

(2010) 09 P&H CK 0357

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 421 of 2010 (A.Y. 2001-02)

Majinder Singh Kang

APPELLANT

Vs

CIT and Another

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(2), 147, 148, 260A

Citation : (2012) 344 ITR 358

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Radhika Suri, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This appeal u/s 260A of the income tax Act, 1961 (for short "the Act"), has been filed by the assessee against the order dated 11-12-2009, passed by the income tax Appellate Tribunal, Amritsar Bench, Amritsar (in short "the Tribunal"), in I.T.A. No. 343/ASR/2009 in respect of the assessment year 2001-02. The assessee has claimed the following substantial questions of law for determination by this court :

1. Whether, in the facts and circumstances of the case, the order passed by the hon'ble income tax Appellate Tribunal is contrary to the ratio of this hon'ble court in Commissioner of Income Tax Vs. Atlas Cycle Industries, and that of the Rajasthan High Court in Commissioner of Income Tax Vs. Shri Ram Singh,
2. Whether, in the facts and circumstances of the case, the Tribunal failed to consider that the jurisdiction of the Assessing Officer ended when no additions were made as per reasons recorded and, thus, Explanation 3 to section 147 was not applicable to the facts of the case?
3. Whether, in the facts and circumstances of the case, the Tribunal could take a view contrary to its own decision in Pritpal Singhs case, I.T.A. No. 346 ASR 2009 where a similar controversy was in issue?

2. The facts in brief are that the appellant-assessee filed his return on 29-8-2002, declaring income of Rs. 91,890 plus agricultural income of Rs. 2,03,125. The income was subsequently revised to Rs. 17,60,641 plus agricultural income of Rs. 2,03,125 on 13-2-2003. The case of the assessee was processed u/s 143(1) on 18-3-2004, and, thereafter, reassessment proceedings were initiated u/s 147 read with section 148. The assessing officer during the reassessment proceedings observed that the revision of return was made after filing of charge sheet by the Vigilance Department on 24-12-2002, the assessee has understated his income and a total amount of Rs. 5,29,86,224 has been earned by the assessee by dubious means. It was further observed that during the accounting period relevant to the assessment year in question, the assessee was the chairman of the Punjab State Forest Development Corporation and he received payments of Rs. 1,23,429 by transfer to his Bank Account No. 01190005761 which included regular transfer of Rs. 2,500 per month besides other amounts. According to the Assessing Officer, the said receipts in the sum of Rs. 1,23,429 were assessable in the hands of the assessee under the head "Salary". Besides, the assessee in his capacity as chairman of the aforesaid corporation had enjoyed the facility of residential accommodation for which the corporation paid monthly rent of Rs. 25,000 and, thus, a total sum of Rs. 3 lakhs was to be treated as perquisite of the assessee. The Assessing Officer after critically investigating and examining the matter came to conclude that he had the reason to believe that income chargeable to tax amounting to Rs. 1,41,27,702 had escaped assessment within the meaning of section 147 of the Act. It was noticed by the assessing officer that the assessee was also partner in various firms. The salary received by him from those firms and the interest accruing thereon would be chargeable to tax. On these premises, the assessing officer further observed that income on these counts and the income on account of purchases of assets acquired from income beyond the known sources of the assessee and chargeable to tax had escaped assessment u/s 147 of the Act. Certain cash deposits were detected during investigation made by the Department. After visualizing the entire scenario which was supported by documents and otherwise, the assessing officer, vide its order dated 28-12-2007 (annexure A1) made an addition of Rs. 1,05,30,200 to the taxable income returned by the assessee. Proceedings for imposition of penalty u/s 271(1)(c) were also initiated against the assessee separately.

3. The assessee preferred an appeal before the Commissioner of Income-tax (Appeals) (in short "the CIT(A)"). The primary submission that was made on behalf of the assessee was that the Assessing Officer could not make additions in respect of the income which had not escaped assessment for which no notice had been given to the assessee u/s 148 read with section 147 of the Act. To fortify this submission, reliance on behalf of the assessee was placed on the judgment of this court in Vipin Khanna Vs. Commissioner of Income Tax and Others, and Commissioner of Income Tax Vs. Atlas Cycle Industries, The Commissioner of income tax (Appeals), after conversing with the assessing officer, held as under :

It is correct that no addition has been made in the assessment order on the issues, on which the case was reopened u/s 147. Hence, the judgment of the hon'ble Punjab and Haryana High Court in the case of Vipin Khanna Vs. Commissioner of Income Tax and Others, is squarely applicable to the facts of the case. In the case of Vipin Khanna Vs. Commissioner of Income Tax and Others, their Lordship had adjudicated that the Assessing Officer was precluded from seeking general information on other issues, which could only be done by issuing a notice u/s 143(2) within the stipulated period. The assessing officer is of the view that the facts of the case relied upon by the learned counsel for the appellant are different from the appellants case, but it is not so. In view of the decision of the jurisdictional High Court in the case of Vipin Khanna Vs. Commissioner of Income Tax and Others, and by respectfully following the same, the reassessment made in the case of the appellant is cancelled.

4. The appeal of the assessee was consequently allowed, vide order dated 27-5-2009 (annexure A 2). Aggrieved by the order of the Commissioner of income tax (Appeals), the Revenue preferred an appeal before the Tribunal. The submissions raised on behalf of the Revenue before the Tribunal were two-fold, one that the Commissioner of income tax (Appeals) was not justified in ignoring the remand report of the assessing officer which contained detailed facts and arguments in respect of all the issues involved. The second submission raised was that at the time of initiating proceedings u/s 147 read with section 148 of the Act, only a prima facie satisfaction of the assessing officer was required and in support of this submission, reliance on behalf of the Revenue was placed on a decision of the apex court in Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others,). A specific reference was also made by the Revenue to the Explanation 3 inserted by Finance (No. 2) Act, 2009, with effect from April 1, 1989, in support of the second submission.

5. The Tribunal made a marathon exercise and exhaustively delved upon the issues with reference to judicial enunciations produced on record by both the sides. The Tribunal held that the issues of additions qua the reasons were not adjudicated by the Commissioner of income tax (Appeals) and the assessment was cancelled purely on legal grounds without adjudicating the case on the merits and the case of Vipin Khanna Vs. Commissioner of Income Tax and Others, did not advance the case of the assessee. In order to appreciate the issues raised herein, it is worthwhile to incorporate as what was held by the Tribunal, in a nut-shell :

Thus, it is evident from the above discussions that the present case had been decided by the Commissioner of income tax (Appeals) only on legal grounds and not on the merits. The remand report of the Assessing Officer has not been considered by the Commissioner of income tax (Appeals) though officers of the Department were present at the time of proceedings before the Commissioner of income tax (Appeals). Natural justice demands that the submissions made by the parties must be considered and appreciated by the quasi-judicial authority.

Having regard to the above legal and factual discussions as also to advance the cause of justice, we are of the considered opinion that the case be restored to the file of the Commissioner of income tax (Appeals), for fresh adjudication. Accordingly, we restore the case to the file of the Commissioner of income tax (Appeals), with the direction to decide the case afresh, both on legal grounds and on the merits of the case, having regard to the relevant provisions of the Act and the case law quoted and relied upon by the contending parties including the remand report/submissions made by such parties. Further, it is incumbent on the Commissioner of income tax (Appeals) to afford reasonable and proper opportunity to both the parties before adjudicating the case afresh. Accordingly, the appeal of the Revenue is allowed for statistical purposes.

6. This is how the assessee is before us in present appeal.

7. Learned counsel for the assessee submitted that the Assessing Officer had reopened the assessment by issuing notice u/s 148 of the Act on the ground that the income from salary, perquisites and unexplained cash deposits in various accounts along with interest thereon had escaped assessment. The counsel urged that the assessing officer, however, while passing the reassessment order had sought to make addition of another amount without any addition having been made on the ground on the basis of which reassessment had been initiated. According to the learned counsel, no reassessment order could be passed by the assessing officer. Learned counsel for the assessee relied upon the following observations made by this court in Commissioner of Income Tax Vs. Atlas Cycle Industries,

... we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the income tax Officer does not get the jurisdiction to make a reassessment.

8. Support was also drawn from the decision of the Rajasthan High Court in Commissioner of Income Tax Vs. Shri Ram Singh, wherein judgment of this court in Commissioner of Income Tax Vs. Atlas Cycle Industries, was followed.

9. We have given our thoughtful consideration to the submission of the learned counsel for the assessee and do not find any merit in the same.

Explanation 3 to section 147 has been inserted by the Finance (No. 2) 11 Act, 2009, retrospectively with effect from 1-4-1989. It reads thus :

147. Income escaping assessment.--...

Explanation 3.--For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

10. A plain reading of Explanation 3 to section 147 clearly depicts that the Assessing Officer has power to make additions even on the ground on which reassessment notice might not have been issued in case during the reassessment proceedings, he arrives at a conclusion that some other income has escaped assessment which comes to his notice during the course of proceedings for reassessment u/s 148 of the Act. The provision nowhere postulates or contemplates that it is only when there is some addition on the ground on which reassessment had been initiated, that the Assessing Officer can make additions on any other ground on the basis of which income may have escaped assessment. The reassessment proceedings, thus, in the present case cannot be held to be vitiated.

11. Referring to the judgment of this court in Commissioner of Income Tax Vs. Atlas Cycle Industries, and the Rajasthan High Court in Commissioner of Income Tax Vs. Shri Ram Singh, it may be noticed that these were the judgments rendered by the courts prior to the insertion of Explanation 3 to section 147 of the Act. In view of the insertion of Explanation 3 to section 147 by the Finance (No. 2) Act, 2009, with effect from 1-4-1989, the aforesaid judgments do not advance the case of the assessee any longer. Accordingly, we find no merit in the appeal. Consequently, the same is dismissed.