

ito Vs. Mahesh Kumar Pandya

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Court : Rajasthan

Decided On : Aug-31-2000

Reported in : (2001)73TTJ(NULL)194

Appeal No. : ITA Nos. 1022 to 1026/Jp/of 1993 31 August 2000 A.Y. 1983-84 to 1986-87 & 1988-89

Appellant : ito

Respondent : Mahesh Kumar Pandya

Advocate for Pet/Ap. : R.N. Jangid, *for the Revenue* R.P. Jain, *for the Assessee*

Judgement :

ORDER

S.R. Chauhan, J.M.

As the above appeals involve common points, so we are disposing them of by this common order for the sake of convenience.

2. ITA Nos. 1022 to 1026(Jp)/of 1993 are appeals by revenue for assessment years 1983-84 to 1986-87 and 1988-89 respectively and are directed against the common order of Deputy Commissioner (Appeals), Jodhpur, dated 10-2-1993, whereby he cancelled the assessment orders passed by assessing officer by involving the provisions of section 148 on account of income having escaped assessment.

3. We have heard the arguments of the both sides and also perused the records.
4. The revenue has raised the following common ground in all the above five appeals :

'On the facts and in the circumstances of the case of learned Deputy Commissioner (Appeals) has erred in cancelling the assessment holding that necessary particulars had already been disclosed by the assessee and therefore, notice issued under section 148 was ab initio void, ignoring the fact that the assessing officer possessed formidable information suggesting that necessary particulars pertaining to his income were not disclosed by the assessee and thereby substantial income chargeable to tax had escaped assessment.'

The learned Departmental Representative of revenue has regarding assessment year 1983-84 (ITA No. 1022 (Jp) of 1993 contended that the assessing officer got information from anti-corruption department and on that basis he formed his belief that taxable income has escaped assessment. He has contended that the learned Deputy Commissioner (Appeals) has observed in his impugned order that the facts were already disclosed, but it is not known as to before whom the same were disclosed. He has known as to before whom the same were disclosed. He has referred to para 4 on p. 2 of Deputy Commissioner (Appeals)s order and. contended that the learned Dy. Commissioner (Appeals) could, in the circumstances, have set aside the assessment orders and restored the matter to assessing officer. He has contended that the Deputy Commissioner (Appeals) has not examined quantum and has straightaway cancelled the assessments. He has contended that sufficiency/adequacy of reasons cannot be adjudged by Deputy Commissioner (Appeals).

5. Regarding assessment years 1984-85 to 1986-87 and 1988-89 he has further contended that on issuance of notice under section 148, the belated return was regularised. He has contended that the assessing officer has recorded the reasons also and he also received the approval of Deputy Commissioner for issuing the notice. He has contended that for assessment year 1984-85 and other assessment years upto 1988-89 the assessee voluntarily filed the returns on 17-3-1989. He has contended that for assessment year 1984-85 the income has been

assessed at Rs. 40,790, and so the action of assessing officer was fully justified.

6. He has contended that regarding all the other assessment years under consideration all the particulars were not already disclosed but the department received information from ACD, and the assessed income for these years clearly suggest that there was escapement of income, and the assessee had not fully disclosed the facts.

7. As against this, the learned authority representative of assessee has contended that for assessment years 1984-85 to 1986-87 and 1988-89 the assessee filed the returns on 17-3-1989, and disclosed information and the assessments were completed under section 143(1). He has contended that the reasons recorded for issuance of notice under section 148, and initiating proceeding on the basis of escapement of income were only general, and no specific reasons were recorded. He has contended that all the relevant facts/information were disclosed either in cash flow statement or in statement of affairs annexed with the return. He has contended that in the circumstances there was no need to reopen assessments.

Regarding assessment year 1983-84, the learned authorised representative of assessee has contended that the assessee did not file return but at the time of filing of returns for assessment years 1984-85 to 1988-89 all relevant information was therein cash flow statement or in statement of affairs. He has specifically referred to p. 2, 4 and 5 of P.B. and contended that the information regarding assessment years 1982-83 and 1983-84 were filed along with the return for assessment year 1984-85. He has contended that all these had been provided on 17-3-1989, long before notice under section 148 issued on 23-3-1990. He has contended that the survey was conducted on 18-10-1989. He has contended that all the information was, as such, on record.

8. In rejoinder the learned Departmental Representative of revenue has referred to p. 4 of assessee's P.B. and contended that source of money for purchase of plots was not mentioned. He has contended that this is a material fact under section 147. He has contended that the information given on p. 4 of P.B. does not give sufficient particulars. He has contended that in these cases, by figures of subsequent assessments, it is proved that there had been escapement of income.

He has contended that in assessment year 1983-84, it is only after receipt of information from ACD that the notice under section 148 was given.

9. We have considered the rival contentions as also the materials on record.

10. First we take up assessment year 1983-84. For this assessment year return of income was not filed and the income as shown in annexures of assessment year 1984-85 was at Rs. 14,520, that is below taxable limit. The assessee assessed income under section 147, is however Rs. 56,210. Obviously there has been an escapement of income. As the assessee had not filed the return (for assessment year 1983-84) and the department had received the information from ACD that the assessee had purchased a number of plots and had made huge investments in construction, which was general though, but coupled with the subsequent factum/quantum of assessed income may, in the peculiar fact-situation of this case in particular, well constitute reasons for assessing officer to believe escapement of income. It may also be noted that each assessment year is separate and independent and the assessee's conduct of filing of some incomplete information pertaining to one assessment year along with the return of some subsequent assessment year, by way of annexure thereto, may not be sufficient to detract from the assessing officer's reasons to believe escapement of income in that one year for which return has not been filed, in the circumstances.

10.1. We may however, also consider as to whether the action of assessing officer under section 148 is time-barred as agitated in para 9 of the assessee's written submissions. The assessee having not filed the return, the said escapement was due to failure or omission to file the return of income. As such the case falls within section 147(a) and not in section 147(b) as it stood at the relevant time. Accordingly, the limitation of eight years or sixteen years from the end of that assessment year applied for issuance of notice under section 148 depending on the escaped amount being within Rs. 50,000 or beyond thereto. The notice under section 148 having been issued on 23-3-1990, was well within the prescribed period. The initiation of proceedings under section 147/148 against assessee for assessment year 1983-84 was thus quite valid. The learned Commissioner (Appeals)'s impugned order, in holding the issuance of notice under section 148 for

this assessment year 1983-84 as invalid and void ab initio, is, therefore, not proper, nor justified and so not tenable in law. We, therefore, reverse the order of learned Commissioner (Appeals) on this count and send the matter back to him to decide the other grounds of appeal raised before him on merits.

11. Now we take up the appeals for assessment years 1984-85 to 1986-87 and 1988-89. For all these years the returns of course were filed by the assessee, and the assessments under section 143(1) were made on the basis thereof. In the reassessments made under sections 143(3)/147, 148 the additions made may be detailed as under :

Asst. yr.

Income from medical practice

Cash credit treated inc. from undisclosed source

Declared in return

Amount added

Basis of addition

Declared in return

Amount added

Basis of addition

1984-85

5,500

$(18,000 - 5,500) = 12,500$

Estimate

12,000 (C. C)

12,000

Non-acceptance - of C. C.

1985-86

6,500

$(20,000 - 6,500) = 13,500$

,

25,000 (C. C)

25,000

,

1986-87

8,800

$(34,000 - 8,800) = 25,200$

,

20,000 (C. C)

20,000

,

1988-89

13,300

$(35,000 - 13,300) = 21,700$

,

14,000 (C. C)

14,000

,

Others

Nature of addition

Declared in Return

Amount added

Basis of addition

1984-85

1985-86

1986-87

1988-89

(i) Registration expenditure of plot purchased

4,000

Estimate

(ii) Difference/excess of expenditure (bank deposit+household expenses) over earned income shown

6,620

Excess of Expenditure estimated over earned income

(iii) Accrued interest

8,955

Deduction disallowed

12. As seen above the additions in the reassessment under section 147 made by assessing officer in assessment years 1984-85 to 1986-87 are only in respect of income of two heads being (i) medical practice, and (ii) cash credit. The additions in these three assessment years have resulted due to the reason of assessing officer having estimated higher income from medical practice than declared by assessee, and the assessing officer not accepting as genuine the cash credits declared by assessee and treating the same as income from undisclosed sources. Obvious as it is from the record these additions are merely on the basis of facts/information disclosed by assessee and not on any new fact/information to have been in the possession of assessing officer. The information, stated to have been there in the possession of assessing officer for initiating proceeding under section 148, is as under :

For assessment year 1984-85:

'As per the report and Panchnama received from the anti-corruption department, assessee has made huge investments on plots and on construction and deposits in bank in his name and in the name of his family members. The assessee has not fully and truly disclosed the income and material facts.

For assessment years 1985-86, 1986-87 & 1988-89:

'The anti-corruption department has detected huge investments during the raid conducted by them in the premises of the assessee, which the assessee has not disclosed fully and truly all the material facts necessary for his assessment for this year.'

As evident from the above the information is quite vague and general and not specific. This, viewed in the context of the nature of additions made by assessing officer as detailed in the table given above for these three assessment years 1984-85 to 1986-87, the only conclusion that one as a man of ordinary prudence, can justifiably make is that there seem to be in fact no reasons before assessing officer

to come to a belief of escapement of income in these years. We are consciously aware of the legal position that the 'sufficiency of reasons' of belief is not justifiable but quite distinct therefrom though with a thin difference, is the 'existence of reasons' for entertaining the belief of escapement of income and the Court/Tribunal is expected and is rather duty-bound to look into this aspect so as to adjudicate upon the issue as to whether the preconditions requisite for the assessing officer to invoke/exercise jurisdiction under section 147/148 existed or not. The expression 'reason to believe' in this regard, does not mean merely reason to suspect but something more than that. The expression, in its true legislative spirit, would imply existence of such facts/material on record as would reasonably lead a rational person, or a person of reasonable/ordinary prudence to entertain honestly and in good faith, a belief, prima facie though, and not a finding as such, conclusive or otherwise, at that stage, that some income chargeable to tax, has escaped assessment. Thus, the belief, contextual here, is linked with and is dependent upon some material on record to form rationally the basis or the reason for the same and not a mere fancy/imagination or a differing opinion. It may well be observed here that where the information to constitute 'reasons of belief' of escapement of taxable income, is only general and non-specific, the same may, in certain circumstances, be examined in the context of ensuring assessments as well as the same may facilitate to analyse the gravity/substantially of the initial indicativeness, tethered in the generality of information, spread over therein. Though the belief is normally formed, undisputedly, on taking a circumspect view of the entire fact-situation together with the experience at assessing officer command. Viewed as above, and circumspectually we find the 'reasons for belief' of escapement of income, chargeable to tax, from assessment, to be lacking/missing and what the material/information, referred to above, existing on record, may well be said to be is 'reason to suspect' the escapement, which cannot justifiably constitute 'reason to believe' escapement as the same can, by no stretch of imagination, reasonably induce a man of reasonable/ordinary prudence to rationally entertain, in good faith, a prima facie belief that some taxable income has escaped assessment. The resultant reassessments, as seen above, as well as are no less supportive of the view that the so-called belief, as purported to be there, is devoid of reasons at all. We are, therefore, of the considered opinion that

the assessing officer in effect, did not have reasons to believe that the taxable income had escaped assessment in the assessment years 1984-85 to 1986-87. In that view of the matter we find no fault with the impugned order of learned Commissioner (Appeals) in holding the issuance of notice under section 148 for these three years to be invalid/void ab initio, and in turn cancelling the reassessment orders for these years.

13. Now we take up assessment year 1988-89. In this year the additions in assessment under section 147 are somewhat high but the major additions are mainly in income from medical practice, due to higher estimate thereof and in income from undisclosed sources resulting on account of non-acceptance of cash credit as genuine. An addition of Rs. 4,000 is on account of registration expenses but the purchase of plot and the source of its purchase money already stood mentioned in the cash flow statement and statement of affairs. Addition of Rs. 6,620 is due to excess of expenditure over earned income as shown, and the figure of expenditure got swollen due to estimate of household expenses at Rs. 22,000 as against Rs. 11,043 shown by assessee. The last addition is of Rs. 8,955 made on account of accrued interest due to disallowance of assessee's claim for deduction of the same. Thus the addition, discussed as above, are emanating from information, no other than that disclosed by assessee himself in his return and annexures thereto without any new/fresh information. As such the position of this assessment year too is, in no way, different from that of the other three assessment years as discussed and concluded just above. In that view of the matter we find the impugned order of learned Commissioner (Appeals) holding the issuance of notice under section 148 for assessment year 1988-89 as invalid/void ab initio and in consequence cancelling the reassessment made under section 147/148 for this assessment year to be not laconic, nor suffering from any infirmity. We, therefore, decline to make an interference therein.

14. In the result the appeal of revenue for assessment year 1983-84 being ITA No. 1922 (Jp)/1993 is allowed in part while the remaining four appeals of revenue for assessment years 1984-85, 1985-86, 1986-87 and 1988-89 being ITA Nos. 1023 to 1026 (Jp) of 1993 are dismissed.

