
(1989) 01 MAD CK 0032
In the Madras High Court
Case No : Tax Case No. 277 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Simson and Mc Conechy Limited

RESPONDENT

Date of Decision : 24-01-1989

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 139(2), 142, 142(1)

Citation : (1989) 75 CTR 164 : (1989) 177 ITR 526

Hon'ble Judges : V. Ratnam, J; Bhakthavatsalam, J

Bench : Division Bench

Advocate : N.V. Balasubramanian, for the Appellant; None, for the Respondent

Judgement

Ratnam, J.—The assessee is a non-resident company and the assessment year involved is 1967-68, the previous year ending on December

31, 1966. The Income Tax Officer initially completed the assessment on January 31, 1968. Subsequently, the assessment was reopened u/s

147(a) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and a notice was issued u/s 148 of the Act on November 2, 1969,

which was served on the assessee on November 3, 1969. The assessee filed a return on November 23, 1969, disclosing loss as originally claimed,

while considering the return filed by the assessee, the Income Tax Officer proposed to make an addition of Rs. 4,44,635 and in accordance with

section 144B of the Act, which came into force with effect from January 1, 1976, he prepared a draft of the proposed order of assessment and

forwarded it to the assessee on March 24, 1976. The Income Tax Officer was also of the view that the assessee had concealed particulars of its

income attracting section 271(1)(c) of the Act and that, therefore, section 153(1)(b) of the Act would govern the limitation for the completion of

the assessment. However, the assessee raised the objection that the time for making the revised assessment has expired on March 31, 1974, in

accordance with the provisions of section 153(2)(a) of the Act and hence no assessment could be made, the objection so raised was overruled by

the Inspecting Assistant Commissioner, who directed the Income Tax Officer on September 4, 1976, to make an assessment as proposed and

thereupon, the Income Tax Officer completed the revised assessment on September 10, 1976, determining the total income of the assessee at Rs.

4,10,390 for the assessment year under consideration. Aggrieved by the order of assessment. The assessee preferred an appeal before the

Appellate Assistant Commissioner contending, inter alia, that the time for making the revised assessment had expired on March 31, 1974, and that

therefore, the assessment made on September 10, 1975, was not in order. The Appellate Assistant Commissioner held that the provisions of

section 153(1) of the Act were not applicable and the assessment should have been made within the period prescribed u/s 153(2)(a) of the Act,

and that, therefore, the revised assessment was time-barred. On further appeal to the Tribunal, it also concurred with the view taken by the

Appellate Assistant Commissioner and dismissed the appeal. Thereupon, the Revenue sought for and obtained a reference to this court u/s 256(1)

of the Act on the following question of law:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that section 153(2) applied and not section

153(1) and consequently cancelling the reassessment made by the Income Tax Officer on September 10, 1976, for the assessment year 1967-68,

as time-barred ?

2. Whether the revised assessment has been made within the time prescribed therefore is the question in this reference. That, in turn, would depend

upon whether the case is governed by the provisions of section 153(1)(b) or section 153(2)(a) of the Act. While the contention of the Revenue is

that the case is governed by the provisions of section 153(1)(b) of the Act, the assessee's case is that it would fall u/s 153(2)(a) of the Act. Section

153 of the Act provides for time limits for completion of assessments and reassessments, it will be useful to set out the section in so far as it is

relevant for purposes of this reference:

153(1) No order of assessment shall be made u/s 143 or section 144 at any time after -

(a) the expiry of -

(i) four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year

commencing on or before April 1, 1966;

(ii) three years from the end of the assessment year in which the income was first assessable, which such assessment year is the assessment year

commencing on April 1, 1968;

(iii) two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year

commencing on or after April 1, 1969; or

(b) the expiry of eight years from the end of the assessment year in which the income was first assessable, in a case falling within clause (c) of sub-

section (1) of section 271; or

(c) the expiry of one year from the date of filing of a return or a revised return under sub-section (4) or sub-section (5) of section 139;

whichever is the latest.

(2) No order of assessment, reassessment or recomputation shall be made u/s 147 -

(a) where the assessment, reassessment or recomputation is to be made under clause (a) of that section, after the expiry of four years from the end

of the assessment year in which the notice u/s 148 was served;

(b) where the assessment, reassessment or recomputation is to be made under clause (b) of that section, after -

(i) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(ii) the expiry of one year from the date of service of the notice u/s 148,

whichever is later.

3. There is no dispute that if section 153(1)(b) of the Act should govern the case, then, the time for making the assessment should expire on March

31, 1976, being a period of eight years from the end of the assessment year 1966-68, in which the income was first assessable in a case failing

within section 271(1)(c) of the Act.

4. Section 139 to 158 deal with the procedure for assessment commencing with section 139 relating to the filing of the return, u/s 139(1) of the Act, a duty is cast on every person to furnish a return of his income, if his total income during the previous year exceeded the maximum amount not chargeable to Income Tax. Section 139(2) of the Act empowers the Income Tax Officer to issue a notice to any person requiring him to file a return of income, which should be done before the end of the relevant assessment year. Section 142(1) of the Act enables the Income Tax Officer to call upon the assessee irrespective of whether he has filed a return or not to produce his books of account and to furnish the necessary information as may be required. Section 142(2) of the Act makes provision for the Income Tax Officer making such enquiries as may be considered necessary for the purpose of obtaining complete information, u/s 142(3) of the Act, the assessee should be given an opportunity of being heard on the materials gathered by the Income Tax Officer on the basis of any enquiry made by him u/s 142(2) of the Act and which he proposed to utilise in the course of the assessment, thus, sections 139 and 142 of the Act deal with several stages anterior to the making of an assessment. Sections 143 and 144 of the Act relate to the actual passing of orders of assessment on the basis of the materials. The Income Tax Officer, if satisfied with the return, can accept the same and complete the assessment, but, if he does not, then, he can serve a notice on the assessee to produce evidence and on a consideration of the evidence, the assessment order can be made. Cases may arise when an assessee does not file a return deposit a notice u/s 139(2) of the Act and also having filed a return, the assessee does not extend his co-operation by providing the information required of him despite a notice u/s 143(1) or 143(2) of the Act, in such a situation, u/s 143(1) or 143(2) of the Act. In such a situation, u/s 144 of the Act, the Income Tax Officer can proceed to make a best judgment assessment. It is thus seen that sections 143 and 144 of the Act provide for the procedure for making assessments in the situations contemplated therein. In some cases, it may also be that an assessee had not filed a return u/s 139(1) of the Act and the Income Tax Officer also might have omitted to issue a notice u/s 139(2) of the Act before the end of the relevant previous year and it may be realised later that the assessee had assessable income. The assessment, on the basis of the

materials made available by the assessee, might also have been completed and that may not be either true or full or complete leading to escaped

assessment. A situation may also arise where by reason of information obtained later the Income Tax officer may have reason to believe that

income had escaped assessment in the original assessment. To check revenue loss, u/s 147 of the Act, provision is made to enable the Income Tax

Officer to reopen the proceedings and make a revised assessment. In such a case, an obligation is cast on the Income Tax Officer to issue a notice

u/s 148 of the Act and the time limit for the issue of a notice is provided u/s 149 of the Act, section 153 of the Act provides for the time limit for

the issue of such notice is provided u/s 149 of the Act. Section 153 of the Act provides for the time-limit for making such assessment,

reassessment and recomputation and this is broadly the scheme of the provisions relating to the filling of returns, completion of assessment as well

as it reopening. Section 153(1) of the Act refers to assessments u/s 143 or 144 of the Act, while section 153(2) of the Act deals with assessments,

reassessments or recomputation made u/s 147 of the Act. Thus, in section 153 of the Act, two distinct and different situations are provided for

with reference to assessments u/s 143 or 144 of the Act and assessments or reassessments or recomputation made u/s 147(a) or 147(b) of the

Act and the provisions of different periods of limitation u/s 153(1) and 153(2) is clearly indicative that a clear and distinct dichotomy was intended

and maintained even with reference to the period of limitation within which action could be taken, in other words, it could not have been intended

that there should be any mixing up or overlapping of the different cases contemplated u/s 153(1) or 153(2) of the Act, as the case may be. Though

u/s 2(8) of the Act "'assessment'" includes reassessment, that definition would apply unless the context other is requires and the provision made in

sections 153(1) and 153(2) of the Act maintaining a clear-cut distinction between the respective cases contemplated by it shows that the

expression "'assessment'", occurring in section 153(1) of the Act cannot be understood as including a reassessment as defined in section 2(8) of the

Act. The opening words of section 153(1) of the Act cannot, in our view, be constructed as including an order or reassessment as contemplated

u/s 147(a) or 147(b) of the Act with reference to which a separate and independent provision has been made u/s 153 of the Act. The power to

assess or reassess such income or recompute the loss or depreciation allowance, as the case may be, for the assessment year concerned conferred by section 147 of the Act, when exercised, cannot be interpreted to mean an assessment u/s 143 or section 144 of the Act, as the case may be, depending upon the extent of co-operation extended by the assessee, by reason of section 148 of the Act, the other provisions of the Act are made applicable for making an assessment or a revised assessment, as the case may be, u/s 147 of the Act. But, from that, it is not possible to infer that where an assessment or revised assessment is made u/s 147 of the Act, it is one falling u/s 143 or section 144 of the Act, as the case may be.

5. We may now refer to the decision in *Miri Mal Mahajan Vs. Commissioner of Income Tax and Another*, , relied on by the Tribunal, No return

having been submitted by the assessee, the Income Tax Officer, on information received, issued a notice u/s 148 of the Act for the assessment year

1962-63, which was returned as refused and a fresh notice and later a notice u/s 142 of the Act were also returned as refused and thereupon the

Income Tax Officer proceeded to make a best judgment assessment on August 14, 1968, but it was purported to be done u/s 144 of the Act. A

writ petition was filed challenging the assessment and it was contended that u/s 153(1) of the Act, an assessment should have been made before

the expiry of four years from the end of the assessment year 1962-63 and, therefore, the assessment made on August 14, 1968, was time-barred,

it was held that an order of assessment u/s 144 of the Act can be made only when a return is filed pursuant to notice u/s 139(2) of the Act and not

in pursuance of a notice u/s 148 of the Act and as no return at all was filled by the assessee, there was total escapement of income and, therefore,

sections 147, and 153 of the Act had been invoked and as the best judgment assessment was also made u/s 144 read with section 147 of the Act,

the period of limitation for an assessment u/s 147 of the Act pursuant to a notice u/s 148 of the Act would be governed by section 153(2) of the

Act and that, therefore. The order of assessment was not barred by limitation. In that view, the dismissal of the writ petition was affirmed. The view

thus taken would also support the conclusion that in a case where a notice u/s 148 of the Act has been issued, as here, the limitation as provided

u/s 153(2) of the Act would apply. We, therefore, hold that u/s 153(2)(a) of the Act, the revised assessment should have been made on or before

March 31, 1974, but having been actually made on September 10, 1976, was clearly time-barred. The Tribunal was right in holding so. We,

therefore, answer the question referred to us in the affirmative and against the Revenue, there will be, however, no order as to costs.