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Court : Rajasthan

Decided On : Oct-15-2001

Reported in : (2002)73TTJ(NULL)876

Appeal No. : ITA No. 784/Jp/1994 15 October 2001 A.Y. 1990-91

Appellant : Mohan Lal Balai

Respondent : ito

Advocate for Pet/Ap. : Nauratan Mertia, *for the Assessee K.P. Meena, for the Revenue*

Judgement :

ORDER

S.R. Chauhan, J.M.

This appeal by assessee for assessment year 1990-91 is directed against the order of Deputy Commissioner (Appeal), Jodhpur, dated 15-11-1993.

2. I have heard the arguments and also perused the records,

3. Ground No. 1 disputes the learned Deputy Commissioners (Appeal)'s impugned order not directing the assessing officer to proceed under section 141, instead of cancelling and annulling the order under appeal before him which was void ab initio. The learned authorised representative of assessee has contended that the

summary assessment under section 143(1)(a) was made (sic) addition were made which were deemed by learned Deputy Commissioner (Appeals) vide his order, dated 13th/14-10-1992, the copy of which placed on per page 1 and 2 of paper book. He has referred to the CEBT Circular No. 493, dated 21-8-1987 {(1987) 66 CTR (St) 1 : (1989) 168 ITR 2}, placed on per page 3 and 4 of paper book and contended that the Central Board of Direct Taxes clarified in the said instruction that return of income below taxable limit should not be acted upon unless covered under the exception contained in the proviso to section 139(10) of the Income Tax Act, for assessment years 1986-87 to 1990-91, that is during the period of provision of section 139(10) was in force. He has contended that this case does not fall in any exception. He has contended that in the instant case on that from return subsequently assessment under section 143(3) was made on 12-3-1993, which is under dispute hearin. He has contended that in the learned Deputy Commissioner (Appeal)'s order, dated 13th/14-10-1992 (page 2 of PB), the learned Deputy Commissioner (Appeals) has clearly held that the income declared in the return being below taxable limit in the eye of law there was no valid return. He has referred to para 2 on page 3 of learned Commissioner (Appeal)'s order and contended that learned Commissioner (Appeals) has held therein the assessee's return, showing income less than the maximum income not chargeable to tax, being no return at all in view of section 139(10) but still he directed the assessing officer to proceed under section 144(1) whereas the provisions of section 144, etc., are inapplicable which come into force only when a valid return is filed under section 139(1) or in compliance of a notice under section 142(1). He has contended that in this case no notice under section 142(1) has been issued/served on assessee, nor a notice under section 148. He has contended that it was only on the above-mentioned invalid return that assessment was framed. Whereas an assessment made on invalid return has to be annulled as being void ab initio instead of directing assessing officer to proceed under section 144. He has also contended that coincidentally even after this impugned order no proceedings under section 144/148 have been taken against assessee as per the knowledge of the learned authorised representative of assessee. He has relied upon *Maya Debi Bansal v. CIT* : : [1979]117ITR125(Cal) .

4. As against the above, the learned Departmental Representative of Revenue has contended that the learned Deputy Commissioner (Appeals) had in his order dated 14-10-1992, issued directions to assessing officer to proceed under section 143(2) of the Act and so the assessing officer was under obligation to issue notice under section 143(2). He has contended that the assessing officer accordingly framed assessment 143(3) on 12-3-1993, he has relied on the Deputy Commissioner (Appeal)'s order.

5. I have considered the rival contentions decided decisions, as also the relevant material on record. In my considered opinion the return filed by assessee declaring the income below taxable limit was not to be treated as a return having been filed so. In view of section 139(10), was to be treated as having not been filed and thus, and non est such. In : [1979]117ITR125(Cal) (supra) the Hon'ble High Court, Calcutta, has held that an assessment cannot be made when the return is not in proper form. It has further been held therein that assessment completed under section 143(3) on the basis of invalid return cannot be treated as best judgment assessment under section 144, as if no return have been filed, and the assessment would be void ab initio. No contrary decision has been brought to my notice. As such considering all the facts and circumstances of the case, I am of the view with the return of income filed by assessee, showing non-taxable income was non est and so the assessment made under section 143(3) based thereon was invalid and rather void ab initio which was liable to be annulled as such.

6. In the result, this appeal of assessee is allowed.