
(2006) 02 AHC CK 0268
In the Allahabad High Court

Commissioner of Income Tax

APPELLANT

Vs

S.P. Misra

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2008) 297 ITR 352

Hon'ble Judges : S.N. Shukla, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These appeals u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") have been filed by the Revenue challenging the order passed by the Income Tax Appellate Tribunal dated August 31, 2005, in respect of the assessment years 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97.

2. Since all the appeals raise a common question for determination and, therefore, we are disposing of all the appeals by a common order.

3. The facts, which have given rise to the aforesaid cases, in short, are that the assessee had been submitting his returns of income throughout all the aforesaid years, in which he had disclosed certain income as "agricultural income". These returns were accepted. However, the Assessing Officer while dealing with the assessment year 1997-98, recorded a finding that income of Rs. 1.80 lakhs which has been declared as agricultural income was not agricultural income and, therefore, treated it as income from other sources. In appeal, the Commissioner of Income Tax (Appeals), upheld the finding of the Assessing Officer, vide his order dated January 14, 2001, but did not make any comment on the agricultural income declared and accepted by the Assessing Officer for the assessment years in question in the present appeals, i.e., the assessment years besides the assessment year 1997-98, which was in dispute before the appellate authority.

4. It appears that the Assessing Officer collected an information that the income,

which has been taken as agricultural income in the assessment years in question, is a case of escaped assessment and, therefore, issued notices u/s 148 on March 23, 2001, for all the five assessment years.

5. The reassessment orders were passed on March 26, 2003, in which certain additions were made. The appeals were filed before the appellate authority for all the five assessment years and before the Commissioner of Income Tax (Appeals), the assessee pleaded that reassessment orders were barred by limitation and, therefore, the said orders be set aside.

6. Relying upon the provisions of Section 153(2), it was urged that the time limit for completion of assessment is provided in the aforesaid provisions and consequently no order u/s 147 could be passed after the expiry of one year from the end of the financial year, for which the notice u/s 148 was served.

7. According to the assessee, admittedly, the notice u/s 148 was given in March, 2001, and, therefore, assessment u/s 147/153(3) should have been completed by March 31, 2002, whereas the reassessment orders were made much thereafter, i.e., on March 26, 2003.

8. The Commissioner of Income Tax (Appeals), after considering the provisions of Section 153 and after considering as to whether in the appellate order passed by the Commissioner of Income Tax (Appeals) for the assessment year 1997-98, any direction was given by him in respect of the assessment years in dispute, held that in the absence of any such direction, it could not be said that the reassessment orders were passed for giving effect to the appellate order.

9. There is a mention in the order that the defence representative before the Commissioner fairly admitted that in the appellate order, the learned Commissioner of Income Tax (Appeals) has not given any direction in respect of the assessment years in dispute and, therefore, it could not be said that the reassessment orders were passed for giving effect to the appellate order. But certainly, as the notice u/s 148 has been issued considering the finding of the Commissioner of Income Tax (Appeals) in the assessment year 1997-98, the reassessment orders for the assessment years in question were passed "in consequence of the appellate order" therefore, the one year time limit as provided in Section 153(2) of the Act would not apply.

10. The Commissioner (Appeals) considered the aforesaid plea and held that Sub-section (2) of Section 153 would apply and Section 153(3) would not be applicable, therefore, the reassessment made after the period of limitation provided u/s 153(2), was without jurisdiction and that neither Sub-section (2A) nor Sub-section (3) would apply. Section 153 reads as under:

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

(a) two years from the end of the assessment year in which the income was first assessable, or

(b) one year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under Sub-section (4) or Sub-section (5) of Section 139,

whichever is later.

(2) No order of assessment, reassessment or recomputation shall be made u/s 147 after the expiry of one year from the end of the financial year in which the notice u/s 148 was served:

Provided that where the notice u/s 148 was served on or after the 1st day of April, 1999, but before the 1st day of April, 2000, such assessment, reassessment or recomputation may be made at any time up to the 31st day of March, 2002.

(2A) Notwithstanding anything contained in Sub-sections (1) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order u/s 250 or Section 254 or Section 263 or Section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order u/s 250 or Section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order u/s 263 or Section 264 is passed by the Chief Commissioner or Commissioner:

Provided that where the order u/s 250 or Section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order u/s 263, or Section 264 is passed by the Chief Commissioner or Commissioner, on or after the 1st day of April, 1999, but before the 1st day of April, 2000, such an order of fresh assessment may be made at any time up to the 31st day of March, 2002.

(3) The provisions of Sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of Sub-section (2A) be completed at any time.

(i) (omitted).

(ii) Where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250, 254, 260, 262, 263, or 264 (or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act) ;

(iii) Where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm u/s 147.

11. The scheme of the aforesaid section provides the limitation during which the reassessment order can be made, if the case is covered by the provisions of Sub-section (1) and Sub-section (2). Sub-section (3) of Section 153 excludes the

applicability of the aforesaid period of limitation in the circumstances more precisely indicated in Clauses (ii) and (iii) thereof. The present case is not covered u/s 153(1) or 153(2).

12. Sub-section (2A) again prescribes the period of limitation in respect of the orders passed u/s 250, 254, 263 or 264, as the case may be.

13. The argument of learned Counsel for the Revenue is that reassessment has been made after issuing notice u/s 148 with a view to give effect to the finding of the Commissioner of Income Tax (Appeals) contained in his order of assessment for the year 1997-98 and, therefore, the case was governed by Section 153(3). This argument has to be seen in the light of the findings recorded by the Commissioner of Income Tax (Appeals) for the assessment year 1997-98, wherein he has made the following observations:

The appellant claims to have taken 28 bighas of agricultural land on lease.... But the learned authorised representative claimed that the land was not cultivated. However, he claimed for the first time before me that the appellant derived agricultural income of Rs. 1,80,000 from his ancestral orchard measuring 2 acres. No such claim of orchard was made before the Assessing Officer and no evidence has been given before me. The nature and number of trees have not been mentioned. It is also not clear whether the orchard is in the name of the appellant and the orchard of 2 acres cannot produce income of Rs. 1,80,000. Keeping in view of these facts, I hold that the Assessing Officer was justified in taxing Rs. 1,80,000 as income from other sources.

14. A perusal of the aforesaid finding reveals that it considered a fresh plea taken by the assessee in appeal, to rebut the finding recorded by the Assessing Officer in respect of the alleged agricultural land but this finding cannot be extended for the period covered by the assessment years 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97. There is no direction in the aforesaid order to the effect that the finding recorded in respect of the agricultural income/assessee being possessed of the agricultural land, be given effect to, much less in the earlier assessment years.

15. The Tribunal has relied upon the case of *Rajinder Nath and Others Vs. Commissioner of Income Tax, Delhi*, in reaching the conclusion that the notice u/s 147 was barred by limitation. In the aforesaid case, the apex court interpreted the words "in consequence of or to give effect to any finding or direction contained" as incorporated in Clause (ii) of Sub-section (3) of Section 153. Their Lordships in the said case held that Clause (ii) of Section 153(3) are limited in meanings. It must be for disposal of a particular case in respect of a particular assessee and in relation to the particular assessment year. Further, it was held that (page 20) : "Therefore, in our judgment, the order of the Appellate Assistant Commissioner contains neither a finding nor a direction within the meaning of Section 153(3)(ii) of the Income Tax Act in consequence of which, or to give effect to which the impugned assessment proceedings can be said to

have been taken."

16. In our opinion, the Tribunal did not commit any error in recording a finding that the present case was not a case for giving effect to any finding recorded or direction issued by the Commissioner of Income Tax (Appeals) in its order passed for the assessment years 1997-98. That being so, the period of limitation cannot be saved by applying the provisions of Section 153(3)(ii) of the Act.

Under the circumstances, no substantial question of law arises.

All the appeals are dismissed.