
(2001) 03 MAD CK 0076
In the Madras High Court
Case No : Writ Petition No. 17340 of 2000

Sri Krishna Mahal

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-03-2001

Acts Referred:

Income Tax Act, 1961 — Section 139, 140, 140A, 142(1), 143

Citation : (2001) 169 CTR 228 : (2001) 250 ITR 333

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : N. Quadir Hoseyn, for the Appellant; Chitra Venkataraman, for the Respondent

Judgement

R. Jayasimha Babu, J.—The assessee is aggrieved by a notice dated September 8, 2000, issued u/s 148 of the Income Tax Act, 1961, intimating that a part of the income assessable for the year 1999-2000 had escaped assessment within the meaning of Section 147 of the Income Tax Act and calling upon the assessee to file a return in the prescribed form for that assessment year. The assessee had filed a return for that year on September 30, 1999, for which an intimation u/s 143(1)(a) of the Act had been sent to it on October 15, 1999. In the return it had shown the cost of the construction put up by it as Rs. 92.12 lakhs.

2. On the very day on which the intimation u/s 143(1)(a) of the Act was sent, namely, on October 15, 1999, the Assessing Officer had noticed the discrepancy in the cost of the construction as estimated by the valuer and as noted in the account books of the assessee and had sought a valuation report from the Departmental valuer.

3. The report which was received after a period of several months, indicated the cost of construction as Rs. 168 lakhs. After that report was received the impugned notice was sent.

4. Learned counsel for the assessee submitted that the notice so issued is

without jurisdiction and is illegal inasmuch as the assessee had disclosed all the materials along with the return and that the return had been accepted. It was submitted that as on the date when the valuer's report was called for there was no proceeding pending before the Assessing Officer and, therefore, the report that he subsequently obtained on his own, could not give him the jurisdiction to invoke Sections 148 and 147 of the Act and further that report could not constitute a reason for the Assessing Officer to believe that there had been any escapement of income chargeable to tax.

5. Learned counsel relied upon a decision of this court in *Fenner (India) Ltd. Vs. Deputy Commissioner of Income Tax*, to contend that in the absence of any suppression of material by the assessee, the officer could not assert jurisdiction to invoke Section 147 of the Act. That was a case where the notice u/s 148 of the Act had been issued after the expiry of a period of four years and the observations made in that judgment are in that context that the notice could be sustained only if it could have been shown that the assessee had failed to disclose fully and truly all the material facts that could be necessary for assessment. Here, there is no doubt about the fact that the notice u/s 148 has been issued within the period of limitation of four years.

6. Counsel submitted that the intimation acknowledging the return filed by the assessee which intimation was issued u/s 143(1)(a) of the Act is an assessment. Counsel in this context referred to Sections 140, 153, 199 and 219 as also to Section 143 itself and submitted that Section 143 is seen to be found in the Chapter dealing with the procedure for assessment and that Chapter itself is captioned as "assessment". While Section 153 refers to the orders of assessment made, inter alia, u/s 143, Section 199 refers to credit for tax for being deducted at source in the assessment made under this Act for the assessment year for which the income is assessable. Section 140A of the Act was referred to, to point out that self-assessment is accompanied by liability to pay the tax as so self-assessed and it is that tax paid on such self-assessment that is referred to in Section 143(1)(a). Counsel submits that this provision shows that the intimation which the Department is required to send u/s 143(1)(a) was in fact an intimation of an assessment. These submissions were made to lend support to the further submission that after the issue of intimation u/s 143(1)(a) no proceeding would survive before the officer and in the absence of any proceeding he would have no jurisdiction to call for a valuation report.

7. Counsel for the Revenue submitted that what is done u/s 143(1)(a) is not an assessment, but merely despatch of an intimation acknowledging the filing of the return, and in a case where that intimation indicates any amount as being due towards tax it is given the status of a demand u/s 156. The assessment proper, it was submitted, could only be made u/s 143(3) and until that is done, or an assessment made u/s 147, there is no assessment at all merely by reason of an intimation having been sent u/s 143(1)(a).

8. Reliance was placed by counsel on the case of *MTNL Vs. The Chairman*,

Central Board of Direct Taxes and Another, . In that case it was held that having regard to the changes brought about in Section 143(1)(a) by the Finance Act, 1997, the words "intimation" and "assessment" denote two different concepts. It was noticed that u/s 143(1)(a) no opportunity of being heard is given to the assessee. It was observed by the court that the acknowledgment u/s 143(1) is done mostly by the managerial staff who are not conferred with the power to make any assessment.

9. For the purpose of this case, it is not very material as to whether the intimation sent u/s 143(1)(a) is or is not an assessment. Having regard to the scope of Section 147, a notice u/s 148 can be issued, not only for the purposes of escaped income, but also for the purposes of reassessment of such income and even if an assessment as been made u/s 143(3) that would not have made a difference so far as the power given to the Revenue to assess escaped income is concerned. It may, however, be noticed here that Section 143(4) refers to regular assessment which would seem to indicate that a regular assessment is one which is made after giving opportunity to the assessee and after the records produced have been examined by the Assessing Officer. Such an order is required to be in writing and by implication also signed by the officer making the assessment.

10. Section 143(1)(a) deals with the return which has been filed by the assessee either u/s 159 or in response to a notice u/s 142(1). Section 143(1), Sub-clause (i), if after making an adjustment of the tax deducted at source, advance tax paid, and any taxes paid on self-assessment as also of any amount paid or otherwise by way of tax or interest, any amount in due then, an intimation is to be given to the assessee specifying the amount payable. The intimation so given is deemed to be a notice of demand for payment u/s 156. The issuance of such an intimation is however without prejudice to the power to make a regular assessment u/s 143(3). The second proviso in Section 143(1) stipulates a period of limitation of two years within which such an intimation can be sent. The power to make an assessment u/s 143(3) can be invoked, as provided in the proviso u/s 143(2) only by issuing a notice to be served on the assessee before the expiry of 12 months from the end of the month in which the return is furnished. The failure to invoke Section 143(2) within that period may give rise to an argument that an intimation u/s 143(1) is to be regarded as the assessment as the very purpose of giving notice u/s 143(2) is only to ensure that the assessee has not understated the income or has not computed excessive loss and has not underpaid the tax in any manner. The failure to issue a notice u/s 143(2) is, therefore, capable of being regarded as indicating the acceptance by the assessing authority of the correctness of what has been submitted by the assessee in his return for which the intimation had been given. The term "assessment" can, therefore, be regarded as capable of being applied to an intimation u/s 143(1), especially where the regular assessment had not been made u/s 143(3).

11. In this case the valuation report was called for by the Assessing Officer on the very day on which the intimation was sent. The officer could very well have called upon the assessee to submit further records by using his powers u/s 143(2). The fact that he has not done so, does not by itself disentitle him to resort to Section 148 after the receipt of the valuation report, which prima facie showed that the cost of construction had been understated by the assessee in that report.

12. Section 147 of the Act provides that if the Assessing Officer "has reason to believe" that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income as also other income chargeable to tax coming to his notice subsequently in the course of the proceedings u/s 147 of the Act, subject to the provisions of Sections 148 to 153. The power, therefore, is a wide power which includes the power to assess or reassess the income. The officer is not to act arbitrarily, but he must have some reason to believe that there has been escapement of income chargeable to tax. Reliance placed by the Assessing Officer on the report of an expert regarding the cost of construction of the building cannot be said to be improper, nor can it be said that the report would not provide sufficient justification for that belief that there had been escapement of income, as that report showed a substantial gap between what had been estimated by the valuer and what had been returned by the assessee as the cost of construction. The notice issued, therefore, was not in any way illegal. The writ petition is dismissed.