(2000) 11 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : ITR No. 6 of 2000 17 November 2000

Commissioner of Income Tax — APPELLANT

Vs

State Agro Development Corporation — RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:
Income Tax Act, 1961 — Section 139, 147, 148, 22, 256

Citation : (2001) 114 TAXMAN 532

Hon'ble Judges : Saraf, C.J;B.P. Saraf, C.J;Syed Bashir-Ud-Din, J

Bench : Full Bench

Advocate : Anil Bhan, for the Revenue, for the Appellant;

Judgement

Saraf, CJ.

By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') the Tribunal, Amritsar Bench, Amritsar, has

referred the following question of law to this court for opinion at the instance of the revenue :

Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the assessee is entitled to the benefit of the

carry-forward of loss determined on the basis of return filed in response to notice u/s 148 of the Income Tax Act.

2. The material facts giving rise to this controversy, briefly stated, are as follows. The assessee, Agro Industries Corpn. was established for

promotion of agro industries and improvement of agriculture in the State of Jammu and Kashmir. For the assessment year 1975-76, the assessee

did not file its return of income under the Act within the period allowed u/s 139(1). No notice was issued u/s 139(2) to the assessee by the Income

Tax Officer. However, on 27-2-1978, a notice u/s 148 of the Act was issued and served upon the assessee. In response to the said notice, the

assessee filed its return of income for the said assessment year declaring a loss of Rs. 16,58,038. The Income Tax Officer, after considering the

assessee's claim of depreciation, completed the assessment on net loss of Rs. 16,54,626. The Income Tax Officer, however, held that the loss

determined by him could not be carried forward since the return had not been filed voluntarily. The assessee appealed to the Commissioner

(Appeals). Before the Commissioner (Appeals), it was contended on behalf of the assessee that the return filed pursuant to the notice u/s 148 was

also a return within the meaning of section 139(4), read with section 139(1). The contention of the assessee was that the action taken pursuant to a

notice u/s 148 has to be in accordance with the provisions of section 139(2) which does not place any embargo on the carry-forward of the

losses. In support of this contention, the assessee relied upon the decision of the Supreme Court in Commissioner of Income Tax, Punjab Vs. Kulu

Valley Transport Co. P. Ltd., . The Commissioner (Appeals) accepted the assessees contention and held that the assessee-corporation was

entitled to carry forward the loss determined by the Income Tax Officer as, according to him, notice u/s 148 had been issued to the assessee even

before the time for filing the return u/s 139(4) had expired. In that view of the matter, he held that the assessee had filed return within the extended

time. The appeal of the revenue was dismissed by the Tribunal. Hence, this reference at the instance of the revenue.

3. We have heard Mr. Anil Bhan, the learned counsel for the revenue. The assessment in the present case was made by the Income Tax Officer in

proceedings u/s 147 initiated by issue of notice u/s 148. The question that arises for consideration is whether in such proceedings, initiated for the

purpose of assessment of escaped income, the assessee is entitled to claim determination of loss to enable him to carry forward the same to be set

off against the income of subsequent years to the detriment of the revenue. The Income Tax Officer made the assessment in proceedings u/s 147

initiated with a view to assessing income which had escaped assessment and having not found any escaped income, determined a loss of Rs.

16,54,626. He, however, held that the loss could not be carried forward since the assessment had been made in proceedings initiated u/s 147 for assessing the escaped income. The assessee appealed to the Commissioner (Appeals) who reversed the order of the Income Tax Officer and held

that the assessee was entitled to determination of loss in proceedings u/s 148. The revenue appealed to the Tribunal against the above order of the

Commissioner (Appeals). The Tribunal dismissed the appeal of the revenue and affirmed the order of the Commissioner (Appeals).

4. The question that arises for consideration is whether in proceedings for reassessment of income, income can be reduced below the income

originally assessed or in case where no assessment had been made earlier, income can be determined at a negative figure to the detriment of the

revenue. The real controversy, therefore, is about the scope and ambit of the power of the Income Tax Officer in proceedings initiated u/s 147 for

assessment of income which has escaped assessment.

5. Section 147 empowers the Income Tax Officer to assess income which escaped assessment in the relevant assessment year. It is applicable

only, to a case where the Income Tax Officer has reason to believe that the income of the assessee has escaped assessment. The power under this

section can also be exercised in cases where excessive loss or depreciation allowance has been computed. In the instant case, reassessment

proceedings were initiated by the Income Tax Officer for the assessment year 1975-76 by issue of notice u/s 148 because he was satisfied that the

income of the petitioner-corporation for that year had escaped assessment by reason of the non-submission of return by the assessee. In such a

case, if at any stage of the proceedings, the Income Tax Officer finds that income chargeable to tax has not escaped assessment, he is free not to

take further action pursuant to the notice u/s 148 and drop the proceedings. He is not bound to conclude the proceedings and make assessment to

the detriment of the revenue. If, pursuant to notice u/s 148, the assessee submits a loss return, and the Income Tax is satisfied that the income of

the assessee during the relevant year was really negative as claimed by the assessee in his return, he is entitled to close the proceedings. He cannot

complete the assessment to determine the loss thereby giving the assessee a right to claim set-off of the loss in subsequent years to the detriment of

the revenue. Such an act will be contrary to the object, scope and ambit of section 147. Proceedings u/s 147 being for the benefit of the revenue and not the assessee, the assessee cannot be permitted to take advantage of the reassessment proceedings and seek relief which, in the absence of

the proceedings for assessment of escaped income, he could not have claimed.

Income for the purpose of assessment u/s 147 cannot be a negative figure. Similarly, in case of reassessment of income already assessed, the

income cannot be reduced beyond the income originally assessed nor the loss originally determined can be re-determined at a higher figure.

6. The object, scope and ambit of section 147 is now well-settled by the decision of the Supreme Court in Commissioner of Income Tax Vs. M/s.

Sun Engineering Works (P.) Ltd., . Prior to that decision there was a sharp cleavage of opinion between different High Courts on the subject. The

Supreme Court considered various decisions of different High Courts which had held that once valid proceedings u/s 147 are started, the Income

Tax Officer has the jurisdiction and duty to complete the whole assessment de novo. The Supreme Court also considered the observations in its

earlier decision in V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh, to the effect that

once an assessment is validly reopened by issuance of a notice under sub-section (2) of section 22, read with section 34 of the Indian Income Tax

Act, 1922 (corresponding to section 148 of the 1961 Act), the previous under-assessment is set aside and the Income Tax Officer has the

jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. The Supreme Court observed that an

order made in relation to the escaped income does not affect the operative force of the original assessment, particularly if it has acquired finality,

and the original order retains both its character and identity. What is set aside is only the previous under-assessment and not the original

assessment proceedings. The Supreme Court made it clear that its earlier judgment in V Jaganmohan Rao's case (supra) cannot be read to imply

as laying down that in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in

respect of items finally concluded in the original assessment. The assessee cannot claim re-computation of the income or redoing of an assessment

and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment which has since acquired finality. In the reassessment proceedings, it is of course open to an assessee to show that the income alleged to have escaped assessment has, in

truth and in fact, not escaped assessment but that the same had been shown under some inappropriate head in the original return. The Supreme

Court, therefore, said in clear terms that to read the judgment in V. Jaganmohan Raos case (supra), as laying down that reassessment wipes out

the original assessment and that reassessment is not only confined to 'escaped assessment' or 'under-assessment' but to the entire assessment for

the year and starts the assessment proceedings de novo giving the right to an assessee to re-agitate matters which he had lost during the original

assessment proceedings, which had acquired finality, is not only erroneous but also against the phraseology of section 147 and the object of

reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in

that case.

7. The Supreme Court observed:

... It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the

question under consideration and treat it to be the complete law declared by this court. The judgment must be read as a whole and the

observations from the judgment have to be considered in the light of the questions which were before this court. A decision of this court takes it

colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to

ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the

context of the questions under consideration by this court to support their reasonings . . ..

8. In view of the above legal position, in the case before it, the Supreme Court held :

.... Since the original assessment had been concluded finally against the assessee, it was not permissible for the assessee in the reassessment

proceedings to seek a review/revision of the concluded assessment for the purpose of computation of the escaped income. The High Court clearly

fell in error in permitting the assessee to reagitate, in the reassessment proceedings u/s 147(a) of the Act, the finally concluded assessment

proceedings and to grant to him relief in respect of items not only earlier rejected, but also unconnected the escapement of income by assuming as

if the original assessment had not been concluded or was 'still open'.

9. It is clear from the above decision of the Supreme Court that proceedings u/s 147 are for the benefit of the revenue and not of the assessee and

the assessee cannot be permitted to convert the reassessment proceedings to his advantage. The assessee cannot claim that assessment should be

completed and loss should be determined to enable him to claim the benefit of carry-forward and set-off against the income of subsequent years.

In such a case, the proper course for the Income Tax Officer would be to drop the proceedings u/s 147.

10. In the instant case, by refusing to allow the assessee the benefit of carry forward of loss, the Income Tax Officer had, in effect, dropped the

proceedings u/s 148. In our opinion, he was right in doing so. In proceedings u/s 147, he could not have allowed the assessee the benefit of carry-

forward of loss of Rs. 16,58,038 which obviously was to the detriment of the revenue. The Commissioner (Appeals) and the Tribunal were not

justified in law in reversing the above action of the Income Tax Officer.

11. In view of the above, we answer the question referred to us in the negative, i.e., in favour of the revenue and against the assessee.

The reference is answered, accordingly, with no order as to costs.