(2008) 04 AHC CK 0292

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Satya Narain Keshav Ram (P.) Ltd. RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:
Finance Act, 2006 — Section 148
Income Tax Act, 1961 — Section 260A

Citation : (2008) 173 TAXMAN 402

Hon'ble Judges : S.S. Chauhan, J;Rajes Kumar, J

Bench : Division Bench

Judgement

1.The present appeal u/s 260A of the Income Tax Act, 1961 isdirected against the order dated 8-8-2005 passed by Income Tax Appellate Tribunal, Lucknow Bench, Lucknow in Appeal (ITA) No. 168/Luck./2003 for the assessment year 1995-96.

2.The appeal has been admitted on the following two questions:

(i) Whether the learned Income Tax Appellate Tribunal was justified in law and on the facts of the case in holding that the proviso to Section 143(2)(ii) is also applicable in the case where return was filed in compliance with the notice u/s 148.

(ii) Whether the learned Income Tax Appellate Tribunal was justified in holding that the assessments completed u/s 143(3)/147 read with Section 148 are not valid when the ratio of Nawal Kishor & Sons Jeweller v. Dy. CIT, Central Circle VI, Kanpur by the ITAT (Special Bench) Lucknow Camp at New Delhi clearly held that non-issuance of notice u/s 143(3) is not a nullity but is an irregularity.

3. Heard Shri D.D. Chopra learned Senior Standing counsel for revenue. No one appears on behalf of the assessee despite service of notice.

4. The brief facts of the case are that in response to the notice u/s 148 of the Act, the assessee vide letter dated 2-6-1998 filed on 4-6-1998 in response to the notice issued u/s 148 of the Act submitted that the earlier return filed may be

treated return to have been filed in response to the notice issued u/s 148 of the Act. The notice u/s 143(2) of the Act was issued on 20-10-2000. Since the said notice was not issued within the period prescribed in the proviso to Section 143(2) of the Act, the Tribunal held that the assessment order was not valid.

5. Shri D.D. Chopra, learned Senior Standing counsel for the revenue submitted that an amendment has been made in Section 148 by the Finance Act, 2006 with effect from 1 -10-1991, by which a proviso has been added in Section 148 which provides that in case notice is issued u/s 143(2) of Act after expiry of the time-limit but before expiry of the time-limit for making assessment, the same shall be deemed to be a valid notice. The amendment is with retrospective effect, i.e., with effect from 1-10-1991 thus applicable to the present case, and the notice issued after expiry of 12 months was a valid notice; and in the circumstances the order of the Tribunal is vitiated and liable to be set aside.

6. We find substance in the argument of the learned Senior Standing Counsel. The Section 148 of the Act after the amendment by the Finance Act, 2006 reads as follows:

Issue of notice where income has escaped assessment--(1) Before making the assessment, reassessment or recomputation u/s 147, the assessing officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139:

Provided that in a case--

(a) Where a return has been furnished during the period commencing on 1-10-1991 and ending on 30-9-2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under Sub-section (2) of Section 143 after the expiry of twelve months specified in the proviso to Sub-section (2) of Section 143, as it stood immediately before the amendment of said Sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time-limit for making the assessment, reassessment or recomputation as specified in Sub-section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case--

(a) where a return has been furnished during the period commencing on 1-10-1991 and ending on 30-9-2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under Clause (ii) of Sub-section (2) of Section 143 after the expiry of twelve months specified in the proviso to Clause (ii) of Sub-section (2) of Section 143, but before the expiry of the time-limit for making the assessment, reassessment or recomputation as specified in Sub-section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

7. Bare perusal of the aforesaid provision, shows that the notice issued u/s 143(2) after expiry of the period of 12 months specified in the proviso to Sub-section (2) of Section 143 of the Act before making assessment, reassessment or recomputation as specified in Sub-section (2) of Section 153 of the Act such notice shall be deemed to be a valid notice.

8. In view of the aforesaid amended provisions, the view of the Tribunal appears to be incorrect. However, since the Tribunal has not considered the amended Section 148 of the Act, it would be appropriate to remand back the matter to the Tribunal to decide the appeal afresh in the light of the amendment made by the Finance Act, 2006 with effect from 1-10-1991 in Section 148 of the Act.

9. In the result, the appeal is allowed. The order of the Tribunal dated 8-8-2005 passed in I.T.A. No. 168/LUCK./2003 is set aside and the matter is remanded back to the Tribunal to decide the appeal afresh in the light of the observations made above.

