(1991) 08 OHC CK 0018

In the Orissa High Court

Case No : S.J.C. No. 24 of 1985

Commissioner of Income Tax — APPELLANT

Vs

Sajitha Bakery — RESPONDENT

Date of Decision : 05-08-1991

Acts Referred:
Income Tax Act, 1961 — Section 144B, 153, 271(1)

Citation : (1991) 99 CTR 177 : (1991) 192 ITR 658 : (1992) 62 TAXMAN 301

Hon'ble Judges : S.K. Mohanty, J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : R.P. Kar, for the Appellant; A.K. Roy, P. Patnaik, S. Roy and P. Mohanty, for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue.

2. The following question has been referred to this court for answer :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessment made by the Income Tax Officer on October 13, 1980, for the assessment year 1977-78 was barred by limitation and so, is bad in law ?"

3. In respect of the assessment year 1977-78, the Income Tax Officer was not satisfied with the returned figure submitted by the assessee and complying with the requirement u/s 144B of the Income Tax Act as it then was, forwarded a draft of the proposed assessment order to the assessee. Objections to the draft assessment order having been raised by the assessee, it was sent to the Inspecting Assistant Commissioner for approval, After approval, the assessment was completed and an order was made by the Income Tax Officer on October 13, 1980. The assessee preferred an appeal before the Appellate Assistant Commissioner of Income Tax challenging the order of assessment on merits as well as on grounds of limitation. The first appellate authority did not accept the

challenge of the assessee on the ground of limitation. The order of assessment was, however, set aside on merits. Against the appellate order setting aside the assessment, the assessee preferred a second appeal before the Income Tax Appellate Tribunal claiming that the order of assessment ought to have been annulled since it is barred by limitation. The Tribunal found in favour of the assessee and annulled the assessment. The department, feeling aggrieved, sought for this reference.

4. An assessment is to be completed normally within two years from the end of the assessment year in view of the prohibition u/s 153(1)(a) of the Act. In this case, the assessment being for the year 1977-78, it is normally to be completed on or before March 31, 1980. Explanation 1 to the said section which was in force during the period, however, provided that the period not exceeding 180 days between the period commencing from the date on which the Assessing Officer forwarded the draft order and the date of receiving the direction from the Assistant Commissioner shall be excluded. Relevant portion of Section 153 reads as follows :

"153. Time limit for completion of assessments and reassessments,--(1) No order of assessment shall be made u/s 143 or Section 144 at any time after the expiry of-

(a) two years from the end of the assessment year in which the income was first assessable ; or

(b) one year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under Sub-section (4) or Sub-section (5) of Section 139,

whichever is later ....

Explanation 1. -- In computing the period of limitation for the purposes of this section,-- . . .

(iv) the period (not exceeding one hundred and eighty days) commencing from the date on which the Assessing Officer forwards the draft order under Sub-section (1) of Section 144B to the assessee and ending with the date on which the Assessing Officer receives the directions from the Deputy Commissioner under Sub-section (4) of that section, or, in a case where no objections to the draft order are received from the assessee, a period of thirty days, or ...."

5. It is not disputed that, in view of this provision, the assessment ought to have been completed on or before September 27, 1980. While Mr. R.P. Kar, learned counsel for the Revenue, submitted that the Income Tax Officer was satisfied that there was concealment and, therefore, the period of assessment would be eight years as provided u/s 153(1)(b) of the Act, Mr. S. Roy, learned counsel for the assessee, submitted that there being no satisfaction before completion of assessment within the normal period of limitation, the Revenue cannot avail of

the extended period.

6. Mr. Kar submitted that the order of the Tribunal is vulnerable on the ground that it ought not to have relied upon the date of initiation of penalty proceedings to be the date of satisfaction and, accordingly, the second appellate authority''s finding that the assessment is barred by limitation is not correct. Mr. S. Roy, learned counsel for the assessee, on the other hand, submitted that the Tribunal in second appeal specifically asked the representative of the Department as to the material date which would be relevant for the purpose of computing the period of limitation. Examining the record, the State representative brought to the notice of the Tribunal that it is October 13, 1980, which is the date of initiation of penalty proceedings. Mr. Kar submitted that, on a perusal of the record, it would be seen that satisfaction of the Income Tax Officer about the concealment by the assessee was reflected in the draft assessment order itself which was forwarded to the assessee and, accordingly, it should be accepted that, on February 25, 1980, when the draft was sent to the assessee, the Income Tax Officer was satisfied that there was concealment. In case the same is taken into consideration, the satisfaction of the Income Tax Officer being within the period of limitation of normal assessment, i.e., September 27, 1980, the period of limitation is extended to eight years.

7. The determination of the question of limitation depends on the facts found in the second appellate order, On a bare perusal of Section 153 in its totality, there can be no doubt that the Income Tax Officer is required to be satisfied about the concealment within the normal period of assessment, Where no approval of the Inspecting Assistant Commissioner is necessary and the Income Tax Officer is to complete the assessment himself, it is two years and in cases where approval is necessary, another 180 days more would be available to be added. In case no material is brought to the notice of the fact-finding authorities to come to a definite conclusion about the date of satisfaction by the Income Tax Officer, the Tribunal would be justified in coming to the conclusion that the date of initiation of penalty proceeding for concealment is the date on which the Income Tax Officer was satisfied in respect of the concealment. This would be more justified when the representative of the Department was specifically heard in the matter.

8. In case the Tribunal had given a finding that the Income Tax Officer was satisfied on February 25, 1980, when he sent the draft assessment order and yet it had come to the conclusion that the assessment is barred by limitation, we would have had no hesitation in answering that the Tribunal is clearly in error, since, for the purpose of computing the period of limitation, the satisfaction of the Income Tax Officer is material and not initiation of the proceedings for penalty. Materials not having been brought to the notice of the Tribunal in the second appeal, it is difficult to accept the contention of Mr. Kar to give a different finding on new materials which were not brought to the notice of the Tribunal for consideration. Treating October 13, 1980, when the proceeding was initiated, to be the date of satisfaction of the Income Tax Officer, the conclusion of the

Tribunal that the assessment is barred by limitation is justified on the materials on record.

9. Thus analysed, our conclusion is that-

(i) the Income Tax Officer is to be satisfied about concealment during the normal period of limitation of two years or 180 days added, as the case may be ;

(ii) Even after satisfaction, proceedings for penalty may be initiated on a later date which would not affect the assessment order in case satisfaction of concealment is much earlier and within the normal period of limitation.

10. In view of our aforesaid discussions, the answer to the question referred to us is that, on the facts and in the circumstances of the case, the Tribunal was justified in holding that assessment made by the Income Tax Officer on October 13, 1980, for the assessment of 19V7-78 was barred by limitation. The answer is, accordingly, given against the Department, There shall be no order as to costs.

S.K. Mohanty, J.

11. I agree.