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(1989) 11 BOM CK 0007

In the Bombay High Court

Case No : IT APPEAL NO. 1643 (BOM.) OF 1985

FACIT AB SWEDEN — APPELLANT

Vs

FIRST Income Tax OFFICER. — RESPONDENT

Date of Decision : 01-11-1989

Acts Referred:
Income Tax Act, 1961 — Section 144A, 144B

Citation : (1990) 32 ITD 3

Hon'ble Judges : Garg, A.M.

Bench : Division Bench

Judgement

Garg, AM. - This is an appeal by the assessee against the order of the CIT (A) for the assessment year 1979-80.

2. A preliminary objection is raised in the ground with regard to limitation. A draft of the proposed order of assessment was sent by the ITO to the assessee on 30-3-1982, i.e., a day before the normal time limit of 2 years from the end of the assessment year as provided in section 153(1). Upon filing of the objections by the assessee, the directions were issued by the IAC u/s 144B on 27-7-1982, which were received by the assessee on 5-8-1982 and by the ITO on 30-7-1982. The final order of assessment was made on 12-8-1982. The assessees contention before the CIT (A) that the ITO had only one day after receiving the IACs directions to pass the final order and having taken more period than that, the assessment made on 12-8-1982 was barred by limitation. The CIT (A) did not accept the contention as, according to him, the time taken in section 144B proceedings was 180 days commencing from the date of forwarding of the order by the ITO to the date when the ITO receives the IACs directions. Such overall time limit is to be brought into play only in circumstances where the limitation itself is sought to be extended. In his opinion, the correct view would be that where the limitation day was 31-3-1982, the ITO could not pass the final assessment order after 30th September, 1982 and since the order had been passed on 12-8-1982, such must be considered as having been passed within

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time.

3. The learned counsel for the assessee brought to our notice the provisions of section 153(1) dealing with the time limit for completing an order of assessment. An order of assessment could be made within two years from the end of the assessment year from which the income was first assessable. In computing this period of limitation, Explanation 1 provides for the exclusion of certain period. Clause (iv) of this Explanation, which is relevant for our consideration, provides that the period (not exceeding 180 days) commencing from the date on which the Income Tax Officer forwards the draft order under sub-section (1), of section 144B, to the assessee and ending with the date on which the ITO receives the directions from the IAC under sub-section (4) of that section shall be excluded. That period, according to the learned counsel for the assessee, started from 30th March, 1982 and ended on 30th July, 1982. Therefore, according to him, this period, namely, from 30th March, 1982 to 30th July, 1982 could alone be excluded. In that view of the matter, he submitted that 31st July, 1982 was the last day within which the ITO could have completed the assessment, but having completed the same on 12-8-1982, it was barred by limitation.

4. The learned Departmental Representative, on the other hand, submitted that the limitation is to be reckoned with reference to 180 days counted from 31st March, 1982, the normal time limit for the completion of the assessment and if an order was made within that time, i.e. up to 30th September, 1982, as has been held by the CIT (A), the assessment could not be said to be barred by limitation. For this proposition, he relied upon the decision of the Tribunal in the case of ITO v. Reno Chemicals, Pharmaceuticals & Cosmetics (P.) Ltd. [1984] 10 ITD 849 (Bom.) and Heritage Estates (P.) Ltd. v. ITO [1985] 11 ITD 519 (Bom.)

5. We have heard the parties and considered their rival submissions. As provided in section 153, no order of assessment could be made under s. 143 at any time after the expiry of two years from the end of the assessment year in which the income was first assessable where such assessment order is an assessment order commencing on or after the first day of April, 1969. The present assessment year commenced on 1st April, 1979. Therefore, the normal time limit within which the assessment could have completed was 31st March, 1982. This time limit is subject to the provisions provided in Explanation 1 to section 153. Clause (iv) which is relevant for our purposes provided that in computing the period of limitation, the period commencing from the date on which the ITO forwarded the draft order under sub-sec. (1) of sec. 144B to the assessee and ending with the date on which the ITO receives the directions from the IAC under sub-section (4) of that section, is required to be excluded. The ITO forwarded the draft order to the assessee on 30-3-1982. Therefore, on this date the limitation period stopped running. It remained stopped running till the directions u/s 144B were received by the ITO which, in the present case, was on 30-7-1982. The moment the instructions were received, the eclipsing was over and the period started running thereafter. On 30th March, 1982, when the draft order was

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forwarded by the ITO, two days were left at his disposal for completing the assessment within the normal time limit. The said two days would be available to him from the day he received the instructions from the IAC u/s 144B. In these circumstances, he could have completed the assessment latest by 1st August, 1982. The order of assessment made on 12-8-1982 therefore, was barred by limitation. We hold accordingly.

6. The two Tribunal decisions relied upon by the learned Departmental Representative have no application to the present case. In the case of Reno Chemicals, Pharmaceuticals & Cosmetics (P.) Ltd. (supra), the directions of the IAC were received by the ITO more than 180 days thereafter and the question before the Tribunal for consideration was where the IAC took more than 180 days for giving directions to the ITO regarding completion of the assessment referred to him, the exclusion of time for completion of the assessment would be restricted to 180 days or the said period of 180 days was to be reckoned from the date on which the draft was sent to the assessee or from the date of normal time limit for completing the assessment. The order of assessment involved in that case was for 1978-79 for which the normal time limit for completion thereof was on or before 31-3-1981. The draft order in that case was made on 11-2-1981 the directions of the IAC on the objections of the assessee were received on 24-9-1981. The final assessment was completed on 27-9-1981. In this context, it was held that in terms of Explanation 1(iv) to section 153, the period from 11-2-1981 to 24-9-1981 (225 days) was to be excluded but the Explanation would be restricted to 180 days and if that period was added to 31-3-1981, the assessment could be completed by 27-9-1981. Having completed the same on 24-9-1981, it was held that it was within the time limit. This case, therefore, has no application to the facts of the case before us.

7. Similarly, in the case of Heritage Estates (P.) Ltd. (supra), the assessment year involved was 1979-80 the normal time limit for completion of the assessment was 31-3-1982 the draft assessment order was forwarded to the assessee on 24-3-1982 the ITO received the directions of the IAC u/s 144B on 25-9-1982 and the assessment made on 27-9-1982 was held to be within the time limit. The period of normal time limit up to 31-3-1982 stopped on the forwarding of the draft order to the assessee on 24-3-1982, i.e. the ITO had 7 days available to him for completing the assessment after the instructions were received from the IAC on 25-9-82. In other words, he could have completed the assessment six days after 25-9-1982, i.e. up to 1st October, 1982. In these circumstances, the assessment completed by the ITO on 27-9-1982 was held to be within the time limit.

8. We may state that in the instructions issued by the CBDT being Instruction No. 1167 (XXIV/1/14-Sections 144A and 144B of the Income Tax Act, 1961, and clarification regarding), the Board has understood the provisions in the manner in which we have understood the same. In the illustration given, the copy of the draft order for assessment year 1975-76 was forwarded on 10-3-1978 and the

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directions from the IAC were received on 6-8-1978. The time taken in these proceedings thus amounted to 149 days. Excluding the period of 149 days from the ordinary period of limitation of two years, the last date by which the assessment could be completed would be 27-8-1978. The Board has calculated the period in a different manner but the result is the same. It has thus taken the view that the ITO having forwarded the draft order on 10-3-1978, the period of limitation stopped running on that date. The ITO had, with him 21/22 days to complete the assessment. The time started running again on 6-8-1978 when the ITO received the IACs instructions so much so that he could complete the assessment on or before 27-8-1978. In view of the above, we do not find any merit in the contention of the Departmental Representative that the period of 180 days was to be added to the normal time limit. 180 days are to be added only when the period taken by the IAC in giving his directions u/s 144B was more than 180 days. In a case where the period taken by the IAC is less than 180 days, the period actually taken by him alone could be excluded.

9. In view of the aforesaid discussions, we hold that the assessment made by the ITO on 12-8-1982 was barred by limitation and deserves to be cancelled. We direct accordingly.

10. In the result, the appeal is allowed.

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