(2008) 11 KL CK 0034

In the High Court Of Kerala

Case No : IT Ref. No''s. 3 and 4 of 2006

Commissioner of Income Tax — APPELLANT

Vs

Sitaram Textiles — RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(1A), 143(2), 143(3), 154(1)
Income Tax Rules, 1962 — Rule 6B, 6D

Citation : (2009) 221 CTR 476 : (2009) 313 ITR 330 : (2009) 179 TAXMAN 321

Hon'ble Judges : Harun-Ul-Rashid, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; K.R. Sudhakaran Pillai, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—These Income Tax reference cases arise from orders of the Tribunal issued for the asst. yrs. 1989-90 and 1990-91. Loss returns filed by the assessee for the above two years were accepted by the AO and intimations were sent u/s 143(1)(a) of the IT Act. Regular assessment was completed for the asst. yr. 1990-91 u/s 143(3) of the Act after issuing notice u/s 143(2) of the Act. Later, the AO noticed that the intimations sent were incorrect inasmuch as adjustments towards prima facie inadmissible items namely, disallowance under Rules 6B, 6D and Section 37(2A) were not made. Accordingly notices were sent u/s 154(1)(b) of the Act and assessments were rectified vide two orders dt. 8th Feb., 1994 produced as Annex. A to the reference case. In the appeals filed by the assessee, the CIT(A) held that the proceedings sent u/s 143(1)(a) on 31st Aug., 1990 and 28th Feb., 1991 for the respective assessment years do not constitute intimations u/s 143(1)(a) of the Act. Consequently he cancelled the rectification orders in which additional tax was demanded u/s 143(1A) of the Act. In second appeal filed by the Department before the Tribunal, Tribunal confirmed the orders of the CIT(A). It is against these orders reference was sought by the Department and the Tribunal has referred the following two questions of law for our decision:

1. Whether, on the facts and in the circumstances of the case, is the intimation statutorily invalid ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in cancelling the rectification order ?

2. When the cases came up before us, counsel for the assessee pointed out that the Tribunal decided the appeal based on their order in Kerala State Coir Corporation''s case which is confirmed by decision of this Court reported in Commissioner of Income Tax Vs. Kerala State Coir Corporation Ltd., . However, senior standing counsel appearing for the IT Department submitted that the decision of this Court does not apply to the facts of this case because in that case there was no proceeding issued u/s 143(1)(a) and acknowledgement only was issued by the officer on the returns filed.

3. On going through the Tribunal''s order, the decision of this Court abovereferred and after hearing both sides, we feel the Tribunal has committed errors not only on facts but with reference to statutory provisions also. In the first place, on going through the records available with the assessee we find that returns were acknowledged on the date of filing it i.e. on 29th Dec, 1989 for the year 1989-90 and on 31st Dec, 1990 for the year 1990-91. It is seen from Annex. A produced for both the years that the returns were processed and intimations were sent, though without demand, on 31st Aug., 1990 and 28th Feb., 1991. The CIT(A) and the Tribunal have also referred to these intimations issued u/s 143(1)(a) which are not acknowledgements of filing of returns. The question, therefore, to be considered is whether a proceeding sent pursuant to filing of returns without demand of tax or interest is an intimation u/s 143(1)(a) of the Act. We notice that there is a specific proviso in Section 143(1) which is as follows:

Provided further that an intimation shall be sent to the assessee, whether or not any adjustment has been made under the first proviso and notwithstanding that no tax or interest is due from him.

The above proviso makes it clear that besides acknowledgement of receipt of return, issue of an intimation u/s 143(1)(a) is contemplated under the Act. If that be so, then the question is whether such an intimation can be rectified u/s 154(1)(b) of the Act. It is pertinent to note that the above provision specifically authorises rectification of mistakes in such intimations issued. In fact, prior to the amendment w.e.f. 1st June, 1999, Section 154(1)(b) provided for amendment of any intimation sent by the officer under Sub-section (1) of Section 143 or to enhance or reduce the amount or refund granted by it under that sub-section. Apparently, an intimation sent without demand of tax or interest also could be rectified u/s 154(1)(b) of the Act. Since the CIT(A) and the Tribunal have misunderstood facts and have not referred to the statutory provisions applicable at the relevant time, we are constrained to set aside the order of the Tribunal and remand the matter back to the Tribunal for reconsideration for the year 1989-90.

4. So far as the case for 1990-91 is concerned, one additional feature noticed by the Tribunal in the reference order is that after issuing intimation u/s 143(1)(a), the AO had completed a regular assessment u/s 143(3). The question, therefore, is whether after issuing a regular assessment, the proceedings issued u/s 143(1)(a) can be rectified. The decision of the Supreme Court in Commissioner of Income Tax Vs. Gujarat Electricity Board, relied on by the Tribunal does not apply to the facts of this case because there what was decided was not the right of the AO to rectify u/s 154(1)(b) of an intimation after issuing a regular assessment.

5. On the other hand, what Supreme Court has held is that after making a regular assessment, there is no scope for issuing intimation u/s 143(1)(a) of the Act. On the other hand, if proceeding issued u/s 143(1)(a) is an independent proceeding and is not superceded or merged in the assessment issued u/s 143(3), still it will be open to the officer to rectify the intimation issued u/s 143(1)(a). Since the decision of the Supreme Court relied on by the Tribunal is not on the issue, we feel the matter requires to be reconsidered by the Tribunal by understanding the issue correctly which is set out above. Therefore, the order of the Tribunal for this year also is set aside and remanded to the Tribunal for reconsideration.]

6. These reference applications are accordingly disposed of by declining to answer the questions referred, but by setting aside the orders of the Tribunal with direction to them to issue notice to the parties, hear the matter afresh and issue orders.

