
(2007) 02 DEL CK 0035
In the Delhi High Court
Case No : IT Appeal No. 182 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Ved and Co.

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(2), 143(3), 147, 148

Citation : (2007) 209 CTR 455 : (2008) 302 ITR 328 : (2007) 162 TAXMAN 366

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : J.R. Goel, for the Appellant; Y.K. Kapur and Kaanan Kapur, for the Respondent

Judgement

1. The Revenue is aggrieved by an order dt. 20th Aug., 2004 passed by the Tribunal in ITA No. 2042/Del/2000 relevant for the asst. yr. 1994-1995.

2. The assessed had filed its return of income on 29th Sept., 1994 declaring an income of Rs. 17,88,830.

Without processing the return, the AO on 5th June, 1996 recorded reasons for issuing a notice to the assessed for reassessment on the ground that the assessed has wrongly claimed excessive deduction u/s 80-O of the IT Act, 1961 and that income has escaped assessment.

Thereafter, on 11th June, 1996 the return of income was processed by the AO u/s 143(1)(a) of the Act and on the same date notice was issued to the assessed u/s 148 of the Act requiring it to file its return of income.

3. In Commissioner of Income Tax Vs. Kalvinator of India Ltd., a Full Bench of this Court observed that an order of assessment can be passed either in terms of Sub-section (1) of Section 143 or Sub-section (3) of Section 143 of the Act. Insofar as the present case is concerned, it is an admitted position that no assessment order was passed u/s 143(3) of the Act and that the return of the assessed was processed u/s 143(1) of the Act only on 11th June, 1996.

4. In Trustees of Trustees of H.E.H. The Nizam's Supplemental Family Trust Vs. Commissioner of Income Tax, , the Supreme Court observed:

It is settled law that unless the return of income already filed is disposed of, notice for reassessment u/s 148 of the IT Act, 1961, cannot be issued, i.e. no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of return already filed are not terminated.

5. From the dates that we have mentioned above and the law as laid down, it is clear that assessment proceedings terminated u/s 143(1) of the Act only on 11th June, 1996. In other words, on 5th June, 1996, when the AO made up his mind to issue a notice to the assessed u/s 147/148 of the Act, a valid return of income filed by the assessed was still pending before him and which could have been processed.

6. It is submitted by learned Counsel for the Revenue that since the period for issuing a notice to the assessed u/s 143(2) of the Act had already elapsed, and the AO was of the view that income had escaped assessment, the AO had no option but to resort to cl. (b) of Expln. 2 to Section 147 of the Act for initiating reassessment proceedings. This clause reads as follows:

Section 147 xxxxx

Explanation 1 : xxxxx

Explanation 2 : For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:

(a) xxxx

(b) where a return of income has been furnished by the assessed but no assessment has been made and it is noticed by the AO that the assessed has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(c) xxxxx

7. The submission made by learned Counsel for the Revenue is that a return of income was furnished by the assessed and before any assessment was framed, it was noticed by the AO that the assessed had understated its income and claimed excessive deduction in the return and, Therefore, action could be taken under Sections 147 and 148 of the Act. Consequently, the conclusion arrived at by the Tribunal was incorrect.

8. We are of the opinion that in view of the decisions that we have mentioned above, for the purposes of initiating reassessment proceedings, the AO could not have made up his mind that the income of the assessed has escaped assessment while a valid return was still pending before him. If the AO had allowed the time to elapse for taking action u/s 143(2) of the Act, it was entirely his own doing.

What the AO is now trying to do in an indirect (and incorrect) manner is what he could not have done directly.

9. The further contention raised on behalf of the Revenue is that even if no assessment order was framed, the AO could issue a notice for reassessment. We are of the view that if no assessment had been made, there was no occasion for the AO to conclude that income had already escaped assessment.

10. This being the position, we are of the opinion that no substantial question of law arises for our consideration and we do not find any error in the view that has been taken by the Tribunal in this regard.

11. Consequently, the appeal is dismissed.

12. Learned Counsel for the Revenue would like us to record that he had relied upon certain judgments. We are not dealing with them because they are not relevant on the given facts of the case.