
(1991) 12 AHC CK 0026

In the Allahabad High Court

Case No : Income-tax Reference No. 32 of 1979

Universal Book Stall

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-12-1991

Acts Referred:

Income Tax Act, 1961 — Section 143, 144, 147, 246, 246(1)

Citation : (1993) 199 ITR 687

Hon'ble Judges : M. Katju, J;A.N. Verma, J

Bench : Division Bench

Advocate : B. Agarwal, for the Appellant; B. Dayal, for the Respondent

Judgement

A.N. Verma, J.—At the instance of the assessee, the following questions have been referred by the Income Tax Appellate Tribunal, Kanpur, for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that, in the appeal against the reassessment order made u/s 147 read with Section 144 of the Income Tax Act, 1961, in the present case, the Appellate Assistant Commissioner had no jurisdiction to consider and decide the question that the relevant proceedings and reassessment were invalid and beyond the scope of Section 147(a) ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the scope of the relevant appeal before the Appellate Assistant Commissioner u/s 246(c) of the Income Tax Act, 1961, did not permit consideration and decision on the legality of reassessment proceedings taken u/s 147(a) ?"

2. The assessee is a registered firm. Its original assessment for the assessment year 1965-66 was completed on a total income of Rs. 67,200. The total income of the assessee was finally assessed at Rs. 51,127. Later on, the Income Tax Officer learnt that the Income Tax Officer, Delhi, had held the business of Messrs. U. B. S. Publishers and Distributors to be the branch business of the assessee-

firm. On receipt of this information, he initiated action u/s 147(a) against the assessee and served on it a notice u/s 148 of the Income Tax Act, 1961.

3. In response to that notice, the assessee filed a return declaring its income at Rs. 51,127. Simultaneously while fixing a date for the case, the Income Tax Officer also issued a notice under Sections 142(1) and 143(2) requiring the assessee to furnish certain details and copies of account, etc. The assessee submitted some of the details and the copies of account. The Income Tax Officer, however, discovered some discrepancies in the accounts. A notice u/s 142(1) was again issued calling upon the assessee to produce certain books of account. In response, the assessee wrote to the Income Tax Officer to furnish the reasons recorded by him for initiating the proceedings u/s 148. The Income Tax Officer, however, did not furnish the reasons to the assessee. Instead, he fixed a date for the hearing of the matter. On the date fixed, the assessee did not produce the books of account but filed a written reply. Thereupon, the Income Tax Officer completed the assessment u/s 144 on a total income of Rs. 7,52,206.

4. The assessee appealed to the Appellate Assistant Commissioner. Various submissions were made on behalf of the assessee before the Appellate Assistant Commissioner, one of which was as follows :

" That the Income Tax Officer erred in treating the Delhi branch of U. B. S. Publishers and Distributors, Delhi, as a branch of the appellant even though the Income Tax Appellate Tribunal, Allahabad, had accepted the Delhi firm to be a genuine firm and also granted registration to the Delhi firm."

5. The validity of the assessment was also challenged on the ground that the assumption of jurisdiction u/s 147 was unauthorised and illegal. The Appellate Assistant Commissioner accepted the submissions of the assessee and observed that the Income tax Appellate Tribunal, Delhi, vide its order dated September 17, 1974, in I. T. A. No. 4423/ Delhi of 1970-71, having held that the above-mentioned Delhi firm was a genuine concern and further that the Department, not having filed any reference application against that order of the Tribunal, the matter became final. That being so, the Appellate Assistant Commissioner observed that the very foundation on the basis of which the reassessment proceedings were initiated against the assessee had disappeared. He, accordingly, annulled the assessment.

6. Aggrieved by that order, the Department filed an appeal before the Income Tax Appellate Tribunal and contended that the scope of the appeal filed by the assessee before the Appellate Assistant Commissioner arising out of the order of the Income Tax Officer u/s 144 was restricted and, consequently, the assessee could not legally challenge the validity of the assessment, that is, the jurisdiction of the Income Tax Officer to initiate proceedings u/s 147. Reliance was placed by the Tribunal on the decision of this court in CST v. Agrimal Rajaram [1973] UPTC 415 ; [1974] 33 STC 416.

7. On behalf of the assessee-respondent, it was urged before the Tribunal that

the position of law had undergone substantial change under the Income Tax Act, 1961, from that obtaining under the old Act of 1922, inasmuch as, in the old Act of 1922, there was no provision corresponding to Section 246(1)(e) of the Income Tax Act, 1961. The Tribunal did not accept the assessee's contention and allowed the appeal of the Department holding that, in an appeal u/s 246(1)(e) against the order passed by the Income Tax Officer u/s 144 of the Act, it was not competent to the Appellate Assistant Commissioner to consider the validity of the assessment.

8. In order to appreciate the question, it would be necessary to have a look at the relevant statutory provisions. Section 246(1), in so far as is material for our purpose and as the same stood at the relevant time, states :

" Subject to the provisions of Sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer may appeal to the Deputy Commissioner (Appeals) against such order-- . . .

(b) an order imposing a fine under Sub-section (2) of Section 131 ;

(c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under Sub-section (3) of Section 143 or Section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed ;

(d) an order u/s 146 refusing to reopen an assessment made u/s 144 ;

(e) an order of assessment, reassessment or recomputation u/s 147 or Section 150. "

9. Section 139 requires the assessee to file a return of his income and authorises the Income Tax Officer to make an assessment u/s 143 in the regular course. When no return is filed or notices under sections 142 and 143 are not complied with, the Income Tax Officer is authorised to make a best judgment assessment u/s 144. Section 147 authorises the Income Tax Officer to make the assessment or reassessment if he has reason to believe that any income of the assessee chargeable to tax has escaped assessment in any assessment year. Before making an assessment or reassessment u/s 147, the Income Tax Officer has to serve a notice on the assessee u/s 148 containing all or any of the requirements which may be included in a notice u/s 139(2) and the provisions of the Act, so far as may be, shall apply as if the said notice were a notice u/s 139(2) of the Act. It will, thus, be seen that in an assessment or reassessment u/s 147, the same procedure or machinery for making an assessment u/s 143 or for making a best judgment assessment u/s 144 is to be followed.

10. Irrespective, however, of whether the provisions of Section 143 or Section 144 are followed, the assessment made in proceedings initiated u/s 147 would be a separate and distinct category at least so far as an appeal u/s 246(1)(e) is concerned. Such an order cannot obviously be equated for all purposes with an

assessment made in accordance with Section 143 or 144 simpliciter.

11. This will be apparent from a mere glance at Clause (e) of Section 246(1). Orders of assessment or reassessment u/s 147 have been, for the purpose of appeal u/s 246, placed in a separate category distinct and different from assessment made under the other provisions of the Act such as sections 143 and 144 simpliciter.

12. The mere fact, therefore, that, pursuant to proceedings initiated u/s 147, an assessment was made u/s 143 or 144 of the Act would not convert the appeal filed against an order of assessment or reassessment u/s 147 into an appeal falling under clause (c) of Section 246(1) of the Act. For the purposes of appeal, orders of assessment or reassessment u/s 147 constitute a distinct category. It must follow, therefore, as a necessary corollary that an appeal filed against an order of assessment or reassessment u/s 147 is not restricted to the grounds upon which an order of assessment made u/s 143 or Section 144 can be challenged under clause (c) of Section 246(1).

13. A grammatical construction of the statute also leads to the same conclusion. Clause (e) of Section 246(1) has been expressed in the widest possible terms. Its amplitude cannot, therefore, in our considered view, be read down or curtailed merely because the order of assessment ultimately made was passed u/s 144 pursuant to the proceedings for reassessment u/s 147. There is nothing either in the scheme of the statute or the language employed by the Legislature that may justify the conclusion that, where an appeal is filed against an order of assessment or reassessment initiated u/s 147 after following the procedure laid down under a provision like Section 144, it shall stand restricted and confined only to an objection as to the quantum of income assessed or tax determined or that the validity of the assessment cannot be challenged in such an appeal on the ground that Section 147 was illegally invoked or that the assessment was wrongly sought to be reopened u/s 147 of the Act. Upon the plain terms of Clause (e) of Section 246(1), all possible grounds can be urged in an appeal against an order of assessment u/s 147.

14. Further, in construing Section 246, it must be remembered that there has been a significant departure from the scheme of the 1922 Act. Under the 1922 Act, there was no provision corresponding to Clause (e) of Section 246(1) of the Act. The omission is, in our opinion, deliberate and cannot in any case be ignored in construing the statute.

15. The view that we are disposed to take is completely fortified by their Lordships of the Calcutta High Court in the case of Surajmal Ganeshram Vs. Commissioner of Income Tax, . The question raised in that case was identical with that involved in the present reference. Their Lordships, on a careful and exhaustive analysis of the relevant provisions of the 1961 Act, came to the conclusion that Section 246(1) of the Act cannot be read down so as to restrict or circumscribe the scope and ambit of the assessee's right to agitate all

questions including a challenge to the validity of the assessment or reassessment u/s 147 in an appeal falling under Clause (e) of Section 246(1), even if the procedure laid down u/s 144 was followed in making the assessment after initiating proceedings u/s 147 of the Income Tax Act, 1961.

16. In taking the contrary view, the Tribunal has placed reliance on a decision of this court in *CST v. Agrimal Rajaram* [1973] UPTC 415 ; [1974] 33 STC 416. We have carefully examined that decision but find that the same is of no assistance in construing the provisions of the Income Tax Act. In the first place, it is not always safe to adopt the ratio of a decision rendered in the context of another statute wholly different and distinct from the scheme of the enactment with which we are directly concerned ; secondly, the statutory provisions of the Income Tax Act stressed by us are vitally different from those of U. P. Sales Tax Act. This will be apparent from a simple comparison of Section 246 of the Income Tax Act with section 9 of the U. P. Sales Tax Act. Under the U. P. Act, all orders made by the assessing authority have been made appealable whereas, under the Income Tax Act, 1961, orders of assessment and reassessment passed u/s 147 have been put in a separate category, a feature completely absent in the U. P. Act.

17. The same conclusion flows from an examination of *Jute of Corporation of India Ltd. Vs. Commissioner of Income Tax* and another, . The case throws considerable light on the controversy. Their Lordships have ruled in the context of Section 251(l)(a) of the Income Tax Act that, while hearing an appeal under the provisions of the Act, the jurisdiction of the Appellate Assistant Commissioner is wide enough to allow the assessee to raise all possible grounds, including an additional ground, in assailing the order of assessment against which the appeal is filed. Their Lordships went on to hold that, in the absence of any statutory provision, the general principle relating to the amplitude of the appellate authority's power being coterminous with that of the initial authority should normally be applied.

18. Not being hedged in by any restrictive clause, Section 246(1) must, therefore, receive the widest possible interpretation. All grounds must be deemed to be available for challenging orders of assessment passed u/s 147. The dictum laid down by the Supreme Court squarely applies to the controversy on hand. The Tribunal was, therefore, clearly in error in thinking that it could not consider the challenge to the validity of the order of assessment in the appeal filed by the assessee against the order of assessment passed against him u/s 147 of the Income Tax Act.

19. In the premise, we answer both the questions referred for our opinion in the negative, in favour of the assessee and against the Revenue. The assessee shall be entitled to its costs which we assess at Rs. 250.