

(1983) 09 GAU CK 0005
In the Gauhati High Court
Case No : Income-tax Reference No. 5 of 1977

Ramanand Agarwalla

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-09-1983

Acts Referred:

Income Tax Act, 1961 — Section 153, 153(1), 156

Citation : (1984) 39 CTR 110 : (1985) 151 ITR 216 : (1984) 17 TAXMAN 305

Hon'ble Judges : T.S. Misra, C.J.;K.N. Saikia, J

Bench : Division Bench

Advocate : None, for the Appellant; B.P. Saraf and U. Baruah, for the Respondent

Judgement

T.S. Misra, C.J.—The following question of law has been referred to this court for adjudication :

" Whether, in view of the facts and circumstances of the case, the Tribunal was justified on the material before it in holding that the assessment was completed on 16th March, 1968, and as such the assessment was not barred by limitation ?
"

2. The material facts are these : The assessee, Ramanand Agarwalla, was assessed under the provisions of the I.T. Act, 1961, as an individual. His income for the assessment year 1963-64 was the subject-matter of assessment before the ITO, who passed his assessment order on March 16, 1968. That order was then followed by a notice dated March 20, 1968, which was issued by the office of the ITO on March 30, 1968, and was served on the assessee on April 13, 1968. The assessee filed an appeal against that assessment order contending, inter alia, that it was barred by time u/s 153 of the said Act. The AAC repelled this contention holding that the assessment order was passed before March 31, 1968. The assessee then preferred an appeal before the Income Tax Appellate Tribunal reiterating his contention that the assessment order was barred by time. The said contention, however, did not find favour with the Tribunal, which held

that the assessment was completed by the ITO on March 16, 1968, and was entered in the register in March, 1968. The demand notice was also issued on March 30, 1968. The assessee then moved the Tribunal for referring certain questions of law to this court. In compliance with the directions issued u/s 256(2) of the I.T. Act, 1961, by this court, a statement of the case has been drawn up and sent to the court.

3. The question referred to us for our answer relates to the interpretation of Section 153 of the I.T. Act, the material portion of which is in the following terms :

" 153. (1) No order of assessment shall be made u/s 143 or Section 144 at any time after--

(a) the expiry of--

(i) four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or before the 1st day of April, 1967 ;

(ii) three years from the end of the assessment year in which the income was first assessable, where such assessment year is the assessment year commencing on the 1st day of April, 1968 ;

(iii) two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969. "

4. It is quite plain that u/s 153 of the Act, an order of assessment cannot be passed after the expiry of four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or before the 1st day of April, 1967. In other words, the ITO must complete the assessment within four years and, if he fails to do so, he would not be entitled to pass any order with respect to that particular assessment year. The order of assessment is, hence, required to be passed before the expiry of the period of four years. The contention of the assessee before the AAC as also the Tribunal was that he received a demand notice dated March 20, 1968, on April 13, 1968, and as the said demand notice was accompanied by an undated assessment order, it could not be held that the assessment was completed on March, 16, 1968. True it is, that the demand notice was dated March 20, 1968, and that it was served on the assessee on April 13, 1968, but it is also a fact that the said demand notice was issued by the office of the ITO on March 30, 1968, as would appear from the statement of the case. This is a question of fact which cannot be disputed before us. It was also found by the Income Tax Tribunal as has been stated in the statement of the case that the assessment order in question was dated March 16, 1968. This fact cannot also be questioned before us. So, it has to be accepted that the ITO had passed the assessment order on March 16, 1968, and that the said assessment

order bears the date of March 16, 1968. The income of the assessee for the assessment year 1963-64 was the subject-matter of assessment in the order dated March 16, 1968. The said assessment year ended on March 31, 1968. The assessment order should, therefore, in view of the provisions of Clause (a)(i) of Sub-section (1) of Section 153, have been passed before March 31, 1968. The ITO passed that order fifteen days before that date in fact that order was passed on March 16, 1968.

5. There is no substance in the contention that not only the assessment order but the demand notice should also be issued before the expiry of four years from the end of the assessment year in which the income of the assessee was first assessable. Sub-section (1) of Section 153 of the Act requires an ITO to pass an order of assessment within the period prescribed in the Act. It does not require that the demand notice should also be issued within that period. The words "order of assessment" cannot be construed as to include a demand notice as well. The demand notice does not form part of the order of assessment as is evident from the provisions of Section 156 of the Act which says that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the ITO shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

6. The demand notice is prepared after the assessment order is passed and tax or interest or penalty, etc., is found payable by the assessee in consequence of that order. The stage of issuing the notice of demand is therefore, a distinct stage. There is, therefore, no substance in the contention that the demand notice also should be issued within the period of four years from the end of the assessment year in question.

7. Our answer to the above-noted question referred to us is in the positive and against the assessee.

8. We answer the question accordingly.