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Court : Rajasthan

Decided On : Jul-16-2002

Reported in : (2002)176CTR(Raj)377

Appeal No. : IT Ref. No. 29 of 1987 16 July 2002 A.Y. 1975-76

Appellant : Peeru Lal Mohan Lal

Respondent : Cit

Advocate for Pet/Ap. : N.M. Ranka, *for the Assessee* J.K. Singhi, *for the Revenue*

Judgement :

By the Court

On an application filed under section 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question for our opinion :

'Whether, on the facts and in the circumstances of the case, the present assessment proceedings should be considered to be barred by law because of the intervening irregularities and the consequent delay ?'

2. The assessee filed return declaring an income of Rs. 43,820. The relevant assessment year is 1975-76. Initially the assessment order was passed on 16-8-1977. In appeal, the Appellate Assistant Commissioner set aside that assessment

order and directed to make fresh assessment. Fresh assessment order was passed under section 144 of the Income Tax Act, 1961, on 25-5-1978. That assessment order was recalled under section 146 on 20-11-1978. Thereafter a draft assessment order was prepared and that draft order was sent to Inspecting Assistant Commissioner on 28-11-1979. Inspecting Assistant Commissioner later on found that draft assessment order cannot be passed under section 144B of the Act. A fresh order thereafter was passed again under section 144 of the Income Tax Act, 1961, on 19-4-1984. Income Tax Officer sent the notice of demand after calculating the tax on the income assessed and challan was prepared on 23-4-1984.

3. The assessee before Commissioner (Appeals) raised an issue that notice of demand was sent on 23-4-1984, while the assessment had been completed on 28-11-1979, therefore, the same is time-barred and no demand can be raised on the basis of time-barred assessment, but the same was not accepted by the Commissioner (Appeals). Commissioner (Appeals) dismissed the appeal of the assessee.

In appeal before the Tribunal, Tribunal also considered the issue as to whether the assessment in question is time-barred or not. Tribunal considered the provision of section 292B of the Income Tax Act, 1961, and held that by mistake Income Tax Officer sent the draft assessment order for assessment under section 144B and time has been taken by the Inspecting Assistant Commissioner, therefore, the Income Tax Officer could not issue the demand of tax in time and that is a mistake, which can be cured under section 292B of the Income Tax Act, 1961.

4. Mr. Ranka, learned counsel for the assessee, submits that assessment is not completed unless tax is determined and admittedly tax was determined on 23-4-1984, i.e., after two years from the date of order passed in appeal by the Inspecting Assistant Commissioner (Asst.). He further submits that delay cannot be condoned under section 292B of the Income Tax Act, 1961, particularly when the assessment has not been completed in time. In support of his contentions he placed reliance on the decisions in CIT v. Bal Krishna Malhotra : [1971]81ITR759(SC) , Kalyan Kumar Ray v. CIT (1991) 19 ITR 634 and Smt. Kilash Devi Burman & Ors. v. CIT : [1996]219ITR214(SC) .

5. Mr. Singhi, learned counsel for the revenue, submits that if the tax is determined separately after completion of assessment i.e., an irregularity and which can be cured under section 292B of the Income Tax Act, 1961. In support of his contentions, he placed reliance on the decision reported in : [1991]191ITR634(SC) (supra).

6. When the fresh assessment is made under section 146 or under section 250 or under section 254 or under section 263 or under section 264, that should be made before expiry of two years from the end of the financial year in which the order under section 146 cancelling the assessment is passed by the Income Tax Officer or order under section 250 or under section 254 is received by the Commissioner or as the case may be, the order under section 263 or under section 264 is passed by the Commissioner. This has been provided in sub-section (2A) of section 153 of the Act. Before we go for the limitation, we would like to discuss the issue as to when the assessment is completed.

7. Sub-section (3) of section 143 reads as under :

'On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Income Tax Officer may require on specified points, and after taking into account all relevant material which he has gathered,

(a) in a case where no assessment has been made under sub-section (1), the Income Tax Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment;

(b) in a case where an assessment has been made under sub-section (1), if either such assessment has been objected to by the assessee by an application under clause (a) of sub-section (2) or the Income Tax Officer is of opinion that such assessment is incorrect, inadequate or incomplete in any material respect, the Income Tax Officer shall, by an order in writing, make a fresh assessment of the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment. '

8. Clause (b) of sub-section (3) of section 143 provides that in case where assessment has been made under sub-section (1) and if assessment has been objected to either by the assessee or by the Income Tax Officer, being of the opinion that such assessment is incorrect, inadequate or incomplete in any material respect, the Income Tax Officer shall by an order in writing make a fresh assessment of the total income of the assessee or loss of the assessee and determine the sum payable by him or refundable to him on the basis of such assessment. Therefore, for the purpose of assessment of income as well as determination of the tax both are necessary for completion of the assessment order. Similar provision has been made in section 144, which requires assessment of income as well as determination of sum payable by the assessee on that income.

9. The admitted facts are that last day for completion of the assessment order, as per the provisions of the Act, is 31-3-1981 and assessee received the demand notice on 23-4-1984, i.e., beyond two years. Now the pertinent question before us is whether in absence of determination of tax, can it be said that assessment has been made or assessment has been completed. We would like to refer some decisions of the Hon'ble Apex Court.

10. In the matter of CIT v. Balkrishna Malhotra (supra) their Lordships observed as under :

'It has been stated over and over again by this court as well as by the Judicial Committee that the words 'assessment' and 'assessee' are used in different places in the Act with different meanings. Therefore, in finding out the true meaning of those words in any provision, we have to see to the context in which the word is used and the purpose intended to be achieved. It is true that sub-sections (1), (3) and (4) of section 23 require the Income Tax Officer to 'assess the total income of the assessee and determine the sum payable by him'. In other words, in those provisions the word 'assess' has been used with reference to computation of the income of the assessee and not the determination of his tax liability. But in section 34(3) the word used is not 'assess' but 'assessment'. The question for decision is what is the meaning of that word As long back as 24-9-1953, the High Court of

Madras in Viswanathan Chettiar's case came to the conclusion that the word 'assessment' in the proviso to section 34(3) means not merely the computation of the income of the assessee but also the determination of the tax payable by him.

11. In the case of Kalyankumar Ray v. CIT (supra), the issue before the Lordships was whether computation of tax on the income forms part of the assessment order. At page 638, their Lordships observed as under :

'The statute does not, however, require that both the computations (i.e. of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is superscribed 'assessment order'. It does not prescribe any form for the purpose. It will be appreciated that once the assessment of the total income is complete with indications of the deductions rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time consuming. If, therefore, the Income Tax Officer first draws up an order assessing the total income and indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income Tax Officer that the process described in section 143(3) will be complete.'

12. Mr. Singhi, learned counsel for the revenue, also placed reliance on the same decision, wherein their Lordships have made it clear that if assessing officer has made the assessment of the income on separate papers and calculated the tax on the separate sheets, that does not make any difference, since both the sheets are signed by the Income Tax Officer and after that the assessment order is complete.

13. In the case of Kalyankumar Ray v. CIT (supra) both the sheets were signed before expiry of two years as provided under sub-section (2A) of section 153 of the Income Tax Act 1961, but in the case in hand the assessment had been made in the month of November, 1979, and it was sent to Inspecting Assistant Commissioner, who sent it back with the direction that no order is needed under section 144B of the Act. Reference to the Inspecting Assistant Commissioner was wrong even if the income was assessed on 28-11-1979, but no tax was

determined by that date. First time the tax was determined on 19-4-1984 while the demand notice was served on the assessee on 23-4-1984, i.e., after expiry of two years from the last day of financial year in which appeal order has been passed and when the tax had not been determined, assessment was not complete and that was time-barred under section 292B time-barring assessment cannot be cured as that is not a procedural mistake, which can be rectified.

In our view the time-barring assessment does not come within the purview of mistake, defect or omission referred in section 292B of the Act, 1961, therefore, the order of the Tribunal is erroneous.

14. In the result we answer the question in negative i.e., in favour of assessee and against the revenue.

Reference so made stands disposed of accordingly.

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