(2010) 10 P&H CK 0387

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 690 of 2009 (Assessment Year 2000-01)

Sewak Ram APPELLANT

Vs

ITO RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(2), 143(3), 147, 148

Citation : (2010) 10 P&H CK 0387

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Assessee u/s 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 26-6-2009 passed by the Tribunal, Amritsar Bench, Amritsar, in ITA No. 27/Asr/2007 in respect of asst-/yr. 2000-01, proposing following substantial questions of law:

(i) Whether on the facts and circumstances of the case, the learned Tribunal was justified in holding that the assessing officer had any reason to initiate proceedings u/s 147 of the Income Tax Act, 1961?

(ii) Whether on the facts and circumstances of the case, the finding of the learned Tribunal is perverse in nature to the extent that the Assessee did not file the balance sheet, trading, P&L a/c and capital account with the original returns filed for assessment year 2000-01?

2. The IT return of the Assessee was processed u/s 143(1) and thereafter process of reassessment was initiated, inter alia, on the following grounds:

(i) In the capital account of the Assessee, five gifts were received without giving details or filing documents in support thereof. The said amount represented undisclosed income of the Assessee.

(ii) The Assessee sold one bigha land but no capital gain was shown.

(iii) The Assessee made huge investment in shares account.

(iv) The Assessee was a director in a company and has shown the liability to the company without showing any income.

3. After issuing a questionnaire and considering the viewpoint of the Assessee, order of reassessment was passed making additions of Rs. 95,83,013 to the declared income. On appeal, the Commissioner (Appeals) set aside the reassessment order only on the ground that jurisdiction to reassess was not validly invoked. On further appeal, the Tribunal set aside the view taken by the Commissioner (Appeals) and remanded the matter for fresh decision on merits. The finding recorded by the Tribunal is as under:

Keeping in view the facts and circumstances in the present case and after hearing both the parties, we are of the considered opinion that the case law cited by the learned departmental Representative in the case of Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., is applicable to the facts of the present case. As regards to the fresh material on which the reassessment proceedings were initiated by the assessing officer, we find that the assessing officer has reopened the assessment on the sufficient reason which is mentioned at p. 2 and para 2 of this order. As per paper book filed by the learned Counsel for the Assessee, he drew our attention towards copy of trading, P&L a/c, capital account and balance sheet relating to assessment year 2000-01, which he placed at pp. 3 and 4 of the paper book. After considering the same, we are of the view that these documents, Assessee has not filed with original returns. Assessee has filed these documents only at the time of reopening of the present case. As per sale deed for Rs. 4,95,000, which the Assessee had sold as alleged by the assessing officer, the assessing officer has not made any addition in the reassessment on this account. As regards to the reasons for reopening the case of the Assessee on the ground that the director of the company M/s Bhupindra Flour Mills (P) Ltd., the Assessee has neither shown any income from the company nor shown any investment in it. As per record, the Assessee has made huge investment in the shares of Rs. 40,87,040 and that income has been shown from these investments and dividend income from shares was exempted. In view of the judgment of jurisdictional High Court in the case of CIT v. Suresh Kumar L/h of Siri Ram, (2005) 275 ITR 253 and various judgments rendered by the Tribunal, in which they have discussed the validity of reassessment and held that even though the original assessment was made u/s 143(1) and not u/s 143(3) of the Income Tax Act, Assessee having made full disclosure of its income and assessing officer was not justified in reopening the assessment in the absence of any new material. They held that Section 147 does not postulate conferment of power upon the assessing officer to initiate reassessment proceedings upon a mere change of opinion. The Honble court also held that if the assessing officer feels that issue requires much deeper scrutiny is not enough ground for invoking the provisions of Section 147 of the Act, but in the present case, assessing officer has sufficient reason to believe for reopening of present case. We have already discussed that the apex court in the case of Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd. (supra) has held that no opinion expressed by the assessing officer that an assessment is framed u/s 143(1)(a) of the Act and as such, there is no change of opinion or invocation of Section 147 of the Act. The assessing officer has jurisdiction to issue notice u/s 148, if there was cause or justification to know or suppose that income has escaped assessment, it can be said to have reason to believe that income had escaped assessment. The reason to believe is mandatory precondition for assuming of jurisdiction u/s 147 of the Act. It has been further held that such reason to believe must necessary to be based on relevant material and that relevant material must be such that a reasonable person on information of such material would have formed a requisite belief that income of the Assessee has escaped assessment. In other words, reasonable (sic--reopening) must be based upon reasons, which should be on the basis of new material on record to justify the reason for reopening the case. After considering the facts and circumstances of the present case with the support of arguments advanced by both the parties, we are of the considered opinion that the assessing officer was justified for reopening in the case of the Assessee u/s 148 of the Act. Therefore, we are not agreed with the reasons mentioned by the learned first appellate authority for cancelling the reassessment proceedings made by the assessing officer. Accordingly, we cancel the same by allowing the appeal filed by the department.

4. We have heard learned Counsel for the parties and perused the record.

5. Learned Counsel for the Assessee submits that the reasons for reassessment were not based on a new material but on the basis of the particulars in the return and reassessment amounted to change of opinion and initiating a roving enquiry was not permissible. Reliance has been placed on the following judgments:

1. Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., ;

2. Ram Bai Vs. Commissioner of Income Tax, ;

3. CIT v. Batra Bhatta Co. (2008) 13 DTR (Del) 115;

4. Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, ;

5. Chhugamal Rajpal Vs. S.P. Chaliha and Others, ;

6. Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, ;

7. ASOKE KUMAR SEN Vs. Income Tax OFFICER, SPECIAL CIRCLE-V, NEW DELHI, AND ANOTHER., ;

8 Vipin Khanna Vs. Commissioner of Income Tax and Others, ;

9. Smt. Kamlesh Sharma Vs. B.L. Meena, Income Tax Officer and Others, .

6. We are unable to accept the submission. After amendment of Section 147 with effect from 1-4-1989, reassessment can be initiated even if there is disclosure in the return if without considering the particulars of the return, processing is done u/s 143(1) or assessment is made u/s 143(3). No doubt, mere change of opinion by itself is not a ground for reassessment as held in the judgments relied upon on behalf of the Assessee but if there are reasons to believe that tax has escaped, reassessment is permissible. Reasons can be even on the basis of particulars of the return without any new material. Even if proceedings u/s 143(2) are not taken, reassessment proceedings can be taken.

7. In the present case, the Commissioner (Appeals) set aside the proceedings by wrongly holding that reassessment could not be initiated on the basis of material already disclosed in the return without going into the correctness of the reasons.

8. We find, prima facie, that the reasons for reassessment are not irrelevant. In any case, the same could have been gone into by the Commissioner (Appeals) before reassessment was set aside as rightly held by the Tribunal. The judgments relied upon by learned Counsel for the Assessee, thus, have no applicability in the present case. In these circumstances, the view taken by the Tribunal cannot be held to be erroneous. No substantial question of law arises.

9. The appeal is accordingly dismissed.