
(1996) 09 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 12 to 15 of 1985

Kumar Engineers

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

Income Tax Act, 1961 — Section 147, 37, 40A(2)

Citation : (1997) 137 CTR 597 : (1997) 223 ITR 18

Hon'ble Judges : N.K. Aggarwal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; R.P. Sawhney and Sanjay Goyal, for the Respondent

Judgement

Ashok Bhan, J.—This order shall dispose of Income Tax References Nos. 12 to 15 of 1985 relating to the assessment years 1974-75 and 1975-76. Out of the references, two are at the instance of the assessee and the other two at the instance of the Department. The questions of law claimed by the assessee as well as by the Department for the two years 1974-75 and 1975-76 are the same. The Income Tax Appellate Tribunal, Delhi Bench, New Delhi (hereinafter referred to as the Tribunal), has prepared one statement of case and referred the following two questions to this court for its opinion :

" (i) Whether, on the facts and in the circumstances of the case, the Tribunal has erred in law in taking into consideration the further facts which had not been put up before the departmental authorities ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing commission at four per cent. as a deduction which is excessive and unreasonable within the meaning of Section 40A(2) of the Income Tax Act, 1961, having regard to the various "clauses" mentioned in the said Section ?"

2. Question No. (i) is at the instance of the assessee whereas question No. (ii) is

at the instance of the Revenue for both the assessment years.

3. The assessee is a registered firm which derives its income from the manufacture and sale of perforators (used in khandsari and sugar mills). For the assessment year 1974-75, the assessment order was originally completed on September 17, 1975. The assessee went up in appeal before the Appellate Assistant Commissioner which was disposed of on February 10, 1977, and further appeals before the Tribunal were disposed of on January 23, 1979. The Income Tax Officer reopened the assessment for the assessment year 1974-75 on the basis of certain information coming to him from the assessment order for the assessment year 1973-74 and the order of the Commissioner of Income Tax (Appeals) for the assessment year 1976-77. The point in issue in the present reference petitions was neither noticed nor adverted to by either the Income Tax Officer or by the appellate authorities.

4. In the original assessment order, the assessee had claimed payment of commission at the rate of six per cent. to Kumar and Co. and the same had been allowed at Rs. 35,845. In the course of assessment for the assessment year 1973-74, however, the Income Tax Officer had enquired and found that services were not rendered by Kumar and Company and so the commission should not have been paid. On the basis of this information, reassessment proceedings were initiated u/s 147(b). According to the Income Tax Officer, the provisions of Section 40A(2) were clearly applicable and no commission could be allowed to the assessee merely on the basis of an agreement. Similarly, for the assessment year 1975-76, the original assessment was made on April 20, 1976, and the commission claimed at Rs. 58,138 had been allowed. The Income Tax Officer reopened the assessment for this year as well for similar reasons.

4. The Income Tax Officer disallowed the claim regarding payment of commission in full in the reassessment proceedings. The Commissioner of Income Tax (Appeals) upheld the action of the Income Tax Officer in reopening the assessments. However, after considering the facts of the case, he held that a commission at the rate of three per cent. should be allowed. The disallowance was reduced to Rs. 18,000 for the assessment year 1974-75 and Rs. 36,000 for the assessment year 1975-76.

5. In further appeal before the Tribunal, two questions were raised. The first related to the validity of the reopening of the assessment and the other related to the quantum of disallowance. The Tribunal considered the case-law and found that at the time of original assessment the nature of services rendered and the relationship between the assessee and Kumar and Co. had not been examined and these facts were brought to the notice of the Income Tax Officer from the orders relating to the assessment years 1973-74 and 1976-77. It was held that the case was not reopened merely on a change of opinion by the Assessing Officer. It was reopened on the basis of information coming to his knowledge which led him to believe that some income had escaped assessment. The validity of the reassessment proceedings for the two years was, therefore, upheld by the

Tribunal. The second point raised was regarding the quantum of commission. The Tribunal found that Kumar and Company was appointed as the sole-selling agent of the assessee for centrifugal liners for which commission at the rate of six per cent. was to be paid. The Income Tax Officer disallowed the claim on the ground that no services had been rendered whereas the Commissioner of Income Tax (Appeals) held that the claim was excessive having regard to the nature of services rendered. The Tribunal found that the question of reasonableness of the claim had come up before the Tribunal for the assessment year 1976-77 which was a year later. For that year, it was held that commission should be allowed at four per cent. having regard to the nature of services rendered. For these two years, the Tribunal decided to allow the same amount of commission as according to the Tribunal there was no difference of facts. For the assessment year 1976-77, the Tribunal at the instance of the Revenue referred the question of law similar/same to question No. (ii) in the present petition to this court for its opinion. The order of the Tribunal was upheld by the High Court and it was held that commission of four per cent. was reasonable and justified. The order of the High Court is Commissioner of Income Tax Vs. Kumar Engineers, . In view of the decision of this court in Commissioner of Income Tax Vs. Kumar Engineers, question No. (ii) is answered in the affirmative, that is, in favour of the assessee and against the Revenue.

6. Now, we proceed to deal with question No. (i) referred to us at the instance of the assessee.

7. Mr. B. S. Gupta, senior counsel, appearing for the petitioner, argued that the Assessing Officer reopened the proceedings on a mere change of opinion ; that all the relevant facts had been disclosed at the time of earlier assessment ; that the orders of assessment passed by the higher authorities in appeal in the year preceding or succeeding the assessment years in question would not clothe the Assessing Officer with jurisdiction to reopen the proceedings under Sections 147 and 148 of the Act.

8. We find no force in these submissions. A perusal of the original assessment order passed by the Income Tax Officer for the assessment years 1974-75 and 1975-76 shows that even though the assessment was completed u/s 143(3), the agreement between the assessee and Kumar and Company and the payment of commission or its payability in view of Section 40A were not examined. Even in the appellate orders passed against the original assessment by the Appellate Assistant Commissioner and the Tribunal, respectively, this fact had not been noticed and adverted to.

8. Two conditions have to be satisfied before the Assessing Officer is clothed with the jurisdiction to act u/s 147(b), i.e. :

(1) the information must have come to his possession subsequent to the making of the original assessment ; and

(2) he forms a belief on the basis of the information that income chargeable to

tax has escaped assessment.

9. Thus, "information" and "reason to believe" constitute the essential requisites and the basic foundation to set in motion the machinery of reassessment u/s 147(b) of the Act. In this particular case, information came in possession of the Assessing Officer by way of decisions of the appellate authorities for the assessment years preceding and succeeding the years in question subsequent to the framing of the earlier assessments. On the basis of the facts found by the appellate authorities, the Income Tax Officer formed an opinion that income assessable to tax had escaped assessment. The question as to whether a decision of the Tribunal or the Commissioner of Income Tax (Appeals) in a given case can constitute information clothing the Assessing Officer to assume jurisdiction u/s 147(b) has to be answered in the affirmative.

10. "Information" within the meaning of Section 147(b) may be with regard to new or fresh facts or with regard to the facts already on the record. Information may be with regard to facts or as to the true state of law. Conclusions on law and fact found to be erroneous by reason of the subsequent judgment/order of a higher Tribunal would constitute information within the meaning of Section 147(b) of the Act.

11. In *V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh*, the Supreme Court of India upheld the action of the Income Tax Officer in reopening the assessment proceedings in view of a subsequent decision of the Privy Council u/s 34 of the Indian Income Tax Act, 1922. In the aforesaid case the point for consideration was whether the decision of the Privy Council constituted information which could clothe the Income Tax Officer to reopen the proceedings. It was held that the decision of the Privy Council which determined the rights of the parties constituted definite information within the meaning of Section 34 of the Indian Income Tax Act, 1922, and that the proceedings initiated u/s 34 were valid.

12. The Bombay High Court in *Commissioner of Income Tax, Bombay Vs. A.J. Zaveri*, held that a decision of the appellate authority on the same facts may constitute information within the meaning of Section 34(1)(b) of the Indian Income Tax Act, 1922. It was held as under (headnote) :

""Information" within the meaning of Section 34(1)(b) of the Income Tax Act may consist of a different view taken of the facts on record by a higher Tribunal on appeal from the Income Tax Officer's decision resulting in the escapement of assessment, and a decision of the appellate authority on the same facts, as to which entity is really chargeable may constitute information within the meaning of Section 34(1)(b).

The Income Tax Officer had at the time of the original assessment on the facts before him, taken the view that certain income, though claimed by the assessee as his income was in fact the income of another person M. He, accordingly, included it in the assessment of M and brought it to tax. In an appeal by M, the

Tribunal decided that the Income Tax Officer had committed an error in treating the income as income of M and that he had assessed the income in the hands of the wrong person, with the result that it had escaped from being assessed in the hands of the proper person. The Income Tax Officer thereupon initiated proceedings for reassessment and issued notice to the assessee u/s 34(1)(b).

Held, that the decision of the Tribunal constituted information to the Income Tax Officer as to which of the assessable parties was chargeable for this income and constituted "information" within the meaning of Section 34(l)(b) and the proceedings for reassessment u/s 34(l)(b) were not illegal."

13. In the present case, the Income Tax Officer did not initiate action u/s 147(b) on a mere change of opinion. The matter had not been examined by the authorities earlier. On deriving information from the orders passed by the appellate authorities for the years preceding and succeeding the assessment years in question the Income Tax Officer came to the conclusion that certain income chargeable to tax had escaped assessment. Assessment proceedings were reopened on the basis of information and not merely on a change of opinion.

14. The decision of the appellate authority or the Tribunal is a source of information and the cases reopened on the basis of such information can provide enough reason to the Income Tax Officer for resorting to Sections 147 and 148 of the Act to reopen the already completed assessment. The Tribunal was right in holding that the order passed by the Income Tax Officer u/s 147(b) of the Act reopening the assessment proceedings was valid in law.

15. For the reasons stated above, we answer question No. (i) in the affirmative, that is, against the assessee and in favour of the Revenue with no order as to costs.