

G.R. Steel and Alloys Pvt. Ltd. Vs. Commissioner of Income-tax

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Court : Karnataka

Decided On : Nov-14-1983

Reported in : (1984)42CTR(Kar)107; [1985]152ITR220(KAR); [1985]152ITR220(Karn); [1984]17TAXMAN29(Kar)

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

Acts : [Income Tax Act, 1961](#) - Sections 144B and 144B(4)

Appeal No. : I.T.R.C. No. 5 of 1981

Appellant : G.R. Steel and Alloys Pvt. Ltd.

Respondent : Commissioner of Income-tax

Advocate for Def. : K. Srinivasan and ;H. Raghavendra Rao, Advs.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Jagannatha Shetty, J.

1. The Income-tax Appellate Tribunal, Bangalore Bench, has referred the following question for the opinion of this court

'Whether, on the facts, the learned Income-tax Appellate Tribunal was right in holding that the provisions of section 144B of the Act were only procedural and non-compliance with the provisions would not make the assessment ab initio void ?'

2. The reference arises out of the order of assessment made on the assessee company for the assessment year 1977-78. The assessee filed a return declaring a loss of Rs. 16,866. The final result of the order of the ITO was that a sum of Rs. 75,315 was the depreciation to be carried forward. So, the ITO varied the return by more than Rs. 1,00,000. The assessee appealed to the AAC who found that the ITO did not follow the procedure prescribed under s. 144B of the Act and, therefore, he cancelled the assessment.

3. The Revenue appealed to the Tribunal. The Tribunal found that non-compliance with the procedure prescribed under s. 144B will not render the assessment ab initio void and at best it may be a procedural infirmity and the AAC ought to have directed the ITO to redo the assessment by following the said procedure. Accordingly, the Tribunal reversed the order of the AAC and directed the ITO to make a fresh assessment after following the procedure prescribed under s. 144B of the Act.

4. The Tribunal has referred the above question for the opinion of this court.

5. The short question for consideration is whether non-compliance with the procedure prescribed under s. 144B would render the assessment ab initio void and the ITO cannot be permitted to redo the assessment by

following the said procedure. Section 144B is applicable where the ITO proposes to make a variation, adverse to the assessee, in the income or loss returned and the amount of such variation exceeds the amount of rupees one lakh as fixed by the Board. In that event, the ITO is bound to issue notice to the assessee with a draft of the proposed order of assessment calling upon the assessee to forward his objections, if any. If no objections are received within the time allowed, the ITO may complete the assessment on the basis of the draft order. Section 144B(4) provides further procedure regulating the assessment. It reads :

'If any objections are received, the Income-tax Officer shall forward the draft order together with the objections to the Inspecting Assistant Commissioner and the Inspecting Assistant Commissioner shall, after considering the draft order and the objections and after going through (wherever necessary) the records relating to the draft order, issue, in respect of the matters covered by the objections, such directions as he thinks fit for the guidance for the Income-tax Officer to enable him to complete the assessment :

Provided that no directions which are prejudicial to the assessee shall be issued under this sub-section before an opportunity is given to the assessee to be heard.'

6. The above provisions, as we understand, are meant to be a safeguard for the assessee when he objects to the proposed assessment. When the objection is filed, the ITO is required to take the assistance of the IAC and he should be guided also by his directions while completing the assessment. The IAC is required to peruse the entire record and he should issue such direction as would enable the ITO to complete the assessment. Such directions may be either beneficial to the assessee or prejudicial and in the latter event further opportunity of being heard shall be afforded to the assessee.

7. It seems to us, therefore, that s. 144B(4) contains the procedure for completing an assessment and it cannot have the effect of invalidating the assessment when not complied with. The Tribunal, therefore, was justified in directing the ITO to redo the assessment after following the procedure prescribed under s. 144B(4) of the Act.

8. In the result, we answer the question in the affirmative and against the assessee. There will be no order as to costs.

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