
(1989) 02 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 108 of 1979

Commissioner of Income Tax (Central)

APPELLANT

Vs

Pearl Mechanical Engineering and Foundry Works (P) Ltd.

RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 144, 146, 246

Citation : (1989) 79 CTR 241 : (1989) 179 ITR 144

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; S.S. Mahajan, for the Respondent

Judgement

S.S. Sodhi, J.—The matter here pertains to the assessment year 1963-64.

2. The original assessment for the assessment year in question was completed on March 21, 1968. This assessment was, however, later reopened u/s 147(a) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on the ground that the Income Tax Officer had reason to believe that certain income of the assessee-company chargeable to tax had escaped assessment. As the assessee, despite several opportunities, failed to account for the imports on the basis of which the Income Tax Officer had come to believe that certain income had escaped assessment, he proceeded to frame the assessment u/s 144 of the Act on September 12, 1973. Earlier, a specific notice had been served upon the assessee u/s 142(1) of the Act, on August 17, 1973, which the assessee had not complied with.

3. The assessee thereafter filed an application u/s 146 of the Act against the assessment framed by the Income Tax Officer on September 12, 1973. This was rejected by the order of February 25, 1974. No appeal was thereafter filed against this order, but the assessee proceeded to file an appeal against the assessment order of September 12, 1973, the main ground urged being that no notice had been served upon it u/s 143(2) of the Act and the assessment framed

was, therefore, a nullity. This contention prevailed with the Tribunal and the reassessment was consequently cancelled. It is in this factual background that the following questions of law have now been referred to this court for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing the assessee to raise an objection regarding the non-issuing of notice u/s 143(2) by the income tax Officer despite the assessee not having pursued its application u/s 146 after the Income Tax Officer stage ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessment framed was contrary to law and had to be struck down ?

(3) Whether, on the facts and in the circumstances of the case and in any view of the matter, the Appellate Tribunal was justified in quashing the assessment instead of merely setting aside the same with a direction to redo it from the point of irregularity or illegality, if any?"

4. In dealing with this matter, the first question that arises is with regard to the competency of the appeal filed by the assessee seeking to challenge the assessment framed by the Income Tax Officer u/s 144 of the Act in the context of the facts and circumstances of the case here. The view of this court as expressed in *GOPAL SINGH Vs. COMMISSIONER OF Income Tax.*, is clearly against the assessee on this point. That was a case under the Indian Income Tax Act, 1922. It was held there that in an appeal against the assessment u/s 23(4) of that Act, the validity of the notice u/s 34(1)(a) in pursuance of which the assessment was made, cannot be raised without resorting to proceedings u/s 27. The law is thus well settled that without filing an appeal against the order passed u/s 146 of the Act, the appeal against the assessment framed u/s 144 is not maintainable.

5. To overcome this hurdle, learned counsel for the assessee sought to press in aid the plea that notice u/s 143(2) of the Act was mandatory and as no such notice had been served upon the assessee, the assessment framed by the Income Tax Officer on September 12, 1973, could not be sustained. Counsel for the Revenue on his part sought to contend that the notice served upon the assessee by the Income Tax Officer on August 17, 1973, could be read as a notice u/s 143(2) of the Act. In the alternative, the argument raised was that this was, at any rate, a notice u/s 142(1) of the Act, which had not been complied with by the assessee and such non-compliance fully justified the framing of the assessment u/s 144 of the Act, as was done by the Income Tax Officer on September 12, 1973. This alternative plea must indeed prevail. A reference to the record here would show that there is a clear finding by the Income Tax Officer, not upset in appeal in any manner, that there has been non-compliance on the part of the assessee with the terms of the notice issued to it, u/s 142(1) of the Act, on August 17, 1973. Such non-compliance having been

established, the requisite jurisdiction was thereby clearly conferred upon the Income Tax Officer to frame the assessment u/s 144 of the Act. This being so, there can be no escape from the conclusion that the Tribunal clearly fell in error in holding that the assessment framed was contrary to law. The second question referred must, consequently, be answered in the negative, in favour of the Revenue and against the assessee. In view of this answer, the two other questions referred are rendered academic and are consequently returned unanswered. The reference is disposed of accordingly. There will, however, be no order as to costs.