(2008) 07 RAJ CK 0055

In the Rajasthan High Court

Commissioner of Income Tax — APPELLANT

Vs

Smt. Jyoti Devi — RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:
Income Tax Act, 1961 — Section 143(1)(a), 147

Citation : (2008) 218 CTR 264

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—This appeal has been filed by the Revenue against the judgment of the learned Tribunal dt. 24th Sept., 2004.

2. The appeal was admitted vide order dt. 9th March, 2006, by, framing the following substantial questions of law:

1. Whether in the facts and circumstances of the case when for asst. yr. 1991-92 the original assessment was made u/s 143(1)(a), could resort to proceedings u/s 147 be termed as based on mere change of opinion.

2. Whether the resort to Section 147 could be taken if the AO fails to make resort to regular assessment u/s 143 within the time permitted after assessment was made u/s 143(1)(a).

3. The necessary facts are, that the present assessee filed a return on 12th July, 1991, which was processed u/s 143(1)(a) on 27th Sept., 1991, and a refund of Rs. 515 was issued to the assessee. Subsequently on 26th March, 1997, a notice u/s 148 was issued, as the AO was of the opinion, that there was under-assessment of income, inasmuch as the depreciation claimed by the assessee on tractor, which are agricultural implement, and was allowed to the assessee, whereas it is agricultural implement, and any deduction whatsoever, if any admissible, is admissible against the agricultural income. In response to this

notice a return was filed, and the learned AO made best judgment vide order dt. 22nd Dec, 1998, and held, that the assessee has claimed depreciation on two tractors owned by her on the ground that she has income from tractor hiring while there is no evidence that the tractor was ever plied for commercial purposes, and that the tractor is an agricultural machinery, and the assessee having utilised the same for agricultural purposes, she is not entitled to depreciation against the other business income of the assessee. Consequently claim of depreciation was held to be inadmissible, and was disallowed.

4. Against this order, appeal was filed before the CIT(A) by the assessee, and the learned CIT(A) in para 5.2 has found as under:

The AO had briefly discussed the reasons for initiating proceedings u/s 148 in the assessment order. It has been mentioned by him that a notice u/s 148 was issued on 26th March, 1997, as he had found that there was under-assessment of income as much as depreciation on tractors, which are agricultural implement, was claimed and allowed to the appellant whereas any deduction whatsoever if admissible, is admissible against agricultural income.

5. The learned CIT(A) referred to the judgment of Hon''ble the Supreme Court, in Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar, wherein it was held, that when the primary facts, necessary for assessment are fully and truly disclosed, the ITO will not be entitled on change of opinion to commence proceedings for reassessment. Similarly, if he has raised a wrong legal inference from the facts disclosed, he will not, on that account, be competent to commence reassessment proceedings.

6. Inter alia on these premises it was found, that the ITO was not justified in reopening the already completed assessment, and there did not exist any reason whatsoever for forming the belief, that there was any income chargeable to tax has escaped assessment. Full facts in respect of depreciation on tractors were disclosed in the original return, which was processed u/s 143(1)(a), after compliance of deficiency letter, and that, merely after reappreciation of relevant facts on record, which were already there while furnishing original return, had issued the notice u/s 148, which was nothing but a change of opinion. Learned CIT(A) also recorded that he had seen the reasons given by the learned AO for initiating reassessment proceedings before issuance of notice u/s 148, and the learned CIT(A) was of the view, that the AO was not justified in reopening the already completed assessment, as there was no reason for him to take such an action, there were no sufficient reasons with the AO to hold, that income chargeable to tax had escaped assessment. It was noticed that after filing original return AO found some deficiencies, for which deficiency letter was issued, which was duly replied, and evidence was submitted. Then, after satisfied reasonably, processed the return. It goes to show, that thereby the AO was satisfied with the claim of the assessee in respect of depreciation on tractors to be legally correct. Thereafter reopening exercise has been undertaken, only on the basis that depreciation was wrongly claimed, and allowed, which is but a

change of opinion. On this basis initiation of reassessment proceedings was not held to be justified. Learned CIT(A) also relied upon the other judgments, including one of this Court also being Additional Commissioner of Income Tax Vs. Ganeshilal Lal Chand, Consequently, the appeal was allowed, and the reassessment proceeding was quashed.

7. Aggrieved of this order the Revenue filed appeal, and the assessee also filed protective appeal. The learned Tribunal by the impugned order found, that the AO was not justified in opening the already completed assessment in the absence of valid reasons for reopening. It was found, that there was no evidence on record, which could justify, that Income chargeable to tax had escaped assessment, particularly when such depreciation was allowed in the past, and it was found that in subsequent years also it was allowed. Thus, it was found that reopening of the assessment, only on the basis for depreciation was wrongly claimed and allowed, was nothing but a mere change of opinion, which cannot be a basis for initiating action u/s 148. The learned Tribunal also relied upon the judgment of Hon''ble the Supreme Court in CIT v. Bhanji Lavji''s case (supra). Thus, the appeal of the Revenue was dismissed, and the appeal of the assessee being only protective, was also dismissed.

8. Assailing the impugned order it was contended, that the question of sufficiency of reasons for initiation of reopening proceedings could not be gone into by the learned CIT(A), and the learned Tribunal, as it was a matter of subjective satisfaction of the concerned AO, and for this purpose reliance was placed on M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another,

9. On the other hand, the learned Counsel for the assessee supported the impugned order, and contended, as found by the learned CIT(A), and the Tribunal, that there was no material on the basis of which any belief could be framed for initiating proceedings u/s 148.

10. We have considered the submissions, and have gone through the impugned order of the learned CIT(A), and the learned Tribunal.

11. Before proceeding further we would like to deal with the judgment rendered in Phool Chand Bajrang Lal''s case (supra). That is a case on its own facts, inasmuch as in that case, after completion of assessment for the asst. yrs. 1963-64 to 1968-69, accepting the genuineness of the loan, and allowing deduction of the interest, the ITO having jurisdiction to assess the Calcutta company, informed the ITO at Azamgarh, by a letter dt. 7th July, 1970, that the managing director of that company had made a confession, to the effect, that the company was only a name lender, and had never advanced any loans to any person, and this was accepted in the assessments of the company for the asst. yrs. 1962-63 to 1964-65, and it was after receipt of this letter, that the ITO, Azamgarh, issued notices to the assessee for reassessment u/s 147(a), on the ground, that income had escaped assessment to tax, as a result of the failure of

the appellant to fully and truly disclose material facts. On these facts it was found, that there it is not a case of mere change of opinion, or the drawing of a different inference from the same facts, as were earlier available, but acting on fresh information coming to the notice of the AO subsequently, which led to form a requisite belief that the income chargeable to tax had escaped assessment. In this background it was held, that sufficiency of reasons for forming the belief is not for the Court to judge.

12. The precise question, therefore is, as to whether in the present case, any subsequent information, or material have come to the notice of the AO, to enable him to form a requisite belief, that any particular income has escaped assessment, which was liable to be assessed, and apart from the fact, that as found by the learned CIT(A), and the learned Tribunal, that there was no subsequent information, or fresh material, we again pointedly asked the learned Counsel for the Revenue to point out, as to how these findings are wrong, and to show even to us, if there is any material, which might have come to the notice of the AO subsequently, but the learned Counsel for the Revenue could not point out any one.

13. That being the position, in our view, it was rightly found by the learned CIT(A), and the learned Tribunal, that it was merely a change of opinion on the part of the learned AO, about admissibility of claim of depreciation on tractors, and in view of the Judgment of Hon''ble the Supreme Court, in CIT v. Bhanji Lavji''s case (supra), the AO could not initiate reassessment proceedings.

14. In view of the above, question No. 1 is answered against the Revenue, and it is held, that in the circumstances of the case, the resort to proceedings u/s 147, was outcome of mere change of opinion. So far as question No. 2 is concerned, in our view it does not arise in the present case, because it is not a case here, that the AO has failed to make regular assessment within the time permitted, after assessment u/s 143(1)(a).

15. Thus, we do not find any force in the appeal, and the same is, therefore, dismissed.

