(1997) 08 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Income Tax C. No. 47 of 1995

Commissioner of Income Tax — APPELLANT

Vs

Rajbir Singh (HUF) — RESPONDENT

Date of Decision : 28-08-1997

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 144, 147, 148, 256(1)

Citation : (1998) 233 ITR 126 : (1998) 99 TAXMAN 26

Hon'ble Judges : N.K. Agrawal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; S.S. Mahajan and Aparna Mahajan, for the Respondent

Judgement

Ashok Bhan, J.—The Commissioner of Income Tax, Amritsar, has filed this petition u/s 256(2) of the Income Tax Act, 1961, (hereinafter referred to as "the Act"), for issuance of a mandamus directing the Income Tax Appellate Tribunal, Amritsar (hereinafter referred to as the Tribunal), to refer the following two questions of law along with the statement of the case to this court for its opinion, which arise from ITA No. 349/ASR of 1991 decided by the Tribunal on February 28, 1993, pertaining to the assessment year 1976-77.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding as invalid the notice issued u/s 148 by taking cognizance of an omission which is covered by the overriding provision of Section 292B of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal has not erred in holding as invalid the notice u/s 148 for ''taking cognizance of an omission in the wake of the fact that the assessee, in his conduct, had consciously and intentionally waived his right to object to the said omission in the notice issued u/s 148 ?"

2. The assessee filed his return, in the status of a Hindu undivided family on June

16, 1982. The said return was treated as non est by the Income Tax Officer. On March 18, 1985, notice u/s 147/148 was issued to the assessee on the ground that certain income had escaped assessment, this notice Was served on the assessee on the same date. The status of the assessee, Whether a Hindu undivided family or individual, was not mentioned in the notice. The assessee did not file his return either in the status of a Hindu undivided family or as an individual. Thereafter, notice was issued u/s 142(1) of the Act requiring the assessee to produce the account books and other information which remained unresponded. Ultimately on January 21, 1988, counsel for the assessee wrote a letter asking the Income Tax Officer to treat the return filed on June 16, 1982, as the return filed in response to the notice u/s 148. In the order sheet dated February 4, 1988, this fact was recorded, which reads as under :

"Shri Anil Mahajan, C.A., is present. Contended that the return filed on June 16, 1982, may be treated as return filed in response to a notice u/s 148 dated March 18, 1985."

3. Thereafter, the case was again adjourned on a request made by counsel for the assessee and return was filed on February 21, 1989, in the status of an individual. The Income Tax Officer framed the best judgment assessment u/s 144 in the status of a Hindu undivided family and determined the taxable income at Rs. 44,700. This order was affirmed in appeal by the Deputy Commissioner of Income Tax (Appeals) on December 11, 1990. the assessee filed an appeal before the Tribunal which was accepted on February 28, 1993. The Tribunal found that notice issued u/s 147/148 was vague and ambiguous inasmuch as the status in which the return was to be filed by the assessee had not been mentioned in the notice. The petition filed u/s 256(1) of the Act by the Revenue was dismissed which necessitated the filing of the present petition by the Revenue seeking a mandamus directing the Tribunal to refer the two questions of law stated to be arising out of the order of the Tribunal reproduced in the earlier part of the judgment.

4. Mr. B.S. Gupta, senior advocate, appearing for the Revenue, argued that the assessee had waived his right consciously and intentionally to object to the defect in the notice omitting the status in which the return had to be filed ; he further argued that even if there was a defect, the same stood cured by the applicability of Section 292B of the Act.

5. After going through the order of the Tribunal, we are of the opinion that in the facts and circumstances of the case, the Tribunal erred in declining to refer the questions claimed by the Revenue to this court for its opinion. Instead of two questions claimed by the Revenue, we reframe one consolidated question of law covering the subject-matter of the controversy to the following effect :

"Whether, on the facts and in the circumstances of the case and also in the light of the provisions of Section 292B of the Income Tax Act, 1961, notice issued u/s 148 of the Act was not invalid specially when the assessee had consciously and intentionally waived his right to object to the defect in the notice ?"

6. Accordingly, we direct the Tribunal to refer the aforesaid question of law along with the statement of the case to this court for its opinion.

