(2013) 07 MAD CK 0034

In the Madras High Court

Case No : Tax Case (Appeal) No. 1233 of 2005

Commissioner of Income Tax APPELLANT

Vs

R. Selvaraj RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:
Income Tax Act, 1961 — Section 147, 148, 80HHC

Citation : (2013) 07 MAD CK 0034

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : J. Narayanaswamy, for Income Tax, for the Appellant; V.S. Jayakumar, for the Respondent

Judgement

Chitra Venkataraman, J.—This Tax Case Appeal, filed at the instance of the Revenue against the order of the Income Tax Appellate

Tribunal, relating to the assessment year 1998-99, was admitted on the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that 90% of dyeing charges

ought not to be reduced from the ''profits of business'' for the purpose of computation of deduction u/s 80HHC, disregarding the plain wording of

Explanation (baa) to Section 80HHC of the Income Tax Act, as per which, 90% of any receipts by way of brokerage, commission, interest, rent,

charges or any other receipt of a similar nature included in the profits has to be reduced from the ''profits of business''?

The assessee herein filed a declaration under the Voluntary Disclosure of Income Scheme, 1997 (VDIS) before the Commissioner of Income Tax,

Tamil Nadu - IV on 30.12.1997, declaring income in the form of value of assets at Rs. 79,55,710/-. Admittedly, the assessee did not discharge his obligation of paying the required tax under the Scheme.

2. It is seen from the file produced before this Court on the directions issued to the learned Standing Counsel, that the declaration was forwarded to the Assessing Authority by inviting his attention to the office circular in VDIS/99-2000 dated 24.01.2000, which stated that in the VDIS Scheme, if the tax had not been paid within the specified period, the Assessing Officer should reopen the assessment immediately. Thus the declaration was sent to the Officer for necessary action. Based on this, the Assessing Officer reopened the assessment u/s 147 of the Income Tax Act and a notice was issued u/s 148 of the Income Tax Act, holding that he had reason to believe that income liable to tax had escaped assessment. The assessee resisted the proceedings on the ground that the declaration made was only for the sake of information of the Department and that there was no suppression. The Assessing Officer, however, rejected the contention of the assessee and finalised the assessment based on the materials available and the declaration made under the VDIS Scheme.

3. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals). On going through the details filed and the declaration made, the Commissioner of Income Tax (Appeals) found that the assessee was also in possession of gold jewellery as well as other properties, but the assessee had not disclosed the facts about the possession of those assets anywhere prior to 31.12.1997. The Commissioner of Income Tax (Appeals) pointed out that the letter written by the assessee to the Income Tax Officer on 27.02.2002 revealed that it was only as regards the cash that the assessee had denied possession and not the other assets. The Commissioner further pointed out that having given a declaration as regards the assets offered under the VDIS Scheme, the assessee could not retract his own statement, unless there were evidences available with him to show that the declaration made was inconclusive or incorrect. In other words, it was always open to the assessee who made the admission, to contend that his admission was incorrect. In the circumstances, the Commissioner held that the statement made under the VDIS scheme was made for the purpose of reopening the assessment. Thus, going by the materials available, the Commissioner of Income Tax

(Appeals) dismissed the appeal.

4. Aggrieved by this, the assessee went on appeal before the Tribunal, which pointed out that the assessment itself was reopened only at the behest

of the superior authority and the Assessing Officer had not applied his mind independently. In the circumstances, unless the Assessing Officer had

had materials available by recording the reasons for coming to the conclusion that the income had escaped assessment for the assessment year, the

reopening could not be held to be valid in law. Thus, in the absence of any independent reason given, the assessment was set aside. Aggrieved by

this, the Revenue is on appeal before this Court.

5. Learned Standing Counsel appearing for the Revenue pointed out that when the assessee had made the statement on a solemn verification that

he was offering his income under the Voluntary Disclosure Scheme, on the failure to comply with the further condition under the VDIS Scheme,

namely, payment of tax, the statement made would nevertheless be materials providing the information for the purpose of assumption of jurisdiction

u/s 147 of the Income Tax Act. He further pointed out that going by Section 147 of the Income Tax Act, the declaration made being information

available at the hands of the Revenue, the reopening was justly made.

6. We agree with the submission of the learned Standing Counsel appearing for the Revenue. It is no doubt true that under the circular issued by

the Commissioner, the declaration made by the assessee was to be placed for the information of the Assessing Officer for the purpose initiation of

proceedings u/s 147 of the Income Tax Act. But that, by itself, would not lead to an automatic mechanical exercise of jurisdiction u/s 147 of the

Income Tax Act. Given the fact that the assessee had disclosed the particulars of his income for the purpose of VDIS Scheme before the

Commissioner who was the competent authority on the failure to comply with the terms of the VDIS Scheme, the declaration was forwarded to

the respective Assessing Officer for further action. Thus, when the Assessing Officer had had the necessary materials indicating the concealment of

income or income which had escaped assessment irrespective of the source from which it had come, it being the information and the material

indication of escapement of income from assessment for the Assessing Officer to reopen the assessment, rightly the Assessing Officer assumed jurisdiction u/s 147 of the Income Tax Act and no exception could be taken to this by the assessee, contending that the Assessing Officer had no

jurisdiction u/s 147 of the Income Tax Act. Learned counsel appearing for the appellant submits that the declaration made was later on found by

the assessee as not correct and hence, the claim made by the Revenue that the income had escaped assessment without any independent inquiry,

was not correct. We do not find any substance to accept this kind of reasoning, for, when the assessee makes a declaration under the VDIS

Scheme, the assessee was fully conscious of the details given under the Scheme. There was no compulsion on the assessee to opt for the scheme.

Thus, having admitted to the particulars as true and not disclosed in the regular course, if the assessee had not taken this declaration for further

compliance, the details given therein cannot be lost sight of as providing information for the purpose of reopening the assessment. In the

circumstances, we have no hesitation in holding that the information thus provided through VDIS Scheme certainly vests the necessary jurisdiction

with the Assessing Officer u/s 147 of the Income Tax Act, to reopen the assessment. The observation of the Tribunal that the information was

given as per the directions of the Additional Commissioner of Income Tax and that the Assessing Officer had not applied his mind independently,

had no material, particularly in the context of the assessee''s declaration as to his possession under the VDIS Scheme.

In the circumstances, we have no hesitation in setting aside the order of the Tribunal and restoring the matter back to the Tribunal for considering

the re-assessment on merits. Thus the Tax Case filed by the Revenue is allowed, holding that the reopening of assessment was based on necessary

material. Consequently, the Tax Case Appeal stands allowed. No costs.