

Deepak Kumar Poddar, Vs. Union of India (Uoi) and ors.

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Court : Patna

Decided On : Aug-16-1996

Judge : Aftab Alam and P.K. Sarkar, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 143(2), 143(3), 147 and 148

Appeal No. : C.W.J.C. Nos. 1491, 1492, 1493 and 1494 of 1996(R)

Appellant : Deepak Kumar Poddar, Rajendra Kumar Poddar, Basudha Udyog and Smt. Prabhawati Devi Poddar

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Debi Prasad, Adv.

Advocate for Pet/Ap. : L.K. Bajla, Adv.

Prior history : 1. The assessees have filed these petitions under articles 226 and 227 of the Constitution directly in this court challenging notices issued under Section 148 of the Income-tax Act, 1961. 2. Following the filing of the returns by the assessees for the assessment year 1992-93, notices were issued to them under Section 143(2) of the Act. While the proceedings in terms of Section 143(3) of the Act were pending pursuant to the notice, it appears that on the basis of the materials seized i

Judgement :

1. The assessees have filed these petitions under articles 226 and 227 of the Constitution directly in this court challenging notices issued under Section 148 of the Income-tax Act, 1961.

2. Following the filing of the returns by the assessees for the assessment year 1992-93, notices were issued to them under Section 143(2) of the Act. While the proceedings in terms of Section 143(3) of the Act were pending pursuant to the notice, it appears that on the basis of the materials seized in the course of a search at the petitioners' premises, the Assessing Officer found that there were sufficient grounds for initiating a proceeding under Section 147 and hence notices under Section 148 of the Act were issued to the petitioners. These notices are sought to be challenged in these writ petitions.

3. Mr. L. K. Bajla, learned counsel appearing for the assessees-petitioners, submitted that it was not open to the Assessing Officer to initiate a proceeding under Section 147 and issue notices under Section 148 of the Act before concluding the proceedings under Section 143(3) and without passing a final order in those proceedings. In support of his submission, he relied upon a decision of this court in CIT v. Sayed Rafiqur Rahman : [1991]189ITR476(Patna) and the decisions of the Supreme Court in Ellerman Lines Ltd. v. CIT : [1971]82ITR913(SC) , 920, in Navnit Lal C. Javeri v. K. K. Sen, AAC of L T. : [1965]56ITR198(SC) and in Jaikishan Gopikishan and Sans v. CIT : [1989]178ITR481(MP) .

4. In our opinion, those decisions relied upon by Mr. Bajla are of no avail to the petitioners in these cases because those decisions are in cases

relating to the period prior to April 1, 1989, when Explanation 2(b) was added to section 147, which is as under :

Explanation 2. -- For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely ;--....

(b) Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;'

5. Mr. Bajla, however, strenuously argued that the provisions contained in Explanation 2(b) to section 147 of the Act would apply only to cases where the returns filed by an assessee were processed and accepted in terms of section 143(1)(a) of the Act and those provisions would have no application in cases where a return was picked up for scrutiny and a proceeding under Section 143(3) of the Act was initiated. He tried to support his submission with the help of the explanatory note which was placed before Parliament at the time of the introduction of the amendment in section 147 and contended that the provision contained in Explanation 2(b) must be given a restricted and limited meaning in the light of the explanatory note. In support of his submission that circulars issued by the Central Board of Direct Taxes were binding upon the Revenue authorities and also constituted a tool for the interpretation of the provisions contained in the Act and the Rules, Mr. Bajla relied upon a large number of Supreme Court decisions including decisions in *Ellerman Lines Ltd. v. CIT* : [1971]82ITR913(SC) , 920, in *Navnit Lal C. Javeri v. K. K. Sen, AAC of I. T.* : [1965]56ITR198(SC) and in *Jaikishan Gopikishan and Sons' v. CIT* : [1989]178ITR481(MP) .

6. Mr. Debi Prasad, learned counsel appearing for the Revenue, relied upon a Supreme Court decision in *Kerala Financial Corporation v. CIT* : [1994]210ITR129(SC) , wherein it was observed as follows (headnote) :

' A circular of the Central Board of Direct Taxes under Section 119 of the Income-tax Act, 1961, cannot override or detract from the Act, inasmuch as what section 119 has empowered is to issue orders, instructions or directions for the 'proper administration' of the Act or for such other purposes specified in Sub-section (2) of the section. Such an order, instruction or direction cannot override the provisions of the Act ; that would be destructive of all the known principles of law as that would really amount to giving power to a delegated authority to even amend the provision of law enacted by Parliament.'

7. Having heard at length Mr. Bajla for the petitioners and Mr. Debi Prasad appearing on behalf, of the Revenue and having gone through the writ petitions and the counter-affidavit filed in these cases, we are not inclined to accept the submissions made on behalf of the petitioners. We are not aware of any principle of interpretation of statutes which would justify that contrary to its plain meaning a provision in that Act should be given a limited meaning on the basis of the explanatory note submitted before Parliament at the time of the presentation of the Bill.

8. Moreover, we find that the explanatory note hardly supports the submissions made on behalf of the petitioners. The explanatory note uses the expression 'specially' and it is in the following terms :

' The Amending Act, 1987, has, therefore, made amendment in the provisions of section 147 and other connected sections to simplify the procedure which is kept for assessment specially in non-scrutiny cases.' (emphasis* added).

9. Thus, even the explanatory note did not say that Explanation 2(h), to Section 147 of the Act would apply only to the 'non-scrutiny cases' or that cases picked up for scrutiny would not be covered by it.

10. For the reasons stated above, we see no merit in these applications and they are, accordingly, dismissed.

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