
(2008) 09 P&H CK 0062
In the Punjab And Haryana At Chandigarh

Sat Narain

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Income Tax Act, 1961 — Section 148

Citation : (2010) 320 ITR 448 : (2009) 183 TAXMAN 401

Hon'ble Judges : Ajay Tewari, J; Adaish Kumar Goel, J

Bench : Division Bench

Judgement

Ajay Tewari, J.—This order shall dispose of IT Appeal Nos. 484 and 485 of 2007, as common questions of law and facts are involved therein. For the sake of convenience, facts are being extracted from IT Appeal No. 484 of 2007.

2. This appeal filed by the assessee proposes the following questions of law:

(i) Whether in the facts and circumstances of the case the notice u/s 148 of the Income Tax Act, was validly served on the assessee ?

(ii) Whether in facts and circumstances of the case the appellant was prevented by sufficient cause from appearing before the assessing officer and therefore the ex parte assessment u/s 144 was liable to be set aside.

(iii) Whether in the facts and circumstances of the case the assessing officer could invoke the jurisdiction to initiate the reassessment proceedings u/s 147 of the Income Tax Act, on the basis of the VDIS declaration filed under 1997 Scheme contrary to clauses 71 and 72 of the said Scheme and in opposition to Article 20(3) of the Constitution of India under which no man can be compelled to be witness against himself ?

(iv) Whether in the facts and circumstances of the case the assessing officer could invoke the jurisdiction to initiate the reassessment proceedings u/s 147 of the Income Tax Act, on the basis of the VDIS declaration filed under 1997 Scheme which was a nullity ?

3. The assessee had originally filed return for the assessment year 1994-95 on 30-8-1994 declaring an income of Rs. 34,800. In September, 1998, the assessing officer received information from the office of the Assistant Commissioner, Jalandhar in the form of a letter addressed to the assessee pointing out that though the assessee had filed a declaration under VDIS 1997 disclosing income of Rs. 2 lacs in the form of cash for the assessment year 1994-95 and Rs. 2 lakhs for the assessment year 1995-96, it had not paid the due tax and, therefore, the said declaration was deemed not to have been filed as per the provisions of Section 67(2) of the VDIS, 1997. On the basis of this information, the assessing officer framed a fresh assessment vide separate orders dated 29-12-2000.

4. The assessee's challenge to the reassessment proceedings by way of appeal was rejected. In second appeal the learned Tribunal held that it cannot be said that reassessment proceedings were initiated merely on the basis of suspicion. The Tribunal also held on fact that service of notice u/s 148 of the Income Tax Act, 1961 was proper and further that there was error in the order of the appellate authority in not setting aside the ex parte assessment. The appeal of the assessee was accordingly dismissed.

5. Counsel for the appellant has urged that in view of non-deposit of tax, the declaration under VDIS, 1997 was held to be no declaration and, thus, argued that no action could be taken on the basis thereof.

6. We are not persuaded by this argument, since the declaration has been declared to be no declaration only for the purposes of the VDIS, 1997. Apart from that we are in agreement with the view of the Tribunal that the said document did not form the sole basis for the assessing officer to initiate reassessment proceedings but he also took into consideration the letter written by the Asstt. CIT, Jalandhar as well as the fact that no return had been filed by the assessee for the assessment year 1995-96.

7. Ms. Radhika Suri, learned Counsel for the appellant further argued that the notice u/s 148 of the Income Tax Act, was not validly served on the assessee and relied upon a judgment of the Delhi High Court in CIT v. Hotline International (P) Ltd. (2007) 161 Taxman 104 (Delhi). In the present case, the learned Tribunal has held as follows:

12. Apropos the issue of service of notice on the father of the assessee was not valid. However, it is seen that the service of notice on one Shri Vishnu, an employee of the assessee has not been disputed. Moreover, the father of the assessee had been receiving notices earlier also, on behalf of his wife. In A.K.M. Govindaswamy Chettiar (Decd.) and Others (through legal representatives) Vs. Income Tax Officer, , service of notice has been held to be valid on a person, who normally receives the notice, even if not specifically authorized in this regard. Moreover, there is no requirement of serving the notice on the assessee personally.

8. The judgment, relied upon by counsel for the appellant, relates to refusal of service by the security guard and is, thus, clearly distinguishable. In this view of the matter, the questions proposed in these appeals do not arise. Consequently, the appeals are dismissed with no order as to costs.