(1994) 12 BOM CK 0061

In the Bombay High Court

Case No : Income-tax Reference No. 236 of 1984

Ritz Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 19-12-1994

Acts Referred:
Income Tax Act, 1961 — Section 139, 143, 143(3), 144, 147

Citation : (1995) 126 CTR 33 : (1995) 216 ITR 138

Hon'ble Judges : S.M. Jhunjhunwala, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the assessee, the Income Tax Appellate Tribunal, Bombay, has referred the following question of law to this court for opinion :

"Whether, on the facts and in the circumstances of the case, the reassessments made by the Income Tax Officer were barred by limitation prescribed u/s 153 of the Income Tax Act, 1961 ?"

2. The controversy involved in the above question is in a very narrow compass. It pertains to the period of limitation applicable to reassessments made u/s 147 of the Income Tax Act, 1961. We shall, therefore, narrate only those facts which are relevant for the purpose of determining the above controversy.

3. The assessee is a private limited company, deriving income from the business of running a hotel. The assessment years involved in this reference are 1965-66, 1966-67, 1967-68, 1969-70 and 1970-71. The assessments for all these five years were originally completed accepting the statement of the assessee that certain credits shown in its books of account were genuine loans borrowed from certain persons whose names were recorded in the said books. Interest paid by the assessee on those loans were also allowed as genuine payments to those creditors. Subsequently, the Income Tax Officer came across certain materials

which led him to believe that the income of the assessee, in the original assessments, was underassessed due to the failure of the assessee to disclose truly and fully all material facts necessary for the assessments. He recorded the reasons for forming that belief for each of the years under consideration and reopened the assessments u/s 147(a) of the Income Tax Act, 1961 ("the Act"), after obtaining the prior approval of the prescribed authorities wherever necessary, by issue of notices u/s 148 of the Act. The material on which the Income Tax Officer formed his belief were certain confessions by the creditors whose names appeared in the books of the assessee. After reopening the assessments, the Income Tax Officer heard the assessee about the genuineness of credits appearing in its books in the light of the confessions of the creditors in his possession. Considering the facts of the case, he held that those credits were not satisfactorily explained by the assessee and hence, they were assessable as the assessee''s income from undisclosed sources for all the five years under the provisions of section 68 of the Act.

4. These orders of reassessment were confirmed, on appeal, both by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal ("the Tribunal") The assessee applied for reference. On the application of the assessee, the Tribunal has referred the above question to this court for opinion.

5. As stated earlier, the controversy in the above question is very limited and in a narrow compass. There is no dispute about the fact that the proceedings u/s 147(a) of the Act were validly initiated for each of the assessment years by the issue of valid notices u/s 148 of the Act within the time specified in section 149 of the Act. There is no dispute also about the fact that the orders of reassessment u/s 147 of the Act were made by the Income Tax Officer before the expiry of four years from the end of the assessment year in which the notices u/s 148 were served. The only question raised by the assessee is whether sub-section (1) or sub-section (2) of section 153 would apply to a case of reassessment made u/s 147(a) of the Act. We do not find any difficulty in answering this question, because, in our opinion, section 153 of the Act which prescribes the time-limit for completion of assessments and reassessments is quite clear and unambiguous. Section 153, so far as relevant, at the material time, stood as follows :

"153. Time-limit for completion of assessments and reassessments. - (1) No order of assessment shall be made u/s 143 or section 144 at any time after -

(a) 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 or after 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; or

(b) the expiry of eight years from the end of the assessment year in which the income was first assessable, in a case falling within clause (c) of sub-section (1) of section 271; or

(c) the expiry of one year from the date of the filing of a return or a revised return under sub-section (4) or sub-section (5) of section 139,

whichever is latest.

(2) No order of assessment, reassessment or recomputation shall be made u/s 147 -

(a) where the assessment, reassessment or recomputation is to be made under clause (a) of that section, after the expiry of four years from the end of the assessment year in which the notice u/s 148 was sewed;

(b) where the assessment, reassessment or recomputation is to be made under clause (b) of that section after -

(i) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(ii) the expiry of one year from the date of service of the notice u/s 148,

whichever is later. . . ."

6. Mr. V. Rajgopal, learned counsel for the assessee, submits that the time-limit prescribed under sub-section (1) of section 153 of the Act for making orders of assessment u/s 143 or section 144 of the Act would also apply to orders of assessment or reassessment made u/s 147 of the Act because such orders are also made u/s 143 or 144 of the Act. Reliance was placed in support of this contention on the decision of the Madras High Court in Commissioner of Income Tax Vs. Simson and Mc Conechy Limited, . We have considered the above submission, which, on the face of the clear provisions of sub-sections (1) and (2) of section 153, appears to be curious and amazing. Because, even from a plain reading of sub-sections (1) and (2) of section 153, it is clear that sub-section (1) prescribes time-limits for completion of assessments u/s 143 or section 144, whereas sub-section (2) prescribes the time-limits for completion of assessments, reassessments or recomputation under sections 147(a) and 147(b) of the Act. Having failed to understand how, on the face of such clear provisions, which prescribe separate periods of limitation for assessments under sections 143 and 144 and assessments u/s 147, in sub-sections (1) and (2), respectively, it could even be contended that the periods of limitation prescribed under sub-section (1) would apply to a reassessment u/s 147(a) also, we asked counsel to enlighten us in this regard. In reply, learned counsel referred to the definition of "assessment" contained in section 2(8) of the Act which says that "assessment"

includes "reassessment" and submitted that the word "assessment" appearing in sub-section (1) of section 153 should be read as "assessment or reassessment" and so read, the time-limits prescribed therein would also apply to reassessment. We have considered the above submission which, in our opinion, is patently erroneous and wholly misconceived. This argument, if accepted, would render the provisions of section 149 of the Act, which prescribe the time-limit for issue of notice for reassessment u/s 148 of the Act ranging from four years to sixteen years from the end of the relevant assessment year and sub-section (2) of section 153 of the Act which prescribes the period of limitation of four years from the end of the assessment year in which the notice u/s 148 was served in cases where the assessment or reassessment is made under sub-clause (a) of section 147, wholly redundant, and nugatory. Similarly, clause (e) of section 246 which includes in the list of appealable orders "orders of assessment, reassessment or recomputation u/s 147" would also become redundant because all such orders would be covered by clause (c) itself which refers to "orders of assessment under sub-section (3) of section 143 and section 144". The same would be the fate of many other provisions which would be rendered inconsistent with each other, redundant and unworkable. We really wonder who conceived such an argument which deserves no consideration but outright rejection.

7. In that view of the matter, we are of the clear opinion that the orders of reassessment, in the instant case, having been made within the time-limit prescribed by section 153(2) of the Act, are not barred by limitation. However, before parting with the case, it would be appropriate to briefly deal with the argument of learned counsel based on the definition of "assessment" which includes "reassessment" and the effect thereof on interpretation of section 153 of the Act and also the decision of the Madras High Court in Commissioner of Income Tax Vs. Simson and Mc Conechy Limited, on which the case of the assessee was sought to be founded. So far as the definition of "assessment" in clause (8) of section 2 is concerned, one should not lose sight of the fact that section 2, which contains the definitions of various expressions, itself says that the meaning of the words defined therein shall be applicable "unless the context otherwise requires". Hence, the meaning of expressions given in the definition may be departed from if the context so requires. No individual word can be considered in isolation-its meaning has to be determined by other words in the section in which it occurs. Moreover, though the expression "assessment" has been defined to include "reassessment", assessment and reassessment connote two different subject-matters which have been dealt with separately in the Act for various purposes, e.g., initiation of proceedings, time-limit for issue of notice, time-limit for completion of assessment, appeals, etc. The time-limits for issue of notice calling for submission of returns for assessment u/s 143(3) as also for completion of assessments are completely different from those prescribed for assessment or reassessment of escaped income. The language of section 153, which prescribes time-limits for completion of assessments and reassessments, is clear and unambiguous. It prescribes different time-limits for each of them.

Sub-section (1) prescribes the time-limit for completion of assessments u/s 143(3) and section 144 of the Act, whereas sub-section (2) pre-scribes the time-limit for completion of assessments or reassessments u/s 147. That being so, the orders of assessment or reassessment u/s 147 would obviously be governed by the period of limitation prescribed by sub-section (2) of section 153 of the Act. It is clear from the above discussion that the submission of learned counsel that the limitation prescribed u/s 153(1) will apply to "reassessment" also, because assessment includes reassessment, is wholly misconceived and devoid of any merit.

8. We are also amazed and perplexed at the reliance placed by learned counsel for the assessee on the decision of the Madras High Court in Commissioner of Income Tax Vs. Simson and Mc Conechy Limited, in support of his contention that the limitation prescribed u/s 153(1) applies also to reassessments u/s 147. We have gone through the said decision. It appears that arguments similar to those advanced before us were also made in that case before the Madras High Court. The only object of referring to this decision, in our view, possibly, could be to show us that it is not for the first time that such curious arguments are being advanced. Even in the past, courts had to deal with similar contentions. Beyond that, this decision appears to be of no assistance to the assessee because such contentions were repelled by the court in that case. It was held (at pages 530 and 531) :

"...... Section 153(1) of the Act refers to assessments u/s 143 or 144 of the Act, while section 153(2) of the Act deals with assessments, reassessments or recomputations made u/s 147 of the Act. Thus, in section 153 of the Act, two distinct and different situations are provided for with reference to assessments u/s 143 or 144 of the Act and assessments or reassessments or recomputations made u/s 147(a) or 147(b) of the Act and the provision of different periods of limitation under sections 153(1) and 153(2) is clearly indicative that a clear and distinct dichotomy was intended and maintained even with reference to the period of limitation within which action could be taken. In other words, it could not have been intended that there should be any mixing up or overlapping of the different cases contemplated u/s 153(1) or 153(2) of the Act, as the case may be. Though u/s 2(8) of the Act ''assessment'' includes reassessment, that definition would apply unless the context otherwise requires and the provision made in sections 153(1) and 153(2) of the Act maintaining a clear-cut distinction between the respective cases contemplated by it shows that the expression ''assessment'' occurring in section 153(1) of the Act cannot be understood as including a reassessment as defined in section 2(8) of the Act. The opening words of section 153(1) of the Act cannot, in our view, be construed as including an order of reassessment as contemplated u/s 147(a) or 147(b) of the Act with reference to which a separate and independent provision has been made u/s 153(2) of the Act. The power to assess or reassess such income or recompute the loss or depreciation allowance, as the case may be, for the assessment year concerned conferred by section 147 of the Act, when exercised, cannot be interpreted to mean an assessment u/s 143 or section 144 of the Act, as the case may be, depending upon the extent of co-operation extended by the assessee. By reason of section 148 of the Act, the other provisions of the Act are made applicable for making an assessment or a revised assessment, as the case may be, u/s 147 of the Act. But, from that, it is not possible to infer that where an assessment or revised assessment is made u/s 147 of the Act, it is one falling u/s 143 or section 144 of the Act, as the case may be."

9.In the light of the foregoing discussion, the question referred to us is answered in the negative and in favour of the Revenue.

10. In the facts and circumstances of the case, there shall be no order as to costs.

