(2009) 04 MAD CK 0526

In the Madras High Court

Case No : Tax Case (Appeal) No. 2427 of 2006

Commissioner of Income Tax — APPELLANT

Vs

TCP Ltd. — RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:
Income Tax Act, 1961 — Section 139, 143(1)(a), 143(2), 143(3), 147

Citation : (2010) 235 CTR 414

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : K. Subramaniam, for the Appellant; R. Sivaraman, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The Revenue is in appeal against the order of the income tax Appellate Tribunal dated November 23, 2007, made in I.T.A. No. 2304/Mds/2006. The relevant assessment year is 2000-01. The assessee has filed its income tax return on November 30, 2000, declaring a total income of Rs. 2,01,51,054. The return of income was processed u/s 143(1)(a) on March 9, 2001. However, the Assessing Officer issued a notice u/s 148 of the income tax Act on April 30, 2001. Such a notice was objected to as time barred. In spite of that the Assessing Officer has not withdrawn the notice and he has issued notice u/s 143(2) of the Act and completed the assessment on March 28, 2003. That was carried on appeal before the Commissioner of income tax (Appeals), who held that the assessment was ab initio void, inasmuch as the Assessing Officer had issued notice u/s 148 of the Act when he had sufficient time to issue notice u/s 143(3) of the Act. Aggrieved by the order of the Commissioner of income tax (Appeals), the Revenue filed an appeal before the income tax Appellate Tribunal. The Tribunal, following the decision of this court in the case of Commissioner of Income Tax Vs. K.M. Pachayappan, has dismissed the appeal filed by the Revenue. The correctness of the said order is now canvassed before this court by formulating the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that notice u/s 148 of the Act cannot be issued for making an assessment u/s 147 of the Act, when time limit is available for issue of notice u/s 143(2) of the Act for making an assessment u/s 143(3) of the Act ?

2. We heard learned counsel for the Revenue, who fairly submitted that the issue is covered by the decision in the case of Trustees of H.E.H. The Nizam''s Supplemental Family Trust Vs. Commissioner of Income Tax, in which case, the Supreme Court considered the scope of reopening of the assessment and held as follows :

It is settled law that unless the return of income already filed is disposed of, notice for reassessment u/s 148 cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated. According to the Revenue, it is immaterial whether the order is communicated or not and the only bar to the reassessment proceedings is that proceedings on the return already filed should have been terminated...

A mere glance at the note of the income tax Officer would show that it could not be said that the income tax Officer gave finality to the refund since no refund was granted either in the hands of the trust or in the hands of the beneficiaries. It was an inconclusive note where the income tax Officer left the matter at the stage of consideration even with regard to refund in the hands of the beneficiaries. This note was also not communicated to the trustees. Nothing flowed from the note dated November 10, 1965, on the file of 1963-64 as well. In any case if it was an order, it would be appealable u/s 249 of the Act. Since the period of limitation starts from the date of intimation of such an order, it was imperative that such an order be communicated to the assessee. Had the income tax Officer passed any final order, it would have been communicated to the assessee within a reasonable period. In any case, the note dated November 10, 1965, was merely an internal endorsement on the file without there being an indication if the refund application had been finally rejected. By merely recording that in his opinion, no credit for tax deducted at source was to be allowed, the income tax Officer could not be said to have closed the proceedings finally. During the pendency of the return filed u/s 139 of the Act along with the refund application u/s 237 of the Act, action could not have been taken u/s 147 /148 of the Act (headnote).

3. Following the abovesaid judgment, a Division Bench of this court in the case of Commissioner of Income Tax Vs. K.M. Pachayappan, and the subsequent Division Bench of this court, in which one of us is a party (Raviraja Pandian J.) in the case of Commissioner of Income Tax Vs. Qatalys Software Technologies Ltd., has held the issue against the Revenue, by also relying upon the decision in the case of KLM Royal Dutch Airlines Vs. Assistant Director of Income Tax, , in which the

Delhi High Court, following the Supreme Court judgments cited supra, considered the scope of the provision of sections 139 and 147 of the Act and held as follows (page 63): Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no ''fresh evidence or material'' could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the Assessing Officer for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened u/s 143(2), the return had been accepted as correct. It may be argued that thereafter recourse could be taken to section 147, provided fresh material had been received by the Assessing Officer after the expiry of limitation fixed for framing the original assessment. So far as the present case is concerned, we are of the view that it is evident that, faced with severe paucity of time, the Assessing Officer had attempted to travel the path of section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law.

In the light of the decisions cited supra and on the facts of this case, we are of the view that the order of Tribunal is not against any statutory provision or the law declared by the Supreme Court. The tax case appeal stands dismissed. No costs.