Cit Vs. Pushpak Enterprises

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Court : Delhi

Decided On : Dec-13-2001

Reported in : (2001)172CTR(Del)172

Appeal No. : IT Appeal Nos. 93, 123, 127 & 129 of 2001 13 December 2001

Appellant : Cit

Respondent : Pushpak Enterprises

Advocate for Pet/Ap. : J.R. Goel and; Ms. Premlata Bansal, for the Revenue; B. Gup

Judgement :

S.B. Sinha, C.J.

The appellant herein has filed appeals under section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') against the order dated 19-12-2000 passed by the Income Tax Appellate Tribunal, Delhi Bench 'E', New Delhi (hereinafter referred to as the 'Tribunal') in ITA Nos. 231 & 232/Del/1994 and ITA Nos. 141 & 142/Del/1994 for the assessment year 1981-82 and 1982-83.

The appellant has sought to raise the following substantial questions of law for consideration of this court.

'(a) Whether the Tribunal exceeded, its jurisdiction in deciding issue of limitation not raised by the assessed-firm in appeal ?

(b) Whether the Tribunal was right in law in annulling the reassessment orders framed by the assessing officer for the assessment years 1981-82 and 1982-83 ?

(c) Whether the Tribunal was correct in law in holding that on the facts of the case of the present assessed, the case will be falling under section 147(b) and not under section 147(a) ?

(d) Whether the Tribunal was right in holding that the conditions precedent for invoking section 147(b) of the Act are not satisfied ?

(e) Whether order of the Tribunal is perverse as it has failed to consider material and relevant facts ?'

2. The factual position, in a nutshell, is as follows :

The assessed filed original return of income for the assessment year 1981-82 on 31-8-2001, (sic1982) declaring an income of Rs. 62,768 and for the assessment year 1982-83 on 1-9-1982, declaring an income of Rs. 60,542. The assessment for the assessment year 1981-82 was completed under section 143(1) and the income declared in the return was accepted. Similarly, the assessment for the assessment year 1982-83 was completed under section 143(3) and the income of Rs. 60,790 was accepted vide order dated 6-3-1985.

3. The assessing officer subsequently received a complaint along with documentary evidences in respect of assessment years 1980-81 to 1982-83. On the basis of aforesaid complaint and the documentary evidence received by the assessing officer, necessary sanction from the Commissioner of Income Tax was sought for and upon receipt thereof the proceedings under section 147(a) read with section 148 of the Act were initiated. Pursuant thereto notice dated 26-3-1991 was issued. In response to the aforesaid notice, the assessed filed returns declaring an income of Rs. 62,768 and Rs. 60,542 respectively for both the assessment years. Thereafter upon making detailed enquiries, the assessing officer made reassessment of the assessed-firm vide orders dated 29-3-1993,

assessing the income at Rs. 45,85,835 and Rs. 46,80,690 for the assessment years 1981-82 and 1982-83, respectively.

4. Aggrieved by the said assessment, the assessed preferred appeals before the Commissioner (Appeals), which were registered as Appeal Nos. 191 & 192 of 1993-94. The assessed challenged the aforesaid order of the assessing officer inter alia, on the ground that reopening of the assessment under section 148 of the Act was barred by limitation and the provisions of sections 147(b) of the Act would be applicable to the case of the assessed and not the provisions of section 147(a) thereof. The said orders of assessment were also challenged on merits. The Commissioner (Appeals) as regards the question of limitation, rejected the contentious of the assessed vide dated 18-10-1993. On merit, however, the assessing officer granted a relief of Rs. 44,68,957 for the year 1981-82 and the interest charged under section 215/217 of the Act was deleted. So far as assessment year 1982-83 is concerned, a relief of Rs. 43,43,126 was allowed along with directions regarding charging of interest under sections 139(8) and 215/1217 of the Act.

5. The said orders were assailed by the assessed as well as the Commissioner before the Tribunal. The appeals filed by the Commissioner were registered as ITA Nos. 141 & 142/Del/94 and the appeals filed by the assessed-firm were registered as Appeal Nos. 231 and 232/Del/94.

All the four appeals were heard together by the Tribunal and were disposed of by a common order dated 19-12-2000.

The Tribunal in the impugned order inter alia held as under :

'The notice being invalid the reopening is not according to law and reassessments so framed are liable to be quashed.'

Aggrieved by the said order passed by the Tribunal dated 19-12-2000, the revenue preferred appeals before this court wherein substantial questions of law, as set out above, have been formulated.

6. Mr. J.R. Goel, the learned counsel appearing on behalf of the appellant, submitted that the learned Tribunal ought not to have allowed the question of limitation to be raised inasmuch as the only question, which was raised before the learned Tribunal by the assessed, was as under :

'That the Income Tax Officer erred in assuming the jurisdiction under section 147 because of the absence of reasons for reopening and violation of doctrine of natural justice and the Commissioner (Appeals) was wrong in confirming the same.'

The learned -counsel further contended that in any event having regard to the fact that section 147(a) of the Act would be attracted in the instant case, the question of the proceedings being barred by limitation did not arise. The learned counsel sought to raise another question to the effect that section 149 of the Act as amended from l-4-1989, shall have retrospective operation.

7. In the instant case, it is not in dispute that the assessment for the assessment year 1981-82 was completed on 21-1-1984 under section 143(1) of the Act. It is further not in dispute that the proceedings under section 147 was sought to be initiated on the basis of a complaint received together with the documentary evidence enclosed therewith. The learned Tribunal has arrived at the conclusion that section 147(b) of the Act would be applicable and not section 147(a) thereto. The submission of the learned counsel to the effect that as the assessed had failed to disclose the material facts, section 147(a) of the Act would be attracted cannot be accepted.

8. Section 147 of the Act reads as under :

Section 147. Income escaping assessmentIf the assessing officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the 'assessment year

concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) '

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessed to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year.

Explanation 1. : Production before the assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the assessing officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

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

(a) where no return of income has been furnished by the assessed, although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessed but no assessment has been made and it is notice by the assessing officer that the assessed has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.

Sections 148 and 149 of the Act read as under.

Section 148. Issue of notice where income has escaped assessment.(1) Before making the assessment, reassessment or recomputation under section 147, the assessing officer shall serve on the assessed a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the

income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.

(2) The assessing officer shall, before issuing any notice under this section, record his reasons for doing so.

Section 149 Time limit for notice.(1) No notice under section 148 shall be issued for the relevant assessment year :

(a) in a case where an assessment under sub-section (3) of section 143 or section 147 has been made for such assessment year :

(i) If four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) If four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year;

(iii) If seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year.,

(b) in any other case,

(i) If four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) If four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees twenty-five

thousand or more for that year;

(iii) If seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to rupees fifty thousand or more for that year.

Explanation : In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanationn 2 of section 147 shall apply as they apply for the purposes of that section.

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if four years, but nor more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

Time limit for issue of notice under section 148 :

Up to four years from the end of the relevant assessment year

Beyond four years, but up to seven years from the end of the relevant assessment year

Beyond seven years but up to ten years from the end of the relevant assessment year

In cases subjected to scrutiny by way of assessment under section 143(3) or 147

If the escaped income is less than Rs. 50,000

If the escaped income is Rs. 50,000 or more, but less than Rs. 1 lakh

If the escaped income is Rs. 1,00,000 or more

In other cases

If the escaped income is less than Rs. 25,000

If the escaped income is Rs. 25,000 or more but less than Rs. 50,000

If the escaped income is Rs. 50,000 or more

9. If the submission of the learned counsel for the appellant is accepted, the same, in our opinion, would make clause (b) of section 147 of the Act otiose. Section 147(a) of the Act would be attracted when the conditions precedent thereforee, can be found out from the records of the proceedings itself. Section 147(b) of the Act, on the other hand, would be attracted, if proceeding for reassessment is initiated on the basis of the complaint together with the documents accompanying thereof from an outsider, which would be considered to be 'information'. There is nothing on record to show that the assessing officer applied his mind for initiation of such proceedings on the ground that the assessed is guilty of suppression of any material.

10. In Kalyanji Mavji & Co. v. CIT (1975) 102 ITR 287 , it has been held that complaint and evidence on the basis of which the reopening was proposed by the assessing officer after recording reasons will tantamount to 'information'. The Tribunal held as under :

'The word 'information' had been subject-matter of discussion before the Apex Court in the case of Kalyanji Mavji & Co. v. CIT (supra) and after discussing the case law on the point from the case of Kamal Singh (Maharaj Singh) v. CIT : [1959]35ITR1(SC) , CWT v. Imperial Tobacco Co. of India Ltd. :

[1966]61ITR461(SC) , Jagmohan Rao v. ITO : [1970]75ITR373(SC) and other cases, the Apex Court had laid down that information as contained in section 34(1)(b) of the Income Tax Act, 1922, which is identical to the provisions of section 147(b) of the Act, will be the information which may be derived from an external source concerned facts or particulars as to law relating to a matter bearing on the assessment. The information may be obtained even on the basis of record of previous assessment year from an investigation and if information is derived from an external source of any kind then such external source would include discovery of new and important matters or knowledge of fresh facts, which were not presented at the time of original assessment. Admittedly, here word 'information' as used in section 147(b) will be falling in the last category as admittedly the assessing officer received a complaint with document and it was not from the earlier records. If these are the facts, then naturally the case of the present assessed will be falling under section 147(b) and certainly not under section 147(a) and we conclude accordingly from external source, which included discovery of new and important matters relating to fresh facts which were not presented at the time of original assessment.'

We agree with the said conclusion.

11. In view of the aforementioned pronouncement of the Apex Court, there cannot be any doubt whatsoever that section 147(b) of the Act would be attracted.

12. The learned counsel for the appellant is not correct in contending that only ground No. 1 was urged before the Tribunal.

The learned Tribunal in para No. 2 of the impugned order has merely mentioned that ground No. 1 is identical in both the assessment years.

The very fact that the parties addressed the Tribunal at great length on other question clearly goes to show that the question of limitation was also raised.

In fact, the learned Tribunal in its order noticed a decision of the Apex Court in S. S. Gadgil v. Lal & Co. : [1964]53ITR231(SC) and held that the facts obtaining therein are identical with the fact involved in the present case. It was observed that

the provisions of sections 147 and 149 of the Act stand amended from I-4-1989, but the cause for reopening came to an end after the period as given in section 149 prior to 1-4-1989. Accordingly we are of the opinion that old provisions which were on statute book prior to I-4-1989, shall be applicable to be case of the assessed involving assessment years 1981-82 and 1982-83 and not the amended provisions, as laid down in the case referred to above.

13. The Tribunal also analysed the provisions of section 149 of the Act as was existing during the assessment years 1981-82 and 1982-83 and held that having regard to the admitted fact that notice of the reopening was issued for both the assessment years on 26-3-1991, while the assessment under section 143(1) of the Act for the assessment year 1981-82 was completed on 21-1-1994, and that for the assessment year 1982-83 was completed on 6-3-1985, the same was barred by limitation.

14. The submission of the learned counsel for the appellant to the effect that another question of law as regards to the retrospectivity of the section 149 of the Act be taken into consideration cannot be accepted for more than one reason. Firstly, no such question was raised before the Tribunal. Even no question of law was formulated in the grounds of appeal. Secondly, although the matter appeared before the court on 17-9-2001, 10-10-2001, 17-10-2001 and 29-10-2001, at no point of time such a question had been raised. The submission of learned counsel is an afterthought.

15. For the reasons aforementioned, we are of the opinion that no substantial question of law arises for consideration of this court, they are accordingly dismissed.

All the reference applications are accordingly disposed of.