
(2008) 03 P&H CK 0137
In the Punjab And Haryana At Chandigarh

Smt. Anchi Devi	Vs	APPELLANT
Commissioner of Income Tax		RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Income Tax Act, 1961 — Section 142, 143, 147, 148, 153

Citation : (2008) 218 CTR 11

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Garg, J.—The assessee filed return of income on 31st Oct., 1998 for the asst. yr. 1998-99 declaring an income of Rs. 46,220 and an agricultural income of Rs. 84,286. The return was processed u/s 143(1)(a) of the IT Act, 1961 (hereinafter referred to as the "Act") on 18th May, 1999. Subsequently, the assessment was reopened u/s 147 of the Act and a notice u/s 148 of the Act was issued on 8th Jan., 2001 which was served upon the assessee on 11th Jan., 2001. In respect thereto, the assessee filed a return of income on 28th Feb., 2001 declaring the same income as shown in the original return and this return was also processed u/s 143(1)(a) on 30th March, 2001 accepting the returned income. Thereafter, notices were issued u/s 143(2) and Section 142(1) of the Act and the assessment u/s 143(3) r/w Section 147 was completed on 14th Feb., 2003 on a total income of Rs. 17,01,235. Various additions and disallowances were made in this assessment.

2. The assessee filed an appeal before the CIT(A) and besides contesting the disallowances made in the assessment, took up a ground that the assessment was time-barred in view of Section 153(2) of the IT Act and, therefore, the same should be quashed. It was contended that u/s 153(2), the assessment proceedings have to be completed within one year from the end of the financial year in which the notice u/s 148 was served. It was pointed out that the notice was served on the assessee on 11th Jan., 2001, which is a day which fell before

1st June, 2001 and, therefore, in such a case, the assessment ought to have been completed on or before 31st March, 2002. Since it was completed only on 14th Feb., 2003, the assessment, it was contended was beyond the period of limitation.

3. The CIT(A) held that since Section 153(2) was amended w.e.f. 1st June, 2001 to reduce the time-limit available for completion of the assessment from two years to one year from the end of the financial year in which the notice u/s 148 was served, the amended provision would operate in the present case, notwithstanding that the notice was served before 1st June, 2001, and therefore the assessment ought to have been completed on or before 31st March, 2002 and since it was completed only on 14th Feb., 2003, it was beyond the period of limitation. Thus, the CIT(A) applied the amended Section 153(2) to restrict the time-limit available to the AO to complete the assessment.

4. Feeling aggrieved against this order, the Revenue filed an appeal before the Tribunal who vide impugned order dt. 6th July, 2005 held that the view taken by the CIT(A) that the assessment ought to have been completed on or before 31st March, 2002 is correct in law and thus, dismissed the appeal.

5. It is relevant to mention at this stage that the AO reopened the assessment proceedings again by serving a fresh notice u/s 148 of the Act on 24th March, 2004. Reasons for reopening the assessment by the AO are reproduced hereinafter:

Smt Anchi Devi Jindal C/o M/s Viklas WSP Ltd. Siwani

Asst. yr. 1998-99

Reasons for the belief that income has escaped assessment:

From the perusal of the assessment records, the assessment was completed u/s 143(3)/147 on 14th Feb., 2003 on a total income of Rs. 17,01,235 and agriculture income of Rs. 84,286. In the assessment an addition of Rs. 16,79,717 was made on account of deduction claimed by the assessee on account of interest paid of FDRs, the assessee had filed an appeal against this order and the learned CIT(A) in his order in Appeal No. 11/9/BHW/CIT(A), KNL/2002-03 dt. 20th June, 2003 quashed the assessment on the ground that the assessment finalized on 14th Feb., 2003 was barred by time. During the year under consideration the assessee has shown interest on FDRs at Rs. 16,79,717. The case of the assessee has been processed u/s 143(1)(a) on 18th May, 1999 and the returned income has been accepted. It is noticed that the assessee has claimed the payment of interest to the bank at Rs. 16,54,795. The assessee filed its return of income declaring following results.

Income from other sources Interest on FDRs 16,79,717 Less: Interest paid to bank 16,54,795 Balance income 24,922 It is seen that the assessee has obtained loan against her FDRs with the bank on higher rate of interest, and gifted it for the construction of the college building. The deduction on account of interest

claimed to have been paid to the bank is not allowable. Keeping in view the facts that interest income is assessable under the head "Income from other sources".

I therefore, have reasons to believe that wrong deduction has been claimed and allowed on income from interest on FDR and income to the extent of Rs. 16,54,795 (Rs. 1679717-24992) has escaped assessment.

6. In response to this notice, the assessee declared the same income as declared in the original return. During the reassessment proceedings, the AO noted that the assessee had received interest of Rs. 16,79,717 against which interest of Rs. 16,54,794 had been claimed as deduction as paid to the bank.

7. The AO held that interest paid was not allowable as deduction as the income from investment out of the loan was not taxable. He also held that the loans taken were for investment in the FDRs. The interest paid on the borrowings against which the FDRs were pledged, was not wholly and exclusively for earning of interest. He, therefore, disallowed the claim of deduction.

8. In appeal, the assessee submitted before CIT(A) that the issuance of fresh notice u/s 148 was not justified as on the same issue, assessment had already been reopened and the assessment had been completed u/s 143(3). CIT(A) was however not satisfied and it was observed by him that the earlier assessment proceedings had been quashed by CIT(A) and, therefore, there was no bar on reopening of assessment again. He relied upon the judgment of the Hon'ble High Court of Allahabad in the case of G.P. Agarwal Vs. Assistant Commissioner of Income Tax, in which it was held that there was no bar on initiating reassessment proceeding in cases where rectification proceeding had already been dropped. He, therefore, upheld the reopening of the assessment. The addition was also upheld on merits as payment of interest was not made for the purpose of making the earning of interest from FDR which had been assessed under the head "Other sources".

9. Aggrieved by the said decision of CIT(A), the assessee filed an appeal before the Tribunal in which he challenged the reopening of the assessment as well as the addition. The Tribunal after considering the arguments dismissed the appeal of the assessee and held as under:

We have perused the record and have considered rival contentions carefully. The return for the relevant assessment year was processed u/s 143(1)(a) on 18th May, 1999. Subsequent assessment made u/s 143(3)/147 on 14th Feb., 2003 had been quashed by CIT(A) and therefore, this assessment became non est the effect of which was as if no assessment u/s 143(3) had been made. The reopening, therefore, could be made legally in this case after lapse of four years from the end of the relevant assessment year. The argument of the learned Authorised Representative for the assessee that the reopening was bad in law, cannot be therefore, accepted. The reopening is thus held legally valid and the order of CIT(A) is confirmed.

10. Not satisfied with the order of the Tribunal, the assessee has further come up in appeal before this Court challenging the order dt. 22nd Sept., 2006 passed by the Tribunal, New Delhi in ITA No. 3903/Del/2005 raising the following substantial question of law:

Whether the AO has jurisdiction to initiate subsequent proceedings u/s 147 of the IT Act, 1961 in a case where on same set of facts previous proceedings culminating in the passing of assessment order u/s 143(3) r/w Section 147 has been set aside on account of being time barred by the Tribunal?

11. Learned Counsel for the appellant assessee has argued that the assessment in the case was made u/s 143(3) on 14th Feb., 2003 and the same could not be reopened after a lapse of four years from the end of the relevant assessment year unless there was an escapement of Income Tax due to failure on the part of the assessee in declaring true and full material facts necessary for the assessment. It has been further argued by the learned Counsel for the appellant that the AO with a view to circumvent the order of the Tribunal holding that the assessment framed by the AO was barred, by time and therefore, not sustainable in law, again issued a notice u/s 147/148 of the Act by recording the same reasons which had been recorded in the first instance and framed the assessment u/s 143(3) r/w Section 147 of the Act.

12. On the other hand, Mr. Yogesh Putney learned Counsel for the Revenue has argued that the AO was justified in initiating fresh proceedings u/s 147 of the Act as the notice had been issued by the AO within the period prescribed under the Act as the earlier order of assessment dt. 14th Feb., 2003 which was quashed by CIT(A) and the Tribunal on technical grounds will not bar the AO from initiating the reassessment proceedings against the assessee.

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

14. In *R. Kakkar Glass and Crockery House Vs. Commissioner of Income Tax*, , this Court held as under:

When a notice for reassessment is quashed on some technical ground, it would be in order to issue a fresh notice u/s 148 of the IT Act, 1961, provided all other legal requirements of law are complied with. For instance, if a notice u/s 148 is quashed on the ground that no reasons had been recorded, a second notice after recording the reasons would be in order. Similarly, if a notice is quashed on the ground that it has been issued without the requisite sanction of the higher authority, fresh notice can be issued after obtaining the necessary sanction. However, if a notice u/s 148 is quashed after examining the material relied on by the AO and after recording a finding that on the basis of such material the additional income cannot be said to have escaped assessment, it would not be permissible for the AO to issue a fresh notice on the basis of the same material in respect of the same item of income. In case some fresh material comes into the possession of the AO subsequently suggesting escapement of income under the same head or some other head, there are no fetters on the power of the AO

to issue a fresh notice u/s 148. All such notices, however, have to conform to the parameters prescribed under the law including the provisions regarding limitation.

15. In *Commissioner of Income Tax Vs. Mrs. Manjula Sood*, a Division Bench of this Court held as under:

The law prescribing the period of limitation is to be considered as procedural rather than substantive. This proposition of law would have only one exception, i.e., if under the existing law of limitation the right to initiate a proceeding has already become time-barred then a subsequent enlargement of time by an amendment of law cannot be availed of. In such a case, the matter having attained finality, would vest a party with substantive right which has already accrued. This accrued right cannot be taken away by a subsequent amendment. Substantive laws determine the rights and liabilities of the parties concerned, whereas procedural laws govern the manner in which such rights or obligations are to be enforced or realised.

16. In *Commissioner of Income Tax Vs. Air Craft Radio Corporation*, this Court held that after the reassessment had been set aside by the appellate Court, the AO had no jurisdiction to once again embark upon the same proceedings.

17. The Hon'ble Supreme Court in the case of *Commissioner of Income Tax, New Delhi Vs. Rao Thakur Narayan Singh*, observed as under:

...The Tribunal held in the earlier proceedings that the ITO knew all the facts at the time he made the original assessment in regard to the income he later on sought to tax. The said finding necessarily implies that the ITO had no reason to believe that because of the assessee's failure to disclose the facts, income has escaped assessment. The earlier finding is comprehensive enough to negative "any such reason" on the part of the ITO. That finding is binding on him. He could not on the same facts reopen the proceedings on the ground that he had new information. If he did so, it would be a clear attempt to circumvent the said order, which had become final....

18. It may be seen that the AO had no fresh material before him. A perusal of the reasons recorded by him for reopening the assessment proceedings vide notice dt. 22nd March, 2004 shows that the same reasons have been recorded which were stated in the earlier notice served u/s 148 of the Act on the basis of which the assessment was made on 14th Feb., 2003 and which was quashed being barred by limitation. Thus, from the facts itself, it is crystal clear that though the present proceedings were initiated by the AO within the prescribed period of limitation yet it is clear that the same were initiated only to circumvent the earlier order of the Tribunal vide which the assessment dt. 14th Feb., 2003 was held to be time-barred. Thus, the AO cannot be allowed to initiate fresh proceedings on identical facts as the first assessment proceedings had failed to result in a valid assessment due to lapse on the part of the IT authority.

19. In view of the settled proposition of law, the question of law raised by the

appellant is answered in the negative i.e. against the Revenue and in favour of the assessee.

20. Resultantly, the appeal is allowed and the order of the Tribunal is set aside.