(2014) 09 MP CK 0164

In the Madhya Pradesh High Court

Case No : W.P. No. 5529/2010

Preeti Goyal — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 143(2), 143(3), 153, 153A

Citation : (2014) 09 MP CK 0164

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Pavan Dwivedi, Advocate for the Appellant; D.P.S. Bhadoriya, Advocate for the Respondent

Judgement

S.K. Gangele, J.—The petitioner has filed this petition challenging the impugned notices dt. 19.08.2010 (Annexure P/1). By the aforesaid notices, the authority initiated assessment proceedings against the petitioner u/s 153A/143(3) of the Income Tax Act, 1961 for the assessment years 2001-02 up to 2006.

2. A search was carried out at the premises of the petitioner and his partners on 4.8.2006 to 6.8.2006 by the Income Tax Department. The department seized several documents. After scrutiny, department came to the conclusion that the petitioner did not pay correct tax for the years 2001-02 to 06-07. The petitioner filed return on 14.5.2007 and the department proceeded against the petitioner for assessment of income. The petitioner filed an application on 28.5.2007 before the Settlement Commission u/s 245(C) of the Income Tax Act for settlement. The Commission passed the order on 31.3.2008. Certain reliefs were granted to the petitioner and Commission granted immunity from penalty and prosecution in respect of income disclosed before the Settlement Commission under direct taxes Act. The Commission further granted liberty to the department for review after verification.

3. The direction granting liberty to the department for verification by the Commission was challenged by the petitioner and other persons before this

court. The aforesaid petitions were was dismissed by this court vide order dt.23.9.2008. Against the aforesaid orders, various writ appeals were filed. All the writ appeals were decided by the Division Bench vide common judgment dt. 16th Sept. 2009. Division Bench partly allowed the appeals by holding that the order of Settlement Commission of further investigation or enquiry can not be sustained in law. The settlement proceeding stands abated, however, the Division Bench further held that the notices issued u/s 142(1) and 143(2) can not be quashed. Division Bench further ordered that the Assessing Authorities shall now proceed with assessment proceedings. They shall be free to use the information collected against the appellants during the settlement proceedings against the appellants and pass appropriate orders. A review petition was filed, that has also been dismissed. Thereafter, the Assessing Officer issued notices to the petitioner on 19.8.2010.

4. The contention of the petitioner in this petition is that the assessment proceedings could not continue because the statutory period for completion of assessment has already lapsed.

5. The respondents in the return denied the pleadings of the petitioner. It is contended by the respondents that the specified date in the present case is 16.9.2009 when the Division Bench passed the order and permitted the revenue to continue the assessment proceedings, hence, notices issued by the department from the aforesaid date are within limitation.

6. The question for consideration before this court in this writ petition is that what is the specified date as defined and provided u/s 245HA of the Income Tax Act.

7. In the present case, the Settlement Commission passed the order on 31.3.2008. By the aforesaid order, the Commission has held that the revenue can continue the verification, however, it granted immunity to the petitioner from penalty and prosecution.

8. The petitioner filed return on 14.5.2007. Limitation for completing the assessment pursuant to search was 21 months. It subsisted up to 31.12.2008. It means that the revenue could have completed assessment up to 31.12.2008, however, the petitioner submitted the application for settlement on 28.5.2007. The order on settlement was passed by the Commission on 31.3.2008. Section 245HA of the Income Tax provides abatement. In normal course, the assessment u/s 153A of the Income Tax was to be completed up to 31.12.2008, but in this case the petitioner filed the application for settlement on 28.5.2007. The period from submission of application i.e. 28.5.2007 till 31.3.2008 has to be excluded for the purpose of counting 21 months in terms of Section 153B of the Income Tax Act. Hence, last date for completing assessment was 31.3.2009.

9. Sub clause (d) appended to Clause (iv) of sub section (1) of Section 245HA of the Income Tax Act defines "specified date". The provision is as under :-

(d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in sub-section (4A) of section 245D expires."

Sub section 4A of Section 245D of the Income Tax Act is as under :

"(4A) The Settlement Commission shall pass an order under sub-section (4) - (i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008."

10. In the present case the application for settlement u/s 245C was filed on 28.5.2007, it means before the 1st June 2007. In such circumstances in accordance with Sub section 4A of Section 245D of the Income Tax Act the specified date would be 31.3.2008 and if the period from 28.5.2007 to 31.3.2008 be excluded, which comes to 10 months and three days, then the assessment has to be completed up to 31.10.2009.

11. The Division Bench granted liberty to the department in the writ appeal to conclude the assessment vide order dt.16th Sept. 2009. It means the assessment had to be completed up to 31.10.2009.

12. Hon''ble Supreme Court in Hope Textiles Ltd. and Another Vs. Union of India (UOI) and Others, held that a direction can not be issued by the court to a statutory authority to act contrary to statutory provision and the assessing officer is bound to complete the assessment or re-assessment within the prescribed statutory limit. The findings of the Hon''ble Supreme Court are as under :-

"A writ of mandamus can be issued to a statutory authority to compel it to perform its statutory obligation. It cannot issue to compel him to pass an order in violation of a statutory provision. The ITO had no power to make a reassessment beyond the period prescribed by sub-section (2), unless the case fell under any of the other sub-sections u/s 153 or other provision extending the said period of limitation. No such provision is brought to our notice."

13. The contention of the revenue that the period from the date of filing of the application by the petitioner before the Commission on 28.5.2007 up to the order passed by the Division Bench of this court i.e. 16th September 2009 be excluded could not be accepted in view of the judgment of the Hon''ble Supreme Court. Apart from this, Hon''ble court has not extended the period of assessment in the judgment. In such circumstances, initiation of the proceeding and issuance of notices dt.19.8.2010 are beyond the period of limitation. It means that the revenue had no power and authority to continue the assessment proceeding beyond the statutory period of limitation.

14. Consequently, the petition filed by the petitioner is allowed. The impugned notices dt.19.8.2010 (Annexure P/1-A) and continuation of assessment proceedings are hereby quashed.

No order as to costs.