
(2004) 09 MP CK 0043
In the Madhya Pradesh High Court
Case No : IT Ref. No. 41 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Thakur Das Aidasani

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 256

Citation : (2005) 193 CTR 315 : (2005) 274 ITR 605 : (2005) 145 TAXMAN 96

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain, for the Appellant; Pyare Lal, for the Respondent

Judgement

A.M. Sapre, J.—This is a reference made at the instance of Revenue (CIT) under s. 256(2) of the IT Act to this Court for answering following two questions of law which arise out of an order dt. 28th Feb., 1992, passed in ITA Nos. 624 to 627/Ind/1990 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the notice issued under s. 148 of the Act was illegal?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the returns filed by the assessee were under Amnesty Scheme ?"

2. The assessee was assessed for the years 1978-79 to 1981-82. On 21st/22nd Jan., 1986, a search operation as contemplated under s. 132 of the Act, as it had its application in the year 1986, was carried out by Income Tax sleuths in the business and residential premises of assessee. It is in this search operation, one diary was seized by the taxing authorities. This diary contained several information regarding substantial investment made by assessee in the business of scooters, mopeds, three-wheelers, shares, lands and moneylending not only in the name of assessee but also, in the names of other family members/relatives. In these proceedings, the statement of assessee was also recorded under s.

132(4) of the Act.

3. It is this event that gave rise for issuance of notice under s, 148 of the Act by AO to assessee for the asst. yrs. 1978-79 to 1981-82. The AO sought approval of CIT as required under the Act for issuance of notice of reassessment under s. 148 of the Act and then accordingly, served the reassessment notices on 28th July, 1986, in respect of asst. yrs. 1978-79 to 1981-82. In the meantime, the assessee also filed returns on 31st March, 1986 under the Amnesty Scheme which was then in force.

4. The assessee felt aggrieved of issuance of notices under s. 148 ibid and filed appeal to Dy. CIT(A). By order dt. 28th March, 1990, the Dy. CIT(A) dismissed all the appeals by consolidated order and upheld the notices. The assessee, therefore, filed further appeal to Tribunal, By impugned order, the Tribunal allowed the appeal and held that in the absence of any material available for forming an opinion, the AO had no jurisdiction to issue notice of reassessment for the asst. yrs. 1978-79 to 1981-82. After recording this finding, the Tribunal did not consider it proper to examine the other question as to whether assessee could file return under the Amnesty Scheme for the years in question and thus could claim immunity. It is against this order, the Revenue felt aggrieved and prayed for reference to be made to this Court under s. ,256(1) of the Act. The Tribunal though initially declined to accede, to the prayer of Revenue but later on being asked by this Court under s. 256(2) of the Act, made the reference to this Court for answering aforementioned two questions of law.

5. Heard Shri R.L. Jain, learned counsel for the applicant, and Shri Pyare Lal, learned counsel for non-applicant.

6. Having heard learned counsel for the parties and having perused record of the case, we are inclined to answer .the reference in favour of Revenue and against the assessee.

7. In our opinion, notices issued by AO under s. 148 of the Act for making reassessment in respect of asst. yrs. 1978-79 to 1981-82 are legal valid and thus rightly issued by AO. Indeed, what more evidence and material was required for forming an opinion for issuance of notice under s. 148 of the Act than what was actually collected in this case by the taxing authorities in the raid proceedings on 21st Jan., 1986, from the business and residential premises of assessee. In other words, the seizure of diary which contained substantial information regarding several kinds of investment made by assessee in different kinds of business was the best piece of material/ evidence that could be made basis for reopening of concluded assessment case for the years in question. It thus cannot be concluded that no material was placed on record by the Revenue for issuance of notices under s. 148 ibid.

8. In order to issue notices under s. 148 of the Act, there has to be a material for forming an opinion by AO. Absence of material is likely to vitiate the notice. As observed supra, in the present case, material collected in raid proceedings was

the most relevant and decisive material that could be made and rightly made the basis by AO for reopening of concluded assessment. We thus cannot countenance with the view taken by the Tribunal. It is totally against the record and thus not legally sustainable. We, therefore, answer the question No. 1 in favour of Revenue and against the assessee by holding that Tribunal was not right in law in holding that notice issued under s. 148 of the Act is illegal. Instead, we answer the question No. 1 by holding that AO was right in issuance of notices under s. 148 of the Act for the asst. yrs. 1978-79 to 1981-82.

9. So far as question No. 2 is concerned, in our opinion, this question really does not arise out of the order passed by the Tribunal because even the Tribunal declined to examine this question. This is what the Tribunal observed in its order dt. 28th Feb., 1992, while disposing of the appeal:

"Para 9-It is not necessary to record any finding if the returns of income furnished by the assessee for these assessment years were under the Amnesty Scheme."

10. Since the Tribunal itself declined to examine the question and did not give any finding one way or other, the same cannot be referred to this Court for answer. It cannot be said that such question arises out of the order passed by Tribunal. This Court can answer the question referred by the Tribunal provided it arises out of the order. As a necessary corollary in order to arise a question out of the order, it must first be decided on its merits.

11. We, therefore, decline to answer the question No. 2 on merits which in our opinion do not arise out of the order of Tribunal and secondly, in view of answer to question No. 1 in favour of Revenue, the question No. 2 need not be answered. No costs.