(1997) 08 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : IT Case No. 42 of 1995 & IT Case No. 47 of 1995 & IT Case No. 48 of 1995

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

RAJBIR SINGH. — RESPONDENT

Date of Decision : 28-08-1997

Acts Referred:
Income Tax Act, 1961 — Section 142, 144, 148, 256, 292B

Citation : (1998) 145 CTR 461 : (2000) 113 TAXMAN 664

Hon'ble Judges : Ashok Bhan, J

Bench : Division Bench

Judgement

ASHOK BHAN, J. :

The CIT, Amritsar, has filed this petition under s. 256(2) of the IT Act, 1961 (hereinafter referred to as the Act) for issuance of a mandamus directing the Tribunal, Amritsar, 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/91 decided by the Tribunal on 28th February, 1993 pertaining to the asst. yr. 1976-77 :

"1. Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in law in holding as invalid the notice issued under s. 148 by taking cognizance of an omission which is covered by the overriding provisions of s. 292B of the IT 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 under s. 148 by taking cognizance of an omission in the wake of the fact that the assessee, by his conduct, had consciously and intentionally waived his right to object to the said omission in the notice issued under s. 148 ?"

2. Assessee filed his return in the status of HUF on 16th June, 1982. The said return was treated as non est by the ITO. On 18th March, 1985, notice under ss.

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. Status of the assessee whether as HUF or individual was not mentioned in the notice. Assessee did not file his return either in the status of HUF or as an individual. Thereafter, notice was issued under s. 142(1) of the Act requiring the assessee to produce the account books and other information which remained unresponded. Ultimately on 21st January, 1988, counsel for the assessee wrote a letter asking the ITO to treat the return filed on 16th June, 1982 as the return filed in response to the notice under s. 148. In the order sheet dt. 4th February, 1988, this fact was recorded, which reads as under :

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

Thereafter, the case was again adjourned on a request made by the counsel for the assessee and return was filed on 21st February, 1989 in the status of an individual. The ITO framed the best judgment assessment under s. 144 in the status of HUF and determined the taxable income at Rs. 44,700. This order was affirmed in appeal by the Dy. CIT(A) on 11th December, 1990. Assessee filed an appeal before the Tribunal which was accepted on 28th February, 1993. Tribunal found that notice issued under ss. 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. Petition filed under 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.

3. Mr. B. S. Gupta, Sr. 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 s. 292B of the Act.

4. After going through the order of the Tribunal, we are of the opinion that in the facts and circumstances of the case, 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 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 ?"

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.

