
(1998) 09 PAT CK 0073
In the Patna High Court

Hemraj Munshi Ram

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Income Tax Act, 1961 — Section 139, 142, 143, 147, 148

Citation : (1999) 151 CTR 306

Hon'ble Judges : Sachchidanand Saha, J;Aftab Alam, J

Bench : Full Bench

Judgement

Aftab Alam, J.

The petitioner, a registered partnership firm; (hereinafter referred to as 'the assessee') filed this writ petition seeking quashing of the notice (Annexure-3) issued by the Assistant Commissioner on 7-9-1995 u/s 148 of the Income Tax Act, 1961(hereinafter referred to as 'the Act') declaring that he proposed to 'assess the income' of the assessee for the assessment year 1989-90; also comes under challenge the proceedings u/s 147 of the Act initiated pursuant to the impugned notice.

2. The facts of the case are brief and simple and can be stated thus. The Assistant Commissioner seized the assessee's books of account in course of a search conducted at the assessee's business premises on 2-11-1988. According to the revenue the assessee was maintaining two sets of cash books in respect of the transactions for the first two months of the accounting year. It is an admitted position that from the date of their seizure the books of account remained in the custody of the revenue at all materials times and continue to be in its possession till date.

3. For the assessment year 1989-90 to which the seized books of account appertained the assessee filed the return on 31-3-1991 u/s 139(4) of the Act showing an income of Rs. 2,00,950.00 paise. Despite the filing of the return and the books of account being in possession of the revenue no order of assessment

could be passed till 31-3-1992, the last date for completing assessment. On that date (31-3-1992) the assessee was made to file a revised return, according to him, by the Assistant Commissioner who seemed to be harbouring the erroneous belief that by the device the time for completing assessment would get extended. There may be something in what is stated on behalf of the assessee because the "revised return" showed an income of Rs.2,00,980.00 paise, i.e.,an addition of Rs.30 over the income shown in the earlier return. An assessment order (Annexure - 1) u/s 143(3) was then passed by the Assistant Commissioner on 11-3-1993 assessing the total income of the assessee at Rs. 9,39,632.

4. Against the assessment order the assessee preferred an appeal which was allowed by the Commissioner (Appeals), Ranchi by order dated 10-7-1975 (Annexure-2). The appellate Authority held that for the assessment year 1989-90 the last date for submission of return, u/s 139(4), was 31-3-1991 and hence, the return filed by the assessee on that date could be treated as one submitted under that provision of the Act. The so called `revised return" filed on 31-3-1992 was void ab initio and in any event the assessment for the assessment year in question was to be completed, whether on the basis of the original return or on the basis of the revised return, by 31-3-1992. The assessment order passed on 11-3-1993 was, therefore, barred by limitation and void. For these reasons the appellate authority annulled the assessment made by the Assistant Commissioner under assessment order, dated 11-3-1993.

5. It was then that the impugned notice (Annexure-3) was issued on 17-9-1995 u/s 148 of the Act. It neither disclosed the amount escaping assessment nor enclosed the materials which led the assessing officer to believe that any income had escaped assessment. The assessee, without filing a return in the prescribed form as directed by the notice, on 2-10-1995 filed an objection against the issuance of the notice. Thereafter the matter seems to have remained dormant but after two years a notice, dated 21-11-1998 was issued to the assessee, fixing 28-1-1998 as the date of hearing in the proceedings. The assessee appeared on that date and on two subsequent dates and then once again filed objection to the proceedings initiated u/s 147 of the Act. Before any order was passed in that proceedings the assessee came to this court in this writ petition and was able to get an order of stay in its favour.

6. Though a counter affidavit was filed in this case on behalf of the revenue, that did not disclose the materials forming the basis for the belief that any income chargeable to tax had escaped assessment. However, in course of hearing Mr. Jhunjhunwala appearing for the respondents produced before us a memorandum prepared by the Assistant Commissioner under the title "grounds of reopening". From the memorandum it appears that in course of search sets of cash books were seized which were marked as PD/1, KK-1 and PD/32 to PD/38. PD/32 to PD/38 were cash sheets in which transactions were recorded on a daily basis, each bunch recording transaction for a particular month e.g., PD/32 for April, 1988, PD/33 for May, 1988 and so on PD/1 and KK-1 were two sets of cash

books which were written on the basis of the daily cash sheets PD/32 to PD/38. From the memorandum it further appears that expenses amounting to Rs.1,01,069 which were recorded in PD/32 and PD/33 were not shown in PD/1. From the omission to show those expenses in PD/1 the assessing officer inferred that those expenses were made (during the first two months of the accounting year) from unaccounted income which had escaped assessment for the assessment year in question. The assessing officer accordingly resolved to make assessment/re-assessment u/s 147 of the Act and obtained the approval of the Commissioner on 22-8-1995 following which the impugned notice was issued on 7-9-1995.

7. From the facts and circumstances stated above, it is manifest that though the assessment order, dated 11-3-1993 was set aside by the Commissioner of Income Tax (Appeals), an assessment of the assessee's income was made u/s 143(3) of the Act. It, therefore, follows that it is the proviso to section 147 that would cover the assessee's case for the assessment year 1989- 90. The proviso in so far as relevant for our purpose is as follows:-

"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year no action shall be taken under this section after the expiry of four years from the end of relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return u/s 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

8. It is also evident that the notice u/s 148 was issued on 7-9-1995 after the expiry of four years from the end of the assessment year 1989-90. The validity of the notice, therefore, can not be upheld unless the escapement of income was by reason of the assessee's failure to make full and disclosure.

9. Now, in the facts and circumstances of the case, can it be said that the assessee failed to disclose fully and truly all material facts necessary for the assessment for the assessment year in question? The assessee had filed a return u/s 139 of the Act. Before the filing of the return its books of account were seized and were in the possession of the revenue. In those circumstances the particulars furnished in the return could be easily verified by the revenue and one fails to see how the assessee can be said to have failed to disclose fully and truly all material facts.

10. In the counter affidavit filed on behalf of the revenue it is stated that after the order was passed in appeal, the assessee's books of account which after seizure were lying in the department were subjected to further careful examination and then it transpired that (for only two months of the accounting year) there was at least a difference of Rs.1,01,069 representing actual expenditure incurred by the assessee but not shown in the cash book.

11. Mr.Poddar submitted, and in my opinion, rightly, that if the contention of the revenue is to be accepted it would lead to an unending process because in that case it would be open to the revenue to pick up one or the other of the assessee's books of account lying in its custody and to issue a notice on that basis every now and then. In other words, the revenue could keep the proceedings for assessment/re-assessment for the assessment year 1989-90 by simply sitting over the materials seized by it as far back as in the year 1988. I am unable to overlook the fact that the seized books of account had remained in possession of the revenue for several years and there was no reason for not verifying the return filed by the assessee on that basis.

12. I feel satisfied that in the facts and circumstances of the case, it cannot be held that the alleged escapment of assessment was by reason of the failure of the assessee to disclose fully and truly all material facts and therefore, the provisions of section 147 of the Act do not seem to have any application to the facts of this case. The impugned notice and the resultant proceedings must, therefore, be held to be without jurisdiction. The impugned notice and the proceedings u/s 147 are accordingly quashed.

13. In the result, this writ petition is allowed, though with no order as to costs.