IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 117 of 1990
Date of decision 17 .1.2007

The Commissioner of Income Tax, Patiala .. Applicant

Versus

M/s Air Craft Radio Corporation , Patiala. ..Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Yogesh Putney, Advocate for the Revenue

M.M.Kumar, J.

The following substantive question of law for the opinion of this Court has been referred:

" Whether, on the facts and in the circumstances of the case, the learned Appellate Tribunal was right in law in annulling the order of the Income-tax Officer u/s 143(3) read with section 147(a) of the Income Tax Act, 1961 ?"

The facts may briefly be noticed.

The assessee is a registered firm. It carries the business of sale, purchase and repair of Radios. On 21.9.1970 original assessment was made at Rs. 8010/- by the Income Tax Officer under Section 143(1) of the Income Tax Act,1961 (for brevity 'the Act') on the basis of the return of income filed by the assessee on 23.8.1969 declaring its income to be Rs. 7959/-.The Assessing Officer contemplated the assessment by issuing notice under Section 148 of the Act to the assessee on 2.6.1973. The reasons recorded before issue of notice under Section 148 of the Act were :

" Issue notice under Section 148 of the Act for the assessment

year 1969-70 as I have reasons to believe that the income has been under assessed for this year.

Sd/- ITO"

The assessee replied to the notice by sticking to the income declared in the return filed by him at Rs. 7959/-. The Assessing Officer vide order dated 31.7.1976 re-assessed the income of the assessee at Rs. 73,530/-. The basis for re-opening the assessment appears to be that some complaints about tax evasion were filed against the assessee. However, notice under Section 148 of the Act forming the belief by the Assessing Officer, was issued without verification of the allegations levelled in the complaint. Infact on receipt of the complaint a survey under Section 133A of the Act was made by the Inspector of Income-tax on 2.6.1973 when the books of account of the assessee for the year 1973-74 were impounded. The books of account pertaining to the assessment year were not available at the shop of the assessee during the course of survey. However, he produced the account books pertaining to earlier years on 4.6.1973 including the books for the financial year 1969-70 under appeal before the Assessing Officer. The books were impounded and examined and thereafter re-assessment order was passed on 31.7.1976 by computing the income at Rs. 73,530/-.

The Assessee challenged the order passed by the assessing officer under Sections 143(3)/148 of the Act by filing an appeal before the Commissioner of Income Tax. On 20.2.1978 the Commissioner accepted the appeal of the assessee on the ground that no reasons were recorded for issuance of notice under Section 148 of the Act. The order of the Appellate Commissioner as reproduced by the Tribunal reads as under:

" I have gone through the assessment records. The reasons recorded before issue of notice under Section 148 are as under:

2.6.1973

" Issue notice under Section 148 for the assessment year 1969-70 as I have reasons to believe that the income has been under assessed for this year.

Sd/- ITO"

It appears that there were some certain complaints against the assessee about tax evasion and the Income tax Officer issued notice under Section 148 of the Act resting his belief on the complaints. No verification of the facts in the complaints was however, made. The Appellate Assistant Commissioner in his order dated 20..2.1978 observed as under:

"On receipt of the complaint a survey under Section 133A was made by the Inspector of Income tax on 2.6.1973, books of accounts for 1973-74 were impounded. Books of accounts for earlier years were not available at the shop during the course of survey under Section 138A made on 2.6.1973. The assessee was, therefore, asked to produce the account books for earlier years on 4.6.1973. Books of accounts for earlier years including the books for the financial year 1968-69 relevant to the assessment year 1969-70 under appeal were produced before the Income tax Officer on 4.6.1973, which were then impounded and examined. It has, therefore, been urged that the reasonable belief, if any, that could be formed by

the Income tax Officer could be after 4.6.1973, after verifying the position from the account books issued. It has, therefore, been urged that the notice issued was based merely on suspection. From the reasons recorded by the Income tax Officer as reproduced above it is also clear that he has not discussed the material on the basis of which he formed belief that the income had escaped assessment. "In this view of the matter, I am of the opinion that the Income tax Officer had no jurisdiction to issue notice under Section 148 unless he had bonafide belief on the basis of definite information that income had escaped assessment. In the circumstances, the entire proceedings are vitiated. I am, therefore, unable to sustain the order passed by the Income tax Officer. The issue of notice under Section 148 and subsequent passing of the order under Section 143(3)/147 are therefore annulled."

After serving notice and filing of reply it was submitted on behalf of the Assessee that notice under Section 148 of the Act could not be issued as it had already been annulled by the Appellate Assistant Commissioner, Patiala Range, Patiala. In support of his submission, reliance was placed on a Division Bench judgement of the Allahabad High Court in the case of Manoo Lal Kedarnath v. UOI and others (1978) 114 ITR 884. However, the Assessing Officer rejected the submission made by the Assessee by observing that when the earlier notice under Section 148 of the Act was issued and the Income-tax Officer has sufficient material on record to be satisfied that income had escaped assessment because earlier it could not be recorded properly on the order sheet. He again computed the income

of the assessee at Rs. 73,530/- as was done vide order dated 31.7.1976 which was annulled on 20.2.1978 by the Appellate Assistant Commissioner. It has been recorded as a finding of fact that item of income and deduction for the two years dated 31.7.1976 and 26.12.1978 were exactly the same. Again the assessee challenged the order of re-assessment framed by the Assessing Officer before the Appellate Assistant Commissioner. By her order dated 31.3.1979 she has cancelled the assessement by following the judgement in the case of Manoo Lal Kedar Nath's case (supra).Feeling aggrieved, the revenue preferred an appeal before the Tribunal. The Tribunal held that the Appellate Assistant Commissioner while cancelling the reassessment order dated 31.7.1976 framed by the Assessing Authority had emphasised that there was no bona-fide belief on the basis of definite information which could constitute a basis for the Assessing Officer to say that income had escaped assessment and that while passing the re-assessment order dated 26.12.1978 he did not do anything new because items of income and deduction for computation of income have been found to be identical as those taken into consideration in the first re-assessment proceedings. Secondly, the assessment order by the Assessing Officer was sought to be justified on the ground that he had asked for, and had obtained the sanction of the Commissioner for re-assessment of the proceedings. The Tribunal has concluded in para 10 as under:

> " From the facts stated above, it is clear that even the Commissioner did not apply his mind properly to come to a conclusion whether there was escapement of income because the very reasons on the basis of which reassessment earlier had been struck down by the Appellate Assistant commissioner

were taken again to initiate second reassessment proceedings. In our opinion, the case is, therefore, directly covered by the judgement of the Allahabad High Court in which the Hon'ble Court has relied upon the judgement of the Supreme Court in the case of Rao Thakur Narayanan Singh (supra). The re-assessment proceedings are bad and as such were rightly annulled by the Appellate Assistant Commissioner. Her order is upheld."

Feeling Aggrieved, the Tribunal approached this Court and this Court issued directions under Section 256(2) of the Act in ITC No.46 of 1982 on 24.8.1988 directing the Tribunal to refer to this Court the substantive question of law noticed in the opening para of this judgement.

After hearing learned counsel for the revenue, we are of the considered view that the question raised has to be answered against the revenue because after the re-assessment order dated 31.7.1976 was set aside by the Appellate Assistant Commissioner vide its order dated 20.2.1978 the Assessing Officer had no jurisdiction to once again embark upon the same proceedings. The afore-mentioned proposition of law is answered against the revenue by Hon'ble the Supreme Court in the case of CIT v. Rao Thakur Narayanan Singh (1965) 56 ITR 234. The observations of Hon'ble the Supreme Court in that regard reads as under:

"..... The Tribunal held in the earlier proceedings that the Income-tax Officer 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 Income Tax Officer 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 Income-tax Officer. 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....."

The ratio of the judgement of Hon'ble Supreme Court has been followed by the Division Bench of the Allahabad High Court in the case of Manoo Lal Kedar Nath (supra).

In view of the above enunciation of law, we are of the view that the question posed at the outset has to be answered against the Revenue and in favour of the Assesseee. Accordingly the reference is disposed of.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

17.1.2007
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