(2010) 12 P&H CK 0469

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No''s. 15 to 17 of 2000

Commissioner of Income Tax APPELLANT

Vs

Rajbir Singh RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:
Income Tax Act, 1961 — Section 139, 144, 147, 148, 256(1)

Citation : (2011) 243 CTR 185

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This order will dispose of three references, IT Ref. Nos. 15 to 17 of 2000 as the same question of law is involved therein. The facts have been taken from IT Ref. No. 15 of 2000.

2. In this reference under s. 256(2) of the IT Act, 1961 (for short "the Act.''"), the income tax Appellate Tribunal, Amritsar Bench, Amritsar (in short "the Tribunal") on the direction of this Court, vide order dt. 28th Aug., 1997, arising out of ITA No. 350/Asr/1991 at the instance of the Revenue, relating to asst. yr. 1977-78, has referred the following question of law, for the opinion of this Court :

Whether on the facts and in the circumstances of the case and also in the light of the provisions of s. 292B of the IT Act. 1961, notice issued under 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 ?

3. The facts, in brief, necessary for adjudication and as narrated in the reference, are that no return of income had been filed by the assessee for the asst. yrs. 1976-77, 1977-78 and 1978-79 within the time permissible under s. 139 of the Act. Later on, having come to know that certain income chargeable to tax had escaped assessment, the AO initiated proceedings under s. 147(a) and issued notices under s. 148 on 18th March, 1985. Thereafter, it was conveyed on behalf

of the assessee vide his letter dt. 10th Dee., 1987 and also through his counsel Shri Anil Mahajan, chartered accountant, vide his letter dt. 21st Jan., 1988 and order sheet entry dt. 4th Feb., 1988, that the return of income already filed on 16th June, 1982 in the capacity of HUF may be treated as return filed in compliance to notice under s. 148, dt. 18th March, 1985. Ultimately, assessments were completed under s. 144 r/w s. 147, but the same were challenged by the assessee before the appellate authority on the ground that the notices issued under s. 148 did not specify the status of the assessee. The plea raised, in other words, was that it was not discernible from the notices, whether the notices under s. 148 had been issued to the assessee in his individual capacity or in the capacity of HUF. The appellate authority held that the assessment had been completed in the status of HUF correctly. The Tribunal, however, cancelled the assessments by holding that the notices under s. 148 were totally vague and did not specify the status in which the returns were to be filed and such notices would not give rise to assume jurisdiction for framing valid assessment.

4. The CIT filed a reference application under s. 256(1) of the Act requesting the Tribunal to refer the aforesaid question of law for the opinion of this Court. The application was, however, dismissed by the Tribunal and the Revenue thereafter filed a petition under s. 256(2) of the Act and it was in that petition that this Court directed the Tribunal to refer the aforesaid question for its opinion, and it is how the same has been referred to.

5. We have heard Learned Counsel for the parties and have perused the record.

6. Learned Counsel for the Revenue submitted that notice under s. 148 of the Act were issued in the name of Kesho Dass and the Learned Counsel for the assessee had admitted and made a statement that the returns already filed by the assessee be treated to have been filed in response to notices issued under s. 148 of the Act in the status of HUF. According to the Learned Counsel, once the assessee had filed returns in response to reassessment notice under s. 148 in the status of HUF, he could not take a plea that the notice issued by the AO did not disclose the status of the assessee and was, thus, invalid. Alternatively, if was urged by the Learned Counsel that it was not a defect which could not be Cured under s. 292B of the Act. and the reassessment proceedings had been validly initiated. It was also argued that no prejudice has been caused to the assessee by issuance of notice in which there was no specific mention of the status of the assessee. Reliance was placed on the judgments in Swaran Kanta vs. CIT (1989) 176 ITR 29 J (P &.H) and Deoria Oxygen Company vs. CIT (2007) 210 CTR (All) 509.

7. Controverting the above submissions, Learned Counsel for the assessee submitted that the defect in the notice under s. 148 for reassessment was a jurisdictional defect which could not be cured under s. 292B of the Act by the Revenue. The counsel submitted that the Tribunal had rightly rejected the plea of the Revenue and the question of law as claimed deserves to be decided against

it. Support in that behalf was sought from the judgments in Commissioner of Income Tax Vs. Ram Das Deokinandan Prasad (HUF), , Sri Nath Suresh Chand Ram Naresh Vs. Commissioner of Income Tax, , Commissioner of Income Tax Vs. Rohtas, and Commissioner of Income Tax Andhra Pradesh Vs. K. Adinarayan Murty, .

8. We have given our thoughtful consideration to the submissions of the Learned Counsel for the parties and find weight in the submissions made by the Learned Counsel for the Revenue.

9. Sec. 292B was incorporated by Taxation Laws (Amendment) Act, 1975, w.e.f. 1st Oct. 1975 which reads as under :

292B. No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons, or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

10. The section was inserted whereby no return of income, assessment, notice, summons or other proceeding shall be rendered invalid merely on account of any mistake, defect or omission where the return, assessment, notice, summons or other proceeding in substance and effect are in conformity with or according to the intention and purpose of the Act. By incorporating this provision, it has been made clear that purely technical objections carrying no substance shall not come in the way of validity of assessment proceedings, etc. In other words, minor defects or irregularities in the circumstances aforesaid, would not negate the validity of the proceedings initiated by the AO and the assessee would not be able to raise technical or venial defects in this regard.

11. It has been recorded in the assessment order that the assessee vide letter dt. 10th Dec. 1987 and also his counsel, Shri Anil Mahajan, chartered accountant, vide his letter dt. 21st Jan., 1988 had submitted that the return of income which had been filed on 16th June, 1982 in the capacity of HUF be treated to have been filed in pursuance to notice issued under s. 148 of the Act. In such a situation, Learned Counsel for the assessee was unable to point out any prejudice having been caused to the assessee.

12. In the present facts and circumstances, notice issued under s. 148 of the Act by the AO shall not render the proceedings invalid as the same are in substance and effect according to the intent and purpose of the Act falling under s. 292B of the Act and the proceedings cannot be held to be vitiated. In view of the aforesaid findings, the judgments on which reliance has been placed by the assessee have no applicability and do not support the case of the assessee.

13. Resultantly, the question of law is answered in favour of the Revenue and against the assessee. The References stand disposed of.