
(2005) 02 AHC CK 0069
In the Allahabad High Court
Case No : Income Tax R. No. 10 of 1985

Commissioner of Income Tax (Central)	APPELLANT
Vs	
Sanjay Kumar Gupta	RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Income Tax Act, 1922 — Section 23, 44
Income Tax Act, 1961 — Section 154, 155, 155(1), 182, 183

Citation : (2005) 276 ITR 73 : (2005) 146 TAXMAN 462

Hon'ble Judges : R.K. Agarwal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Shambhu Chopra and S.C, for the Appellant;

Judgement

Prakash Krishna, J.—The Income Tax Appellate Tribunal, Allahabad has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (here in after referred to as the Act) for opinion to this Court:-

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was no assessment or re-assessment of the firm or reduction or enhancement in the income of the firm and that the provisions of Section 155(1) had no application to the instant case?"

2. The reference relates to the assessment year 1971-72. The assessee respondent was one of the partners in M/s. Sanjai Engineering Corporation in the assessment year 1971-72 in question. M/s. Sanjai Engineering Corporation was initially assessed for the relevant assessment year as unregistered Firm (URF). However, in appeal filed u/s 184(7), it was held that the said firm is entitled for registration under the Income Tax Act and the order was passed accordingly. The assessment for the assessment year in question was completed on 30th October, 1976 in respect of the assessee wherein his share from the said firm was taken as "URF". There were other firms also namely M/s. Mannu Lal Kedarnath & Sons and M/s. Mannu Lal Kedarnath and Co. These firms were unregistered firms and the share of the assessee was taken at nil. However, in view of the subsequent

order parsed u/s 184(7) in appeal treating M/s. Sanjai Engineering Corporation as registered firm by the appellate authority, the Income Tax Officer issued notice under Sections 154 & 155 of the Act on 28.11.1981. None appeared on behalf of the assessee before the Income Tax Officer in response to the notice; and consequently the Income Tax Officer determined the share of the assessee in M/s. Sanjai Engineering Corporation, M/s. Mannu Lal Kedarnath & Co. and M/s. Mannu Lal Kedarnath & Sons. In latter two firms the determined share was taken into consideration for rate purposes. The assessment order which was made subsequently was challenged unsuccessfully by the assessee in appeal. However, before the Tribunal, in further appeal, the assessee raised a plea about the nonapplicability of Section 155 of the Act on the ground that the Section 155 had no application, since there was no assessment or reassessment of the firm, nor it is a case of any reduction or enhancement made in the income of the firm. This plea Was accepted by the Tribunal. The relevant portion is quoted below:-

"We have considered the rival submissions as also the decision referred to above. Section 155 had no application to the facts of the case, since there was no assessment or reassessment of the firm nor it was a case of any reduction or enhancement made in the income of the firm."

3. Heard Shri shambhu Chopra, the learned standing counsel for the department. None appeared on behalf pf the assessee in spite of notice, sent by the office Section 155 of the Act as it stood at the relevant time, its relevant portion is quoted below:-

"Section 155. Other Amendments -

(1) Where in respect of any completed assessment of a partner in a firm it is found

(a) on the assessment or reassessment of the firm, or

(b) (b) on the reduction or enhancement made in the income of the Firm under the subsequent.....or

.....,

that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included, is not correct, the Assesment Officer may of amend the order of the assessment of the partner with a view to the inclusion of the share in the assessment or correction thereof....."

4. The Tribunal took the view that as a result of grant of registration to the firm namely M/s. Sanjai Engineering Corporation there was no assessment or reassessment of the firm nor it was a case of any reduction or enhancement made in the income of the firm, therefore, Section 155 has no application. To test the correctness of the aforesaid view of the Tribunal it is necessary to bear in mind the meaning to be assigned to the word "assessment" occurring in the aforesaid section.

5. Apparently that the Tribunal was of the view that the appellate order was with respect to the status of the firm and there is no enhancement or reduction of the income of the firm and its partners. Therefore, the order passed by the appellate authority granting registration to the firm is not an assessment order.

6. The word "assessment" is used in the Income Tax Act in a number of provisions in a comprehensive sense and it includes all proceedings starting with the filing of the return or issue of notice and ending with the determination of the tax payable by the assessee. It is also true that in so many sections the word "assessment" is used with reference to the computation of income. The Supreme Court in *C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, has considered the import of the word "assessment" used in Chapter IV of the Income Tax Act 1922 dealing with the subject "deductions and assessment" and has held that the expression "assessment" used in these sections is not used merely in the sense of computation of income and there is no ground for holding that when by Section 44, it has declared that the partners of the members of association shall be jointly and severally liable to assessment, it is only intended to declare the liability to computation of income u/s 23 and not to the application of procedure for declaration and imposition of tax liability and machinery for enforcement thereof.

7. The Supreme Court in the case of *Commissioner of Income Tax, Andhra Pradesh Vs. Bhikaji Dadabhai and Co.*, has quoted the following observation of the Privy Council made in (1938) 6 ITR 414 (Privy Council) :-

"One of the peculiarities of most Income Tax Acts is that the word "assessment" is used as meaning sometimes the computation of income, sometimes the determination of amount of tax payable and sometimes the whole procedures laid down in the Act for imposing liability upon the tax-payers."

8. In this case the Supreme Court has held that the expression "levy of assessment and collection of Income Tax" includes imposition of penalty u/s 40 of the Hyderabad Income Tax Act. It has also relied upon the meaning given to the assessment by it in the case of *C.A. Abraham (supra)*. The same principle has been reiterated by it in the case of *Kalawati Devi Harlalka Vs. Commissioner of Income Tax, West Bengal and Others*, .

9. It is, thus clear, that when the proceedings are taken u/s 155 of the Act to give effect to the order of the Appellate Authority and in pursuance thereof treat a firm registered one under the Act, which was earlier treated as unregistered by the Income Tax Officer, it is a proceeding for assessment. In the proceedings under Section 155, the Income Tax Officer amends the order in respect of completed assessment of a partner in a firm on the assessment or reassessment of the firm, on the ground that the share of the partner in the income of the firm has not been correctly included in the income of the partner. Such proceedings, in our view are amendment proceedings, therefore, clearly form part of the proceedings for assessment. Further assistance can be withdrawn from the

scheme of the Act itself. Section 155 is in Chapter XIV of the Act. The heading of said chapter is "procedure for assessment". Chapter XVI of the Act provides special provisions applicable to firms. Section 182 deals with the assessment of registered firms and Section 183 with the assessment of unregistered firms. u/s 182, after assessing the total income of the registered firm, the income tax-payable by the firm shall be determined and the share of each partner in the income of the firm shall be included in his total income and assessed to take accordingly. The apportionment of share of the partner in the income of the firm is clearly a part of the assessment proceedings of the firm u/s 182. The proceedings under Section 182 do not come to an end merely on computation of the income of the firm and the determination of tax payable by the firm on that income.

10. The learned standing counsel has rightly placed reliance upon, a judgment of the Supreme Court in the case of *S. Sankappa and Others Vs. The Income Tax Officer, Central Circle II, Bangalore*, in support of his submission that the proceedings for assessment of a firm consists of computation of income of the firm, determination of tax payable by the firm, apportionment of the income of the firm between its partners in the case of registered firm, and in appropriate cases the imposition of tax on the firm after including share of the income" of certain partners in the income of the firm, even though the firm is registered. It has been held by the Apex Court that the proceedings for assessment of a firm are not completed until all these steps, mentioned above have been taken by the Income Tax Officer and each of these steps must be held to be step in the proceedings for assessment of the firm. Consequently, when the Income Tax Officer passed order in conformity with the order passed by the Appellate Authority and treated the Firm as a registered Firm (earlier it was treated as U.R.F.) and consequently ordered the refund of the excess income tax paid by it, is part of the assessment proceeding of the firm and the partner's share and liability to pay the tax could be rectified. The original assessment was completed in which the share from M/s. Sanjai Engineering Corporation was taken as "URF" and rebate under Section 86 was withdrawn after treating it as a registered firm. The Tribunal was not justified that there was no assessment or reassessment of the firm and the provisions of Section 155 had no application.

11. We could lay our hands on a judgment of Kerala High Court in the case of *Commissioner of Income Tax Vs. P.K. Aboobacker*, . In this case the firm was treated as unregistered firm but on revision under Section 263, the Commissioner directed to treat the firm as registered one. An argument was raised that when power u/s 155(1)(a)(b) was exercised by the Income Tax officer to amend the income of the partner of the said firm, that the Commissioner had only directed a fresh assessment of the firm and had not touched the orders of the assessment against the partners. This argument was not accepted by the High Court and it was held that the carrying out of the revisional order would involve not only a fresh assessment of the firm, but also assessment of all the partners to the extent of their share of the income derived by them from the

registered firm. Therefore, it was held that even without recourse to the Section 155 or 154 of the Act, the Assessing Officer had jurisdiction to complete the assessment not only in respect of the firm but also in respect of the partners in view of the direction of the Commissioner in presence of the managing partners, the respondent, to complete the assessment in terms of Section 183(b) of the Act. Once the firm is assigned the status of registered firm, it is an assessment or reassessment of the firm leading to the consequence provided for in Section 155(1)(a) of the Act. It has been further held that the expression "deduction or enhancement" in Section 155(1)(b) of the Act cannot be understood in a technical sense and it only means that there is a variation in the assessment pursuant to an order made u/s 263 of the Act.

12. In view of the above discussion we are of the considered opinion that the Tribunal committed illegality in not giving the comprehensive meaning to the word "assessment" mentioned in Section 155 of the Act. The question of law referred to us is therefore answered in negative i.e. in favour of the Department and against the assessee. However, no order as to costs.