

(2013) 02 AHC CK 0033

In the Allahabad High Court

Case No : IT Appeal No. 28 of 2011 (Appeal arising out of order of Tribunal in IT Appeal No. 238 (Agr) of 2006)

Commissioner of Income Tax

APPELLANT

Vs

Shyam Cold Storage

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2013) 215 TAXMAN 669

Hon'ble Judges : Ram Surat Ram (Maurya), J;Prakash Krishna, J

Bench : Division Bench

Advocate : R.K. Upadhyaya, for the Appellant;

Judgement

1. The present appeal has been filed u/s 260-A of the income tax Act, 1962, hereinafter referred to as "the Act", against the order dated 27th August, 2010 passed by the Income Tax Appellate Tribunal, Agra Bench, Agra in ITA No. 238/Agr/2006 for the Assessment Year 2002-03. The present appeal arises out of the reassessment proceeding u/s 147 of the Act. The Assessing Officer after recording reasons issued notice u/s 147 of the Act for the Assessment Year 2002-03. The assessee participated in the reassessment proceeding. The reassessment was completed by making certain additions. The matter was carried in appeal and the appeal was allowed in part by the Commissioner of Income Tax (Appeals), Ghaziabad. Thereafter the matter was carried further in appeal before the Tribunal by the assessee. During the course of the appeal, the assessee raised the following ground.

Because the very initiation of proceedings u/s. 147 are wrong and illegal as there is no mention of assessment year by the Assessing Officer in the reason recorded in the absence of the same the initiation of proceedings u/s. 147 for A.Y. 2002-03 are also wrong, illegal, without jurisdiction and the entire proceedings and the assessment completed is invalid and deserves to be quashed.

2. The Tribunal by the order under appeal has held that the reasons recorded by

the Assessing Officer nowhere state that in which assessment year the income of the assessee escaped assessment and on this technical ground the reassessment proceedings have been set aside and the assessment has been quashed.

3. The following four substantial questions of law have been framed in the memo of appeal.

(1) Whether the learned ITAT has erred in quashing the reassessment merely on the basis of non-mention of the assessment year in the reasons recorded when the assessee had not raised any such objection either before the assessing officer or the first appellate authority?

(2) Whether the ITAT failed to consider the fact that the assessee had fully cooperated during the assessment proceedings and complied the notices issued by the assessing officer?

(3) Whether the learned ITAT failed to consider the fact that the assessee had always understood that the proceedings of reassessment related to assessment year 2002-03, i.e., Financial Year 2001-02 as was mentioned vide his letter dated 7.2.05 addressed to the assessing officer?

(4) Whether the ITAT erred in ignoring the provisions of section 292B and 292BB of the Act?

4. Heard Sri R.K. Upadhyay, learned counsel for the appellant and Sri Ashish Bansal, learned counsel for the respondent.

5. Sri R.K. Upadhyay, learned Standing Counsel for the Department, submits that the appeal has been allowed by the Tribunal on a technical ground. The submission is that in view of Section 292B of the Act non-mentioning of the assessment year is of little consequence, in view of the fact that the assessee was not misled and it participated in the reassessment proceedings treating the assessment proceedings for the Assessment Year 2002-03. In reply, the learned counsel for the respondent submits that the very initiation the reassessment proceeding is invalid as the assessment year is not mentioned in the reasons recorded by the Assessing Officer and the reasons do not disclose as to which assessment year the Department was in possession of the material that the income of the assessee has escaped assessment.

6. Considered the submissions made by the learned counsel for the parties and perused the record. It was not disputed by the assessee that he did participate in the reassessment proceeding without raising any objection as to which assessment year the reasons recorded do relate. The assessee participated in the reassessment proceedings for the Assessment Year 2002-03 without raising any objection. No material was placed before us to show that in any manner the assessee was misled for not specifically mentioning the assessment year in the reasons recorded by the Assessing Officer. Section 292B of the Act provides that no return of income, assessment, notice, summons or other proceedings, 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.

7. Section 292B has been enacted with a view to overcome purely technical objection coming in the way of validity of assessment proceedings etc. It deals with curable defects in the proceedings. The idea is that when substantial justice is pitted against technicality cause of justice should prevail. No party can claim to have vested right in injustice being done because of some slip of pen, or omission causing no prejudice to anyone. The section is intended to ensure that an inconsequential technicality does not defeat justice. Nature of mistake will determine whether a return, order or proceeding is vitiated or not.

8. The existence of a valid notice u/s 148 of the Act is a condition precedent, which has been complied with herein. The I.T.A.T. has set aside the reassessment order as in the reasons there is omission of the assessment year.

9. In our considered view, the aforesaid section is fully attracted on the facts of the case. The argument of the learned counsel for the respondent-assessee that merely participation of the assessee will not validate the reassessment proceeding if the notice is invalid, is of no help, in view of the fact that the question of validity of notice u/s 147 of the Act is not in issue. The only defect which could be pointed out is that the assessment year was not mentioned in the reasons recorded by the Assessing Officer. Unless it is shown that assessee was misled by not mentioning the assessment year in the reasons recorded, we are of the view that if the reasons recorded relate to a particular year, the reassessment proceeding initiated relate to that particular year and the assessee participated in the reassessment proceeding without raising any objection, such an objection cannot be raised by the assessee at a subsequent stage of the proceeding. In view of the above, the order of the Tribunal cannot be sustained. In the result the substantial questions of law as framed in the memo of appeal are decided in favour of the Department and against the assessee by holding that the reasons recorded by the Assessing Officer are not vitiated by not mentioning the assessment year therein. Since the Tribunal has not examined the case on merit, the matter is restored back to the Tribunal to examine the case on merits and decide the appeal accordingly. The appeal is allowed. No order as to costs.