(2005) 02 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 1 of 2003

Subhash Chander APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:
Income Tax Act, 1961 — Section 124, 124(3), 142(1), 143(1), 143(3)

Citation : (2005) 196 CTR 75 : (2005) 275 ITR 40 : (2006) 153 TAXMAN 199

Hon'ble Judges : Viney Mittal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : P.C. Jain, for the Appellant; Rajesh Bindal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In this appeal filed u/s 260A of the Income Tax Act, 1961 (for short, "the Act"), the appellant has prayed for determination of the following question of law :

"Whether under the facts and circumstances of the case, the Tribunal is justified in setting aside the assessment order with a direction also to decide the issue of jurisdiction u/s 124 and to pass an order in accordance with law which question the said Assessing Officer has already decided in this order dated March 13, 1995, and thus the Tribunal should have decided the issue of jurisdiction itself ?"

2. The appellant is engaged in the trading of foodgrains. For the assessment year 1992-93, the appellant filed the return on March 1, 1993, declaring a loss of Rs. 15,700. The same was processed u/s 143(1)(a) of the Act. Later on, the case was selected for scrutiny. On September 22, 1994, the appellant applied for transfer of the case to the Assistant Commissioner of Income Tax, 4(3)-cum-New Assessees'' Circle, Drum-shape Building, New Delhi. By an order dated January 20, 1995, the Assessing Officer rejected the appellant''s plea by observing that he had the jurisdiction to decide the matter. He also called upon the appellant to furnish certain clarification, etc., in the context of notice issued u/s 143(3) of the

Act. By an order dated March 13, 1995, the Assessing Officer finalised the assessment at an income of Rs. 53,16,730. The appeal filed by the appellant was disposed of by the Commissioner of Income Tax (Appeals), Rohtak, vide his order dated October 10, 1995.

3. Dissatisfied with the orders of the Assessing Officer and the Commissioner of Income Tax (Appeals), the appellant filed further appeal before the Income Tax Appellate Tribunal, Chandigarh Bench "A" (for short, "the Tribunal"). By an order dated May 31, 2002, the Tribunal disposed of the appeal by remanding the case to the Assessing Officer to record a finding on the issue of jurisdiction. Paragraph 7 of that order, reads as under :

"The other question relating to territorial jurisdiction was important. If the Assessing Officer did not have territorial jurisdiction then his order is bad in law. So this question goes into the root of the matter. The learned Departmental Representative submitted that the above question was also not material as the Assessing Officer had the jurisdiction to make assessment. We are unable to agree. When a question of jurisdiction is raised, it has to be resolved in accordance with law and a proper finding has to be recorded. The Revenue authorities are to take into account the provisions of Section 124 of the Income Tax Act. The above question was also examined by the Income Tax Appellate Tribunal (C) Bench of Delhi in the case of Amulya General Trading and Agencies Ltd. v. Asst. [1995] 55 ITD 233. Accordingly, on this point, we set aside the assessment and ask the Assessing Officer to record a finding in accordance with law after hearing the assessee. Therefore, the assessment is set aside on this point."

4. We have heard learned counsel for the parties and perused the record. In our opinion, the Tribunal committed a serious error by remanding the case to the Assessing Officer for deciding the issue of jurisdiction afresh. A perusal of the order dated May 31, 2002, passed by the Tribunal shows that it had treated the issue of jurisdiction raised by the assessee as an important issue and set aside the order of assessment with a direction to the Assessing Officer to record a finding on the issue of jurisdiction. While doing so, the Tribunal overlooked the fact that the Assessing Officer had already decided the issue of jurisdiction vide his order dated January 20, 1995, and again vide order dated March 13, 1995. This is clearly borne out from paragraph 7 of the last mentioned order, which is reproduced below :

"Besides, it may not also be out of place to mention that proper jurisdiction in this case vests with the undersigned in this context, attention is also drawn to the provisions of Section 124(3)(b) of the Income Tax Act, 1961. According to this section, no person is entitled to call in question the jurisdiction of an Assessing Officer after the expiry of time allowed by the notice under Sub-section (1) of Section 142 of the Income Tax Act. As already stated supra, notice u/s 142(1) was issued in this case on February 25, 1993, requiring the assessee to file the return by March 15, 1993. However, the return was filed on March 1, 1993, in pursuance of the above notice and so at the most, the jurisdiction could have been called into question up to March 15, 1993. After March 15, 1993, absolutely, the assessee is not at all entitled to call into question the issue of jurisdiction. From the above, it is abundantly clear that the correct jurisdiction vests with the undersigned and as the main object of transfer was only to defeat enquiries, the assessee''s plea of transfer of pending assessment to Delhi is rejected for the time being."

5. Learned counsel for the respondent fairly states that in the face of the finding recorded by the Assessing Officer on the issue of jurisdiction, the Tribunal should have itself adjudicated on the issue and should not have remanded the case to the Assessing Officer for fresh decision on the same issue.

6. In view of the above, the appeal is allowed. Order dated May 31, 2002, passed by the Tribunal is set aside and the case is remanded to it for fresh adjudication of the appeal filed by the assessee.

7. The parties are directed to appear before the Tribunal on March 7, 2005.