(1990) 09 PAT CK 0014

In the Patna High Court

Case No : Taxation Case No. 132 of 1979

Commissioner of Income Tax APPELLANT

Vs

Sayed Rafiqur Rahman RESPONDENT

Date of Decision : 17-09-1990

Acts Referred:
Income Tax Act, 1961 — Section 147, 148

Citation : (1990) 88 CTR 150 : (1991) 189 ITR 476 : (1991) 56 TAXMAN 5

Hon'ble Judges : G.G. Sohani, C.J;G.C. Bharuka, J

Bench : Division Bench

Advocate : S.K. Sharan, for the Appellant; L.N. Rastogi, for the Respondent

Judgement

1. As directed by this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter to be referred to as "the Act"), the Income Tax Appellate Tribunal, Patna Bench, Patna, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in quashing the assessment ?"

2. The material facts giving rise to this reference, briefly, are as follows :

The assessee was assessed in the status of an individual. The assessee filed a voluntary return for the assessment year 1972-73, disclosing an income of Rs. 5,546. Before the assessment was framed, proceedings u/s 147 of the Act were initiated against the assessee. In response to the notice u/s 148 of the Act, a return was filed by the assessee showing an income of Rs. 46,761. The Income Tax Officer, thereafter, passed the order of assessment. Aggrieved by that order, the assessee preferred an appeal before the Appellate Assistant Commissioner. It was contended on behalf of the assessee that the Income Tax Officer had no jurisdiction to issue notice u/s 148 of the Act, because he had not passed any order of assessment on the basis of the voluntary return filed by the assessee. The Appellate Assistant Commissioner rejected that contention and dismissed the appeal. On further appeal before the Appellate Tribunal, the Tribunal held that the action of the Income Tax Officer in issuing notice u/s 148 of the Act was not justified. In that view of the matter, the Tribunal allowed the appeal and quashed the assessment order. Aggrieved by the order passed by the Tribunal, the Revenue sought reference but, as the application filed in that behalf was rejected, the Revenue filed an application u/s 256(2) of the Act before this court. That application was allowed and the Tribunal was directed to refer the aforesaid question of law to this court for its opinion.

3. From the statement of case, it is clear that the assessment proceedings for the assessment year 1972-73 were pending when notice u/s 148 was issued by the Income Tax Officer. Therefore, the notice for reassessment issued during the pendency of the assessment proceedings cannot be held to be valid. Income cannot be said to have escaped assessment if, at that time, proceedings for the assessment of the assessee''s income have not yet culminated in a final assessment thereof. Moreover, as observed by the Tribunal, the record did not disclose any reason whatsoever for issuing notice u/s 148. In our opinion, therefore, the Tribunal was right in holding that the assessment deserved to be quashed. Our answer to the question referred by the Tribunal to this court is, therefore, in the affirmative and against the Revenue. In the circumstances of the case, there shall be no order as to costs.

4. Let a copy of this judgment be communicated by the Registry of this court to the Assistant Registrar, Income Tax Appellate Tribunal, Patna Bench, Patna.