Commissioner of Income-tax, Karnataka Vs. R. Giridhar

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Court : Karnataka

Decided On : Oct-20-1983

Reported in : (1984)43CTR(Kar)253; [1984]145ITR246(KAR); [1984]145ITR246(Karn); [1984]17TAXMAN20(Kar)

Judge : Mohammad Sharif, ;S.R. Rajashekhara Murthy and ;Jagannatha Shetty, JJ.

Acts : Income Tax Act, 1961 - Sections 143, 143(3) and 292B

Appeal No. : Income-tax Reference Case No. 332 of 1979

Appellant : Commissioner of Income-tax, Karnataka

Respondent : R. Giridhar

Advocate for Def. : K.R. Prasad, Adv.

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Judgement :

Jagannatha Shetty, J.

1. The following question has been referred by the Income-tax Appellate Tribunal, Bangalore Bench, Bangalore, under s. 256(1) of the I.T. Act, 1961, for the opinion of this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment order which does not contain computation of tax, as in this case, is invalid under section 143(3) and has to be annulled ?'

2. The facts, briefly stated, are these :

R. Giridhar, the assessee, was a partner in several firms. For the year 1974-75, the ITO while making the assessment, computed the income and indicated the advance tax paid and also the T.D.S. He did not determine the sum payable, but such computation was made on a separate sheet of paper accompanying the assessment of the total income.

3. The assessment order was undisputedly signed by the ITO, but the said separate sheets for paper did not contain his signature.

4. The assessment order was made on March 30, 1976.

Challenging the validity of the assessment order, the assessee appealed to the AAC. One of the grounds of attack in the appeal was that the assessment order was invalid since to tax payable for the year had not been computed and quantified therein. The AAC, while rejecting this contention, has observed thus :

'It is to be pointed out especially that the Income-tax Officer had in fact quantified the tax as should be seen

from the assessment order and that the same was also communicated to the appellant. The fact that the signature of the Income-tax Officer is not appearing below the tax computation would not make the whole assessment invalid.'

5. The assessee thereupon appealed to the Income-tax Appellate Tribunal. The Tribunal by following its earlier judgment in I.T.A. Nos. 590 & 591 (Bang)/77-78 and I.T.A Nos. 596 (Bang)/77-78, dated January 31, January 31, 1979, allowed the appeal by observing thus :

'So far as the question regarding validity of the assessment under section 143(3) is concerned the position here is that the assessment order contains only the competition of the income which is signed by the Income-tax Officer. The computation of tax is on a separate sheet which is not signed by the Income-tax Officer. The law on the point has been fully discussed in our order in the case of the assesses HUF in I.T.A. Nos. 590 & 591 (Bang)/77-78 and I.T.A. Nos. (Bang)/77-78, dated January 31, 1979, in which, following the J & K. High Court ruling in S. Mubarik Shah Naqshbandi v. CIT and an order of the Delhi Bench 'D' of the Tribunal, it was held that the assessment order in this case does not contain the computation of tax and, therefore, the assessment is invalid and has to be annulled.'

6. From the narration of the facts, what cannot be disputed is that the ITO made and assessment of the total income of the assessed He had also indicated in the order the tax deducted at source and the advance tax paid. He, however, did not determine the sum payable on the basis of the said computation immediately above his signature; but that has been determined in a separate sheet which does not contain his signature. The question is whether the assessment order could be said to have been made in accordance with the provisions of s. 143. of the I.T. Act. The relevant portion of s. 143 reads :

'...the Income-tax Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine that sum payable by him or refundable to him on the bases of such assessment.'

7. In CIT v. Khemchand Ramdas [1938] 6 ITR 414, the Privy council, while dealing with the scope of the word 'assessment', observed :

'... the word assessment in its comprehensive sense as including the whole procedure for imposing liability upon the taxpayer. The method consist of the following steps. In the first place the taxable income of the taxpayer has to be computed. In the next place the sum payable by him on the basis of such computation has to be determined. Finally a notice of demand in the prescribed form specifying the sum so payable has to be served upon the taxpayer. The second of those Steps involves the determination of two sums, namely, the sum payable for income-tax and the sum payable for super-tax.'

8. In S. Mubarik Shah Naqshbandi v. CIT , the Jammu & Kashmir High Court has observed that the determination of the tax payable by the assessee is as much mandatory as to determination of his income and that it is not sufficient if such determination is only shown in the notice of demand and failure to determine the tax payable in the assessment order would invalidate the order of assessment.

9. Similar observation is found in the decision by the Calcutta High Court in Mohendra J. Thacker & Co. v. CIT : [1983]139ITR793(Cal) .

10. There can, therefore, be no doubt that the determination of the sum payable by the assessee in that assessment order is mandatory and it is also a well-accepted principle that non-compliance with the mandatory provisions would vitiate the assessment order In the instant case, however, there is not such non-observance of the mandatory provision.

11. The Tribunal has invalidated the assessment order solely on the ground that the computation of the sum payable by the assessee is found in a separate sheet of paper which has not been signed by the ITO. It is not the case of the parties that the sum payable was worked out in a separate sheets of paper by a person other than the ITO. That separate sheet, although does not bear the signature of the ITO, none the less forms part

of the assessment order. It was on the basis for that order, the demand notice was issued indicating the sum payable by the assessee.

12. Regard being had to these facts, it seems to us that the defect or omission points doubt by the Tribunal cannot invalidate the assessment order in view of the provisions of s. 292B of the I.T. Act. The said section, which has been introduced by the T.L. (Ahmend.) Act, 1975 with effect from October 1, 1975, reads :

'No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.'

13. The assessment order in questioned was made on March 30, 1976, i.e., subsequent to the above section was brought into force. The impugned assessment order, in our opinion, in substance and effect, is in conformity with and according to the intent and purpose of the I.T. Act.

14. Having regard to the facts found, the question referred needs to be reforms as follows :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment order is invalid under section 143(3) and has to be annulled ?'

15. We answer the question in the negative and in favour of the Revenue. In the circumstances, we make no order as to costs.