(2006) 01 GAU CK 0090

In the Gauhati High Court

Jorehaut Group Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Income Tax Act, 1961 — Section 142, 143, 147, 148, 251

Citation : (2007) 209 CTR 276 : (2007) 289 ITR 419

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D. Biswas, J.—These batch of writ petitions are taken up together for disposal in terms of the judgment and order passed by this Court on March 11, 2005, in Assam Co. Ltd. Vs. Union of India (UOI) and Others,

2. The writ petitions have been filed by the assessees challenging the legality and validity of the impugned notices dated March 28, 2003, and January 6, 2004, issued by the respondent authority under the provisions of Sections 148 142 and 143(2) of the Income Tax Act, 1961.

3. The writ petitioners are public limited companies incorporated under the Companies Act, 1956, and is engaged in the business of cultivation, manufacture and sale of tea cultivated in its tea gardens in the State of Assam. They were served with the aforementioned notices for reassessment of the income of the petitioner for the assessment years 1996-97 (in W.P. (C) No. 586/05) ; 1997-98 (in W.P. (C) No. 587/05) ; 1998-99 (in W.P. (C) No. 588/05) ; 1999-2000 (in W.P. (C) No. 589 of 2005) ; and 2000-01 (in W.P. (C.) No. 590 of 2005) as escaped assessment within the meaning of Section 147. The aforesaid orders were passed by the Deputy Commissioner, Income Tax, Special Range-II, Guwahati, and the assessment orders dated February 24, 1998 (in W.P. (C) No. 586 of 2005), June 23, 1998 (in W.P. (C) No. 587 of 2005), November 10, 1999 (in W.P. (C) No. 588 of 2005), March 26, 2001 (in W.P. (C) No. 589 of 2005) and March

26, 2001 (in W.P. (C). No. 590 of 2005) were challenged before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) set aside the said assessment orders and directed the assessing authority to reconsider and pass fresh orders. Accordingly, the Assessing Officer revised the earlier assessment orders under the provisions of Section 251 and determined the total income of the petitioner at Rs. 4,87,220 and the revised tax refund thereon at Rs. 49,970 in Writ Petition (C) No. 586 of 2004. Similar orders have also been passed in other writ petitions. Thereafter, the impugned notices were received by the writ petitioners whereby they have been directed to submit their return for reassessment within a period of thirty days. The petitioner also requested the taxing authority to furnish them with the reasons for reopening the assessment for the aforesaid assessing years. According to the writ petitioners, all materials and necessary facts were placed before the assessing authority. Therefore, there is no good reason for reopening of the assessment made final after taking into consideration all material facts submitted at the time of assessment.

4. Dr. Saraf, learned senior counsel argued that the deduction allowable on account of cess on green leaves has to be allowed on composite income. Dr. Saraf further argued that the issues raised in these writ petitions were also dealt with in an earlier case, i.e., Assam Co. Ltd. Vs. Union of India (UOI) and Others, and the reasons recorded therein hold good for the cases at hand. In the said judgment, the learned single judge observed as follows (page 626):

The purported interpretation of the decision of this Court in Jorehaut Group Ltd. Vs. Agricultural Income Tax Officer, cited as the reason for invocation of power u/s 147 of the Act in view of the above determination is plainly unsustainable. Consequently, the reason recorded in the impugned notices has to be construed as non est in law. It not having been held by this Court in Jorehaut Group Ltd. Vs. Agricultural Income Tax Officer, that the assessee is entitled to deduction on the cess on green leaves only from 60 per cent, of the composite agricultural income, the very foundation of the reason for the impugned action is missing. Not only has the concerned authority misread the reported decision, there appears to have been a total non-application of mind to the relevant legal provisions. The present thus is not only a case where no reason exists for invoking the power u/s 147 of the Act but also is one where the so called belief is not a bona fide one being patently imaginary in the accompanying facts and circumstances of the case. The notices impugned in the above premises, therefore, cannot be sustained in law and on facts and are hereby quashed.

5. Therefore, there appears to be no difference in the factual matrix of the cases at hand with those of Assam Co. Ltd. Vs. Union of India (UOI) and Others, The reasons recorded in paragraph 42 of the judgment, quoted above, are also applicable in the instant cases. Consequently, the impugned notices are liable to be set aside.

6. In the result, the writ petitions are allowed and the impugned notices dated

March 28, 2003, and January 6, 2004, being illegal and without jurisdiction are hereby quashed.

7. No order as to costs.

