(1984) 06 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Appeal No. 1033 of 1980

Rajan Silk APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 27-06-1984

Acts Referred:
Income Tax Act, 1961 — Section 147(b), 148

Citation : (1985) 21 TAXMAN 118

Hon'ble Judges : D.H. Shukla, J;B.K. Mehta, J

Bench : Division Bench

Advocate : J.P. Shah, for the Appellant; S.N. Shelat and G.N. Shah, for the Respondent

Final Decision : Allowed

Judgement

B.K. Mehta, J.—The petitioner-firm by this petition moves this Court for appropriate writ, order and direction to quash and set aside the reassessment order dated 31-3-1980 passed by the ITO in respect of the assessment year 1975-76. A few facts need be noticed in order to appreciate the challenge to the impugned assessment. The petitioner-firm made return of Rs. 61,460 for the assessment year 1975-76 to which statement of total income was annexed. At the end of the said statement, three notes were appended, one of which was to the effect that the assessees had purchased automatic printing machinery in the year of account corresponding to the assessment year in question, and that it worked the said machinery for some time in the said period and the petitioner-firm had claimed development rebate, depreciation, extra shift allowance on the costs of the said machinery. It appears that petitioner had also furnished along with the profit and loss account, which it had filed for the accounting year corresponding to the assessment year, the particulars of the interest paid by the petitioner-firm to different creditors which, inter alia, included an amount of Rs. 8,057, which the petitioner claims to have paid to the Life Insurance Corporation (LIC) on loans raised and secured on the policy of the partners of the firm. The

ITO concerned, by his order of 18-9-1976, assessed the petitioner-firm granting depreciation, development rebate, extra shift allowance and interest as claimed by the petitioner-firm. It appears that by notice dated 20-1-1979, issued u/s 148 of the income tax Act, 1961 (''the Act''), which was received by the petitioner-firm on 24-1-1979, the petitioner was intimated that the ITO has reason to believe that the income chargeable to tax for the assessment year 1975-76 has escaped assessment and, therefore, he proposed to reassess the income for the said assessment year and the assessee should, therefore, file within 30 days of the receipt of the notice, a return in the prescribed form for the said year. The assessee-firm by its letter of 28-1-1979 objected to the proposed action for the reassessment, inter alia, on the ground that the ITO had no jurisdiction to reopen the assessment. The assessee by another letter of 12-2-1979 addressed to the ITO stated that there was no reason or ground in fact or in law for issuing notice u/s 148. The assessee also requested the ITO to treat the original return as the return of the assessee in response to the aforesaid notice. The assessee by the said letter also requested the ITO to furnish reasons for issuance of the aforesaid notice.

2. The ITO, however, in spite of the objection to his jurisdiction, fixed the appointment on 22-1-1980 and intimated the assessee, accordingly, by his letter of 11-1-1980. It appears that the assessee, therefore, before appearing in person addressed a letter on 21-1-1980, that is, a day immediately prior to the date of the appointment that the ITO had informed his representative in the earlier return that the reopening was sequel to some audit objection in that behalf and the assessee, therefore, invited the attention of the ITO to the decision of the Supreme Court in Indian & Eastern Newspaper Society v. CIT [1919] 119 ITR 996, where the Supreme Court ruled that audit objection did not constitute information and, therefore, the action of the ITO in acting on such an audit objection would virtually amount to change in the opinion. The assessee, therefore, requested the ITO to drop the proceedings.

3. The ITO did not respond favourably to this objection of the petitioner-firm, and fixed the appointment on 15-2-1980 vide his letter of 5-1-1980. It appears that the petitioner has thereafter filed the return to avoid the consequences of penal interest and penalty though we have not been able to appreciate how the income written by the assessee by that return, which was Rs. 57,205, has been described in the petition as income disclosed in the original return. We must, however, add that nothing turns upon this discrepancy. The ITO was not impressed with the objection raised by the petitioner-firm as to his jurisdiction and he, therefore, proceeded to pass the reassessment order on 31-3-1980 by which he had withdrawn the depreciation in sum of Rs. 58,458 and the allowance of interest of Rs. 8,037 paid to the LIC. This order is impugned in this petition.

4. The only short point, which has a bearing so far as this petition is concerned, is as to whether the audit note can be said to constitute an information within the terms of section 147(b) of the Act. So far as this question is concerned, the

point is not res Integra and we do not think that it would be open to the revenue to contend that the audit note constitutes an information so as to invest the ITO with the jurisdiction or authority to initiate reassessment proceedings u/s 147(b).

5. In Indian & Eastern Newspaper Society''s case (supra), the Supreme Court held that the opinion of an internal audit party of the income tax Department on a point of law can not be regarded as ''information'' within the meaning of section 147(b) for the purpose of reopening an assessment, since a statement by a person or body not competent to create or define the law cannot be regarded as law, and the suggested integration of enacted legislation and the elaboration of legal principles in text books and journals do not enjoy the status of law and they are merely opinions. The Supreme Court emphasised that if the distinction between the source of the law and the communication of the law is carefully maintained, the confusion which often results in applying section 147(b) may be avoided. We are, therefore, of the opinion that it is not possible to contend otherwise in view of the position of law being declared by the Supreme Court in the aforesaid decision. The attention of the ITO concerned was invited to this decision but he could not be persuaded since, in his opinion, once the initiation is with the authority the proceedings cannot be vitiated by any subsequent event such as the exposition of law by the Supreme Court or the amendment of a legal provision. The ITO found support for his opinion from the decision of this Court in CIT v. Maneklal Harilal Spg. & Mfg. Co. Ltd. [1977] 106 ITR 26. We are of the opinion that the ITO was clearly in error in placing reliance on this decision for the obvious reason that this Court was not concerned in Maneklal Harilal Spg. & Mfg. Co. Ltd.''s case (supra) with the effect of a subsequent decision of the Supreme Court on the initiation of proceedings for reassessment. The decision of the Supreme Court in COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., , which held that development rebate was admissible on parts of machinery also, was pronounced within a month after the ITO issued the notice, virtually upheld the original assessment. This enunciation of the legal position in the opinion of this Court did not necessarily result on the basis or foundation of the reassessment proceedings disappearing and that the effect of a subsequent Supreme Court decision cannot be equated with the retrospective effect being given to a statute. This was not the question before the ITO insofar as he had initiated reassessment proceedings on the basis of the information received in the nature of audit note, which has been held by the subsequent Supreme Court decision in Indian & Eastern Newspaper Society''s case (supra) to be no information at all on the point of law. In other words, the very basis on which the initiation of reassessment proceedings rested disappeared. In that view of the matter, we are of the opinion that the ITO had no jurisdiction or authority or power to reassess the proceeding since with all the materials before him, which were considered by the ITO in the original assessment proceedings and assessment made, accordingly, could not be reopened since it would, for all intents and purposes, a change of opinion and not the case of escaped assessment. In the result, this petition is allowed and a writ

of certiorari is issued quashing and setting aside the impugned reassessment made by the ITO, which was without any jurisdiction or authority of law. Rule is made absolute, accordingly, with costs.

