

T.P. Indrakumar Vs. Ito

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Court : Karnataka

Decided On : Jul-09-2009

Judge : D.V. Shylendra Kumar and ;Aravind Kumar, JJ.

Appellant : T.P. Indrakumar

Respondent : ito

Advocate for Pet/Ap. : Sri. A. Shankar

Judgement :

D.V. Shylendra Kumar, J.

1. Appeal by an assessee, an individual, in respect of the assessment year 1998-99, who though had initially filed return claiming a loss of Rs. 1,17,480, on scrutiny by the assessing officer in respect of the particulars of the returns and later on the assessee volunteered to offer an additional income of Rs. 10 lakhs, had been assessed and on such premise had been asked to bear a tax liability of Rs. 2,23,856 on a net income of Rs. 8,29,520 with the addition of a sum of Rs. 13,428 as interest under Section 234A of the Income Tax Act, 1961 (for short, the Act) and a further sum of Rs. 92,877 towards interest under Section 234B, totally a sum of Rs. 3,30,161 apart from the prospects of facing liability under Section 271(1)(c) of the Act, and being unsuccessful in getting rid of this assessment order before the first appellate authority--the Commissioner (Appeals) and so also before the Tribunal.

2. This Court while admitting the appeal had noticed the following questions of law for examination, as indicated in the memorandum of appeal:

(a) Whether, on the facts and circumstance of the case is the Tribunal correct in law in holding that the consent of the appellant confers jurisdiction for addition of Rs. 10 lakhs ?

(b) Whether, on the facts and circumstance of the case Tribunal is legally correct in holding that the appellant has earned income of Rs. 10 lakhs instead of loss claimed, merely on the basis of admission without any supporting evidence ?

(c) Without prejudice, whether on the facts and circumstance of the case was the Tribunal justified in law in not reducing the addition to Rs. 6.24 lakhs instead of Rs. 10 lakhs ?

(d) Whether the Tribunal is justified in law in holding that the interest under Sections 234A and 234B is leviable on the facts and circumstance of the case ?

(e) Whether it is justified in law in holding that interest under Sections 234A and 234B is leviable for the period of delay attributable to revenue authorities in completing the assessment proceedings ?

3. We have heard Sri A. Shankar, learned Counsel for the appellant-assessee and Sri M.V. Sheshachala, learned standing counsel for the respondent- revenue.

4. Brief facts leading to this appeal are that : The assessee who was carrying on business of running a rice mill and who, it appears, had started the business afresh, had filed his return of income for the assessment year in question and had claimed a loss of Rs. 1,70,480, mainly attributable to the deduction due to depreciation on the investment made in the rice mill.

5. Unfortunately for the assessee, it appears, the case had been taken up for scrutiny and the assessing officer got active to probe into the business activities and the business transactions of the assessee, had obtained information from the assessee's bankers as well as from the assessee's business contacts. The assessing officer noticed that there were discrepancies in the capital account and

investment made, as claimed by the assessee before the banks such as SBI, Karnataka State Finance Corporation, State bank of Mysore, TGMC Bank, Tumkur etc., and further that the assessee had not reflected the trading activities in sale of rice, for which purpose, it appears, the assessee had been, purchasing considerable quantities of rice from a dealer at Manvi etc.

6. In this context, the assessee had been issued with notices under Sections 142(1) and 143(2) of the Act. At the time of assessment and during the course of personal appearance of the assessee before the assessing officer on 28-2-2000, which was the third date of hearing and had been preceded by two earlier hearings on 27-12-1999 and 17-1-2000, before the assessing officer, the assessee gave a letter stating that he is offering a further income of Rs. 10 lakhs, mainly to buy peace with the department and to avoid further scrutiny and the probing that the department wanted to conduct and this offer was accepted at its face value by the assessing officer, who concluded the assessment on such premise and determined the tax liability of the assessee, after allowing the set off of Rs. 1,70,480, which had been initially claimed by the assessee as loss for the assessment year in question.

7. It appears, immediately thereafter, the assessee filed an appeal before the first appellate authority contending that the assessing officer could not have simply proceeded on the premise that the offer made by the assessee, offering a sum of Rs. 10 lakhs as additional income; that it had no basis; that the authority should have verified as to whether the return filed and the books of accounts of the assessee could support a further income of Rs. 10 lakhs over and above what had been disclosed earlier; that even the statement made before the banks was not a realistic one, which had been an inflated one for the purpose of raising bigger financial assistance from the banks and as the record available before the assessing officer did not support an addition of Rs. 10 lakhs income to the assessee, the assessing officer is in error and therefore the order called for interference.

8. The appellate authority, however, did not think so. The appellate authority, on the other hand, found that the assessee had volunteered to offer Rs. 10 lakhs as

unexplained cash credit on account of various omissions and commissions made by the assessee and if the assessing officer had simply accepted it, there was nothing wrong in the assessment order; that the interest under Sections 234A and 234B of the Act being statutory, there was no way for the assessee to avoid the same, and dismissed the appeal.

9. A further appeal by the assessee to the Tribunal also did not make any difference to the assessee, as the Tribunal also, after examining the arguments before it in the appeal, opined that the assessee who was the best person and who had the full knowledge of his business activities and when the authority had noticed certain discrepancies in the return filed by the assessee vis a vis the information they had gathered from the bankers and other persons who had business transactions with the assessee, the assessee had volunteered to offer an additional amount of Rs. 10 lakhs as his income; that, there was no mistake or error on the part of the assessing officer in accepting the offer voluntarily made by the assessee himself and that the assessee had also not produced any material to rectify the mistake, if any, committed by him in his offer and in such a situation, the assessee cannot be permitted to resile from his offer of an additional sum of Rs. 10 lakhs to the income of the assessee and therefore upheld the orders of the lower authorities and dismissed the appeal. It is assailing such orders, the present appeal is filed.

10. Submission of Sri A. Shankar, learned Counsel for the appellant-assessee is that a mere admission by the assessee before the assessing officer is not sufficient to fasten a tax liability under the Act, it should be a determination in terms of the provisions of the Act. It is submitted that the assessing officer is duty-bound to determine the actual tax liability based on the available material and in accordance with law; that a mere offer by the assessee is no substitute for quantification of the tax liability of the assessee; that while the assessment order suffers from such error, it is also submitted that the assessee, who had been virtually coerced to offer an additional income of Rs. 10 lakhs over and above what is stated in the return by him and in fact no opportunity was given to retract before the assessing officer, as the assessment order was passed immediately on the heels of giving the letter dated 28-2-2000 and at the earliest point of time, the

assessee had filed the appeal, which was well within the permitted period of limitation and therefore filing of the appeal should be taken to be a retraction and on such premise the matter should have been remanded to the assessing authority for re-examination, as, if the admission by the assessee is retracted, there is no material to support the assessment order.

11. It is also submitted that even the clear settled legal position is that a person who has made an admission can retract from the admission and it can never be a binding admission and the assessing authority, which is statutorily functioning or performing, is duty-bound to examine the effect and real nature of the admission and to determine the liability only based on other sustainable material and not merely based on the admission and therefore the assessment order and the orders affirming the same suffer from infirmities. In support of his submission, learned Counsel for the appellant has placed strong reliance on the following decisions:

- (i) Pullangode Rubber Produce Co. Ltd. v. State of Kerala : (1973) 91 ITR 18 (SC);
- (ii) Bhandari Metals & Alloys (P) Ltd. v. State of Karnataka (2004) 136 STC 292;
- (iii) The Honorary Secretary, Kaniyara Seva Samaj v. State of Mysore (1969) 23 STC 155; and
- (iv) CIT v. N. Swamy : (2000) 241 ITR 363 (Mad).

12. Based on these authorities, submission of Sri Shankar is that it is very clear that a statutory authority like the assessing officer would not have merely ipso facto accepted the so-called voluntary offer of Rs. 10 lakhs by the assessee, but it was the duty of the assessing officer to determine the actual liability and that having not been made by the assessing officer, the matter warrants interference at least for the purpose of remanding the matter to the assessing authority on the premise that the assessee has retracted from his offer/admission of having earned an additional income of Rs. 10 lakhs and therefore the assessing officer should examine the matter only on the merits and if need be on such material as he might have gathered or may gather and to pass an assessment order afresh by giving

opportunity to the assessee to prove his return of income.

13. On the other hand, Sri M.V. Seshachala, learned standing counsel for the respondent-Revenue, submits that the assessee's case has been treated as scrutiny case and it was during the scrutiny, many facts came to the notice of the assessing officer, which were otherwise not made known. Submission is that the discrepancies with regard to the statement made by the assessee before the banks and as indicated in the return, were made known to the assessee and the assessee was also called upon to explain as to the reason for such discrepancies, with regard to the investment made and such other aspects; that when this was being examined by the assessing officer during the hearing and the personal appearance of the assessee and his representative, the assessee voluntarily came forward to offer an additional income of Rs. 10 lakhs with a request to drop further probe and he may be provided protection from prosecution, penalties etc.

14. It is submitted that in such a situation, the assessing officer had acted on the offer made by the assessee, stopped further probe and concluded the assessment, on the basis of the voluntary disclosure made by the assessee and therefore the assessment order cannot be characterized as bad in law and or not supportive; that the decisions relied upon by learned Counsel for the appellant are not relevant or applicable for this case and therefore urges for dismissal of the appeal.

15. We have bestowed our attention to the submissions made at the Bar, perused the record and have also examined the impact of the authorities relied upon by the learned Counsel for the appellant in the circumstance of this case.

16. While it is no doubt true that an admission which is otherwise not an admission of the very nature by itself can constitute an admission of the liability, has to be probed further, an admission of the nature that the assessee voluntarily offered i.e. Rs. 10 lakhs by way of income to avoid any further scrutiny by the assessing officer can be acted upon at its face value without further probe. The entire exercise by the assessing officer is to determine the income of the assessee, whereupon tax liability gets automatically fixed in terms of the rates as provided for by the Finance Act. If the assessing officer is pre-empted from performing this

exercise of determination of the actual income of the assessee, there is nothing else for the assessing officer to further probe into the matter as to whether the income so declared is correct or not and if the assessee himself is volunteering to offer the amount as his income, there is nothing further that is required to be done by the assessing officer.

17. Though the learned Counsel for the appellant is right in submitting that the assessment order cannot be de hors the provisions of the Act and it is a statutory determination, in the circumstance, we are not impressed that a matter of this nature warrants interference by us in this third stage of litigation and on an examination of substantial questions of law, for the simple reason that the assessee, for the reasons best known to him, pre-empted all further probe and consequential acts by offering an additional amount of Rs. 10 lakhs by way of income. We also notice that this amount is mentioned as cash credit, which even in terms of the Act, if is an unexplained cash credit that can be added by way of income in terms of Section 68 of the Act.

18. As to whether the precise amount could have been added as income being an unexplained cash credit or unexplained expenditure or investment, cannot be the question now, as the assessee voluntarily offered this amount, particularly to avoid further probe into his actual income from his business and from the activities of running the rice mill and also from the activity of trading in rice and to avoid further probe and scrutiny into the investment made for setting up the industry etc. As to whether the precise tax liability would have crystallised in the amount now determined by the assessing officer is speculative and it could have been either less, or more, when the assessee on his own, in the wake of his need for avoiding further probe and scrutiny, offered this amount, it can be reasonably inferred that the assessee is obviously striking a balance to avoid a bigger liability or harsher consequences.

19. Be that as it may, when the assessee had voluntarily offered the amount by way of income, there was nothing further for the authority to do when the authority is accepting it at its face value. It is for this reason we find the authorities relied upon by learned Counsel for the appellant do not advance the case of the

appellant in the present circumstance and reject the submissions on behalf of the appellant.

20. Insofar as the levy of interest is concerned, while it is a statutorily fixed one, Sri Seshachala, learned standing counsel for the respondent-Revenue, would point out that it is open to the assessee to claim relief on such levy before the Chief Commissioner or the Board, as the case may be, by making an application under Section 119 of the Act. It is also submitted at the Bar that the penalty levied under Section 271(1)(c) of the Act has been deleted by the Tribunal at the instance of the assessee and though the learned Counsel for the appellant is not sure as to whether the revenue had further appealed against this order of the Tribunal. However, this may not deter us from disposing of this appeal, as it is open to the assessee to point out such circumstance if such a stage is reached before the appropriate forum. But for this observation, this appeal is dismissed.

9-7-2009

21. This matter is listed today for orders on 'Being spoken to' on our direction, as we felt that the matter requires further hearing of the learned Counsel for the appellant and the revenue.

22. We have heard Sri Seshachala for the revenue and pass the following order.

23. This appeal was heard and order was passed on 8-7-2009. However, before signing the order/judgment, we noticed that the questions raised in the memorandum of appeal and for examination of which, the appeal had been admitted, had not been answered vis--vis each question, as the appeal was dismissed, having regard to the peculiar facts and circumstances of the case and not necessarily by applying the authorities relied upon by the learned Counsel for the assessee to justify a remand of the matter to the assessing authority.

24. The validity of the assessment procedure being upheld, it could have been inferred that all the questions are answered against the appellant-assessee. On further examination, we are of the view that while the first four questions are required to be answered, being answered in favour of the revenue, so far as the

fifth question relating to the justification of levy of interest under Sections 234A and 234B of the Act is concerned, as this question is also required to be examined in the context of the peculiar facts and circumstances of this case as we have upheld the validity of the assessment order passed by the appellate authority and the Tribunal having regard to the peculiar facts and circumstances of the case and on doing so, we find that the question No. 5 is required to be answered in favour of the assessee for the reason that the assessee had offered a sum of Rs. 10,00,000 as an additional income in addition to the income already offered in his return and only to buy peace with the department and that has been accepted by the assessing officer without further scrutiny. In such a situation, it cannot be held that the assessee had defaulted in payment of instalments of advance tax, as the amount of Rs. 10 lakhs was offered by way of income for the first time as per the assessee's letter dated 28-2-2000 to buy peace and avoid further adverse consequences and the assessing authority having acted upon this proposition of the assessee and having regard to the peculiar facts and circumstances of this case, we direct that the addition of income (sic-interest) under Sections 234A and 234B in the case of the present appellant-assessee is not necessary and not justified and thus the fifth question is answered in favour of the appellant-assessee and the appeal is allowed only to this extent in part.

Ordered accordingly.