(1995) 04 PAT CK 0014

In the Patna High Court

Case No : IT APPEAL NO. 356 (PAT.) OF 1991 [ASSESSMENT YEAR 1979-80] & ITA No. 356/Pat/1991; Asst. yr. 1979-80, April 28, 1995.

INCOME TAX OFFICER APPELLANT

Vs

BANARSILAL SATYANARAIN. RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0014

Hon'ble Judges : Abdul Razack, J.M.

Bench : Single Bench

Judgement

ABDUL RAZACK, J. M. :

A very interesting question has arisen in this appeal filed by the Revenue for our consideration as to whether extended period of limitation laid down in s. 153(1)(c) is available to the AO when a return is filed by the assessee under s. 139(5) revising a return which was originally filed in compliance to notice under s. 148 of the Act. But before we decide the controversy a quick glance at the facts is necessary.

2. The assessment year involved in 1979-80 and the previous year is 31st Oct., 1978. According to the provisions of s. 139(1) as it stood then for that assessment year the assessee was obliged to file its return of taxable income on or before 30th June, 1979. No such return was filed. Thereafter, there were search and seizure operations in accordance with the provisions of s. 132 of the Act on 21st/22nd March, 1980. This search operation resulted in seizure of account books and another (sic) documents/materials. The assessee filed its return of income for the year under appeal on an estimate basis estimating and declaring the income in a sum of Rs. 1,35,000. The said return purported to be under s. 139(4) of the Act was not accompanied by copy of any trading account, P&L account, balance sheet or any other paper or document in support of the return filed. A letter was, therefore, issued to the assessee on 18th Dec., 1980, to support the return by document required as per law. The last date for

compliance for removing the deficiency/defects was given till 6th Jan., 1981. The assessee did not remove the defects/deficiency nor filed any papers or documents supporting the return so filed on 1st Dec., 1980. Therefore, the said return filed on 1st Dec., 1980, was invalid and non-est and was lodged by the AO. However, the AO issued notice dt. 28th June, 1983, under s. 148 of the Act which was served on the assessee on 2nd July, 1983, in compliance to which a return was filed on 10th March, 1986 declaring a taxable income of Rs. 99,300. It appears from the record that the said return was processed. While the enquiry was still going on, the assessee filed another return on 30th March, 1988, revising its income in a sum of Rs. 1,29,730. This revised return was also processed and the subject-matter of enquiry for the passing an assessment order. The assessee cooperated and participated with the enquiry in pursuance to the said revised return filed on 30th March, 1988. The assessment was finally completed on 15th March, 1989 computing the total income at Rs. 1,29,773.

3. The assessee preferred an appeal before the first appellate authority, viz., the Appellate Commissioner (AC) challenging the framing of the assessment on 18th March, 1989, claiming it to be barred by limitation in accordance with the provisions of s. 153(2) of the Act which stood then prior to its substitution by the Direct Tax Laws (Amendment) Act, 1987, which came into effect from 1st April, 1987. The main bone of contention of the assessee before the AC was that the assessment ought to have been completed by the AO on or before 31st March, 1988, since the return was filed in compliance with s. 148 and the AO did not get the extended period of limitation provided in s. 153(1)(c) of the Act as the assessee could not file any revised return in accordance with the provisions of s. 139(5) because a revised return under that provision can be only filed where a return has been filed either under s. 139(1) or under s. 139(2). In short, the assessees case has been that no revised return can be filed where a return has been filed in accordance with the provisions of s. 153(2) governing the period of limitation for the purpose of making assessment where notice has been issued under s. 148 and a return has been filed in compliance thereto by any assessee. The AC got convinced with this line of argument and annulled the assessment holding that the assessment completed on 15th March, 1989, was barred by limitation as per provisions of s. 153(2) of the Act. The Revenue is not satisfied with this view taken by the AC and, therefore, the present appeal has been filed in this Tribunal.

4. Smt. Lekha Kumar, representative appearing for the Department, submitted that the AC has grossly erred in taking the view that the assessment framed by the AO on 15th March, 1989, is barred by limitation in accordance with the provisions of s. 153(2) of the Act. According to her the case is governed by the provisions of s. 153(1)(c) and not by s. 153(2) because the assessee filed a revised return on 30th March, 1988, and, therefore, the AO got extension of time till 29th March, 1989, for framing of the assessment as laid down in s. 153(1)(c) of the Act. Our attention was invited to the provisions of ss. 153(2), 153(1)(c), 148 and 139(5). In view of these sections the Departmental Representative

submitted the impugned order of the AC deserves to be reversed. On the other hand, Shri. B. P. Khetan, the learned representative appearing for the assessee, fully supported the reasoning of the AC and submitted that the decision rendered by the AC is fully justified and the Departmental appeal, having no merits, deserves to be dismissed. The assessees counsel also relied on the judgment of the Madras High Court in the case of Commissioner of Income Tax Vs. Simson and Mc Conechy Limited, and decision of the Ahmedabad Bench A of this Tribunal in the case of (1994) 50 TTJ 370 which has considered the decisions for and against the controversy and also the CBDTs Instruction No. 388, dt. 1st Oct., 1975.

5. We have given our anxious consideration to the facts of the case and to the submissions made by representative of both sides before us. The orders of both the lower authorities have been perused by us. We have also studied the judgment of the Madras High Court as well as of different High Courts, reference of which has been made by Ahmedabad Bench A of this Tribunal in the case of Maneklal Sakarchand vs. ITO (supra). In our view the assessment does not deserve to be annulled as has been done by the AC in the impugned order.

6. The provisions of sub-s. (1) of s. 148 (as it stood then) speak thus :

"(1) Before making the assessment, reassessment or recomputation under s. 147, the ITO shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-s. (2) of s. 139, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

The phraseology used in s. 148(1) "and the provisions of this Act shall, so far as may be, apply accordingly as if the notice issued under that sub-section", that is to say s. 139, are very significant. It, therefore, clearly emerges that when a notice is issued in terms of s. 148 of the Act then it shall be deemed that such a notice is a notice issued under s. 139(2) of the Act and, therefore, all the provisions of this Act shall apply accordingly. The provisions of sub-s. (5) of s. 139 lays down that "if any person having furnished a return in sub-s. (1) or sub-s. (2) discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made". A combined reading of s. 148 and s. 139(5) amply bring out that an assessee can file a revised return under s. 139(5) if a return has been filed by him in compliance to notice under s. 148, because the provisions of s. 148 as we have extracted above, clearly lay down that the said notice issued under s. 148 shall be deemed as one issued under s. 139(2) and if that is the case then all the provisions of the Act including the provisions of s. 139(5) and s. 153(1)(c) shall apply accordingly. The provisions of s. 148(1) authorise an AO to issue notice calling upon a person to file a return upon satisfaction of conditions laid down in s. 147 about escapement of income and such notice shall contain and include all requirements as are contained in a notice under s. 139(2) of the Act. Thus, such a notice under the enabling provisions of s. 148(1) shall be deemed for all the intents and purposes of the Act as one issued under s. 139(2) of the Act. It, therefore, follows and means, as a logical corollary, that any return filed in compliance to a notice issued under s. 148(1) shall be deemed as one filed in compliance to notice under s. 139(2) of the Act and the legislature has, therefore, laid down further in s. 148(1) that once that is so then all the provisions of the Act shall apply accordingly. And once a return is deemed as filed under s. 139(2) then the assessee is permitted under s. 139(5) to file a revise return if any omission, mistakes or wrong statements are discovered in the original return. The assessee in the instant case found that the income was incorrectly returned originally in compliance to notice under s. 148(1) which in law, we repeat, is deemed as a notice under s. 139(2). It so filed a revised return showing an upward income of Rs. 1,29,730. No doubt this return was filed on 30th March, 1988, i.e., a day before the normal limitation period was to expire in accordance with the provisions of s. 153(2) of the Act. But no sooner the return got filed on 30th March, 1988, in terms of s. 139(5) the AO, in our view, statutorily got the benefit of extension of time of making the assessment, by a period of one more year from the date of filing of the revised return, i.e., upto 29th March, 1989, in accordance with the provisions of s. 153(1)(c) of the Act.

7. We have studied the decision of the Madras High Court in the case of CIT vs. Simson and McConechy Ltd. (supra) and in our view the same is distinguishable as on facts of the present case because the Madras High Court was not confronted with the controversy with which we are concerned. There can be no doubt that once a notice under s. 148(1) is issued the assessment has to be completed mandatorily in accordance with the provisions of s. 153(2) of the Act. But the question here is what happens when the assessee suo moto files a revised return under s. 139(5) showing an upward income. Can it be said that the limitation expires as per s. 153(2) and the AO does not get any extension of time as provided in s. 153(1)(c) of the Act. In the case of Simson and Mc Conechy Ltd. (supra) the Madras High Court has not examined the controversy with the facts with which we are confronted viz., whether the notice issued under s. 148(1) shall be deemed as issued under s. 139(2) of the Act and, therefore, provisions of the Act shall apply accordingly as if the notice was issued under s. 139(2) of the Act. It is on account of these reasons that the Madras High Court decision cannot bail out the assessee. The assessee also cannot derive much support from the decision of the Ahmedabad Bench A of this Tribunal in the case of Maneklal Sakarchand (supra) because the return filed in the instant case is one under s. 139(2) as per the deeming provisions language used in s. 148 of the Act. The return which has been filed by the assessee in the instant case is not one filed under s. 139(4) of the Act. It is filed under s. 139(2) of the Act as deemingly laid down in s. 148(1) of the Act. In the case of Maneklal Sakarchand (supra) the return was filed suo moto and voluntarily by the assessee under s. 139(4) of the Act and, therefore, is was held that no revised return could be filed under s. 139(5) of the Act. In the present case we are dealing with a situation where return has been filed in compliance to provision of s. 148(1) of the Act

which equates it with the provisions of s. 139(2) of the Act and s. 139(5) authorises an assessee to filed a revised return if the original return is filed either under s. 139(1) or 139(2).

8. From the facts of the case we are firmly of the view that the return filed by the assessee though in compliance to a notice issued under s. 148(1) of the Act is, in fact, a return filed in compliance to notice under s. 139(2) as per language contained in s. 148 of the Act which we have extracted above. The provisions of s. 153(1)(c) clearly lay down that extended period of one year of limitation will be available to an AO from the date of filing of a return or a revised return under sub-s. (4) or (5) of s. 139. If we are to agree with the AC that the extended period of limitation is not available to AO upon filing of a revised return under s. 139(5) where return has been filed in compliance to notice under s. 148(1) then we will be doing injustice to those assessees who in reality have less income but due to mistake or inadvertence have filed a return filed originally in compliance to notice under s. 148 declaring higher income. Let us illustrate by giving a hypothetical case. Assume that an assessee due to inadvertence and mistake instead of declaring an income of Rs. 15,000 files return declaring income at Rs. 1,50,000. Now before the assessment is completed the assessee realises this mistake and files a revised return deleting the additional zero and declaring the income correctly at Rs. 15,000. It will not be only be preposterous but travesty of justice on the part of the AO to contend that he will not take cognizance of the revised return filed showing an income of Rs. 15,000 which is the correct income, because the assessee cannot under s. 139(5) file revised return for the simple reason that the original return has been filed in compliance to notice under s. 148(1) of the Act. In the instant case on hand since there is more income in the revised return, this plea which suits the assessee, regarding the expiry of limitation period is canvassed; whereas had the income been less than the original figure then the assessee, we are sure, would not have taken such a plea of limitation because taking such a plea would be to his detriment and he would have been obliged to pay tax on an income which has not been earned by it.

9. There is no ambiguity in the provisions of s. 148(1) of the Act as contended by the assessees counsel. In fact, the language used therein is very plain and simple and the intention of the legislature is amply clear and transparent. No interpretation or construction whatsoever is required. If the section is interpreted or understood otherwise or in any other manner it would lead to inequity, injustice and absurdity also. We wish to avoid this. It is worthwhile to quote from out of several judgments of the apex Court, the very pertinent observations of their Lordship of the Hon''ble Supreme Court in two very illuminating and landmark judgments one in the case of Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, and the other in the recent case of C.W.S. (India) Limited Vs. Commissioner of Income Tax, . In J. H. Gotlas case it is observed as under :

"If a strict and literal construction of the statute leads to an absurd result, i.e., a result not intended to be subserved by the object of the legislation ascertained from the scheme of the legislation, then, if another construction is possible apart from the strict literal construction, then that construction should be preferred to the strict literal construction. Where the plain literal interpretation of a statutory provisions produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational result." In the case of C. W. S. (India) Ltd. s case (supra), it is observed as under :

"Literal construction may be the general rule in construing taxing enactments, but that does not mean that it should be adopted even if it leads to a discriminatory or incongruous result. When a literal interpretation leads to an absurd or unintended result, the language of the statute can be modified to accord with the intention of Parliament and to avoid absurdity."

10. We, therefore, for the reasons given above unhesitatingly reverse the view taken by the AC and hold that the assessment is not time barred by limitation.

11. In the result, the Revenues appeal is allowed.

