
(1997) 09 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 407 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Suri Sons

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Income Tax Act, 1961 — Section 125A, 144B, 144B(7)

Citation : (1998) 145 CTR 316 : (1998) 233 ITR 91

Hon'ble Judges : N.K. Agrawal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; None, for the Respondent

Judgement

N.K. Agrawal, J.—The following question has been referred to this court by the Income Tax Appellate Tribunal (for short "the Tribunal") u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that reference made u/s 144B of the Income Tax Act, 1961, was bad in law and assessment made on May 28, 1984, is barred by limitation ?"

2. The assessee-firm derived income from the export of handicrafts, brasswares, etc. A return was filed for the assessment year 1981-82, showing income at Rs. 18,48,505. The revised return was filed thereafter, showing income at Rs. 17,92,190. The Income Tax Officer proposed variation in the assessee's income exceeding Rs. 1,00,000 and, therefore, he followed the procedure laid down in Section 144B of the Act. The draft assessment order was sent by the Income Tax Officer to the assessee on November 22, 1983. Objections were filed by the assessee on December 2, 1983. A copy of the draft assessment order along with the objections was sent to the Inspecting Assistant Commissioner on December 6, 1983. Directions from the Inspecting Assistant Commissioner were received on May 17, 1984. Assessment was framed by the Income Tax Officer on an income

of Rs. 19,16,430 on May 28, 1984.

3. The assessee challenged the assessment on the ground that the Income Tax Officer wrongly followed the procedure laid down in Section 144B of the Act and, therefore, the extended period of limitation was not available for completing the assessment. It was claimed that the Income Tax Officer had concurrent jurisdiction along with the Inspecting Assistant Commissioner u/s 125A of the Act and, therefore, in the light of Sub-section (7) of Section 144B, the procedure laid down in Section 144B was not required to be followed.

4. The Tribunal agreed with the assessee and annulled the assessment order on the ground that Section 144B had been wrongly applied by the Income Tax Officer and, therefore, the extended period of limitation was not available for completing the assessment. It was held by the Tribunal that Sub-section (7) of Section 144B did not require the Income Tax Officer to follow the procedure laid down in that section if the Income Tax Officer had concurrent jurisdiction together with the Inspecting Assistant Commissioner concerned.

5. A similar question has been examined by this court in Income Tax Reference No. 63 of 1985 (Commissioner of Income Tax Vs. Gheru Lal Bal Chand,) decided on September 25, 1997, and it has been held that Sub-section (7) of Section 144B was not attracted and the procedure laid down in that section, was rightly followed as the Income Tax Officer, having concurrent jurisdiction with the Inspecting Assistant Commissioner u/s 125A of the Act, proposed to make variation in the income of the assessee exceeding Rs. 1,00,000. Following the said view, the question is answered in the negative, i.e., favour of the Department and against the assessee.