Commissioner of Income-tax Vs. Ishwar Singh and Sons

LegalCrystal Citation : legalcrystal.com/459057

Court : Allahabad

Decided On : Aug-30-1979

Reported in : [1981]131ITR480(All); [1980]3TAXMAN63(All)

Judge : C.S.P. Singh and ;R.R. Rastogi, JJ.

Acts : Income Tax Act, 1961 - Sections 147 and 148

Appeal No. : Income-tax Reference No. 121 of 1976

Appellant : Commissioner of Income-tax

Respondent : ishwar Singh and Sons

Advocate for Def. : S.B.L. Srivastava, Adv.

Advocate for Pet/Ap. : R.K. Gulati and ;Ashok Gupta, Advs.

Judgement :

R.R. Rastogi, J.

1. The respondent, M/s. Ishwar Singh and Sons, was proprietary business of one Ishwar Singh. On his death in January, 1950, his eldest son, Arjun Singh, carried on that business and he was assessed on its income as an individual up to the assessment year 1957-58. Thereafter, no assessment was made for several years till the ITO received an information that business in the name of M/s. Ishwar Singh and Sons was still being carried on and it was having taxable income. On receipt of that information the ITO issued a notice under Section 148 of the I.T. Act, 1961 (hereinafter referred to as 'the Act'), for the assessment years 1963-64 to 1966-67. In the present reference we are concerned with the assessment year 1963-64 only. For this year the notice was addressed to Sri Arjun Singh Johar, proprietor of M/s. Ishwar Singh and Sons. It was served on one Sri Maheshwar Singh on September 11, 1967. Pursuant to that notice Sardar Sampuran Singh, younger brother of Arjun Singh, filed a return in the name of M/s. Ishwar Singh and Sons, proprietor, Sardar Sampuran Singh. The assessment was made on the respondent-assessee taking his status as that of an HUF.

2. The assessee appealed to the AAC and challenged the validity of the notice on the ground that the notice had been issued to Arjun Singh who had no connection with the assessee-HUF since he had separated from the family in 1959 and hence no assessment could be made on the assessee on the basis of that notice. The AAC accepted that contention and quashed the assessment. The department took the matter in appeal before the Income-tax Appellate Tribunal. The submission made on

behalf of the department before the Tribunal was that the notice had been issued to the HUF and it was so understood by the assessee and hence the notice was not invalid. Since Arjun Singh was the eldest son of Ishwar Singh and had succeeded him in his business, notice for the assessment year under consideration was issued to the assessee through him. It was contended that the only mistake in the notice was that instead of Sampuran Singh, karta of the family, the name of Arjun Singh was mentioned. The Appellate Tribunal did not accept this submission and found that there was nothing on the record to indicate that the ITO had intended to issue the notice to the assessee-HUF. The matter was to be judged from the surrounding circumstances and it was found that the notice had been addressed to Sri Arjun Singh Johar, proprietor of M/s. Ishwar Singh and Sons. In the opinion of the Appellate Tribunal the way in which the notice had been addressed suggested that it had been addressed to Arjun SinghJohar, individual, and the last assessment, that is, for 1957-58, had been made on Arjun Singh in the status of an individual. In these circumstances, it could not be believed that the ITO intended to issue the notice to the assessee in the status of HUF and in any case there was no evidence to support that contention. It may be noted that the Appellate Tribunal placed reliance on the decision of the Supreme Court in CIT v. K. Adinarayana Murthy : [1967]65ITR607(SC) . In the result, the order of the AAC was confirmed.

3. Now, at the instance of Commissioner of Income-tax in this reference under Section 256(1) of the Act, the following question has been referred to this court for its opinion;

' Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the Appellate Assistant Commissioner's order cancelling the assessment for the assessment year 1963-64? '

4. On the facts found by the Appellate Tribunal it would appear that the notice under Section 148 of the Act had been issued to Arjun Singh Johar, proprietor of M/s. Ishwar Singh and Sons, in the status of an individual and the return on the basis of which the assessment was completed was filed by Sardar Sampuran Singh, karta of his HUF, M/s. Ishwar Singh and Sons. Now, Section 148(1) of the Act provides :

' Before making an assessment, reassessment or recomputation under Section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 139 ; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section.'

5. No standard form is prescribed for a notice under this section. All that it requires is that a notice consisting of all or any of the requirements which may be included in a notice under Section 139(2) shall be sent. It hardly needs mention that for the validity of an assessment under Section 147 the issue of a notice under this section is a condition precedent. Hence, if no notice is issued or if the notice issued is invalid or is not served in accordance with law, the assessment would be bad. Thus, the question which falls for our consideration is as to whether the assessment made on the assessee on the basis of the return filed by Sardar Sampuran Singh, karta of the HUF, when the notice under Section 148(1) had been issued to Sardar Arjun Singh, proprietor of M/s. Ishwar Singh and Sons, was valid in law ?

6. It was submitted before us on behalf of the revenue by Sri R.K. Gulati that since for

the year under consideration the assessment could have been made by March 31, 1968, the return filed by the assessee on September 29, 1967, should be treated as a return filed under Section 139(4)of the Act and the assessment made on its basis was perfectly valid in law. Reliance was placed in support of this contention on the decision of the Supreme Court in CIT v. S. Raman Chettiar : [1965]55ITR630(SC) . In that case, the assessee, an HUF, had not filed any return for the assessment years 1944-45 and 1945-46. On April 3, 1948, the ITO issued notice under Section 34 of the Indian I.T. Act, 1922, for both the assessment years. At that time it was not necessary to obtain the sanction of the Commissioner and none was obtained. For the assessment year 1944-45, the assessee filed a return on September 4, 1948, showing an income of Rs. 4,053 which was below the HUF taxable limit of Rs. 7,200. The ITO hence dropped the proceedings for that year. For the assessment year 1945-46 also, the assessee filed a return and the ITO passed an order on October 27, 1950, determining the net taxable income at Rs. 1,20,603. In second appeal, the Appellate Tribunal held that out of the profits of Rs. 79,760 arising from the sale of certain properties, Rs. 33,000 was assessable in the assessment year 1944-45 and it was observed that the ITO was at liberty to take such action as he might be advised about that liability. This order was passed on November 19, 1952, and after having obtained the sanction of the Commissioner, the ITO issued a notice under p. 34 for the assessment year 1944-45 on February 27, 1953. The validity of that notice was challenged. That contention was repelled by the revenue authorities as also by the Appellate Tribunal. On a reference, the High Court of Madras took the view that notwithstanding that the return filed by the assessee on September 4, 1948, was the result of an invalid notice, the return itself could not be ignored or disregarded by the department and the department could not issue a further notice under Section 34(1)(a) on the assumption that there had been an omission or failure on the part of the assessee to make a return of his income under Section 22. There was an appeal by special leave filed before the Supreme Court which confirmed the view taken by the High Court. The ratio laid down by the Supreme Court was (p. 636);

' We think that some confusion has crept into this branch of the income-tax law by the use of the words 'voluntary return' and a 'non-voluntary return'. Section 23(3) does not use this expression and whatever the impelling cause or motive, if a return otherwise valid is filed by an assessee before the receipt of a valid notice under Section 34, it is to be treated as a return within Section 22(3), for, it falls within the language of the sub-section.'

7. The reason given by the Supreme Court was that Section 22(3) permits an assessee to furnish a return at any time before the assessment is made. By virtue of Section 34(3), as it stood in 1949, assessment could have been made at least up to March 31, 1949, if the return was valid. Therefore, the returnmust be filed before the time mentioned in Section 34(3) and this condition was satisfied in this case.

8. On behalf of the assessee, on the contrary, our attention was invited to another decision of the Supreme Court, on which the Appellate Tribunal has also placed reliance, rendered in CIT v. K. Adinarayana Murthy : [1967]65ITR607(SC) . In that case the facts briefly stated were that for the assessment year 1949-50, the assessee, an HUF, submitted a return in response to a notice sent to him. The ITO computed the income at Rs. 2,429 which was below the taxable limit and the assessee was declared not liable to pay income-tax. Subsequently, on information received that the assessee had earned large profits in business as a broker for the Government, the ITO issued a notice under Section 34 of the Act of 1922 on March 22, 1957. Pursuant to

that notice the assessee made a return on April 30, 1957. Prior to the issue of that notice the ITO had, in the assessment for 1954-55, taken the view that the correct status of the assessee was not HUF but was individual and hence the aforesaid notice was issued to the assessee in the status of an individual. Before the assessment could be made, in the proceedings taken under this notice, the AAC, in the appeal for the assessment year 1954-55, accepted the assessee's contention and held that the status of the assessee was that of an HUF and not of an individual. Thereafter, the ITO issued a fresh notice under Section 34 on February 20,1958, and a return was filed in pursuance of the same and the assessment was ultimately made on the assessee in the status of HUF. On appeal the AAC held that no notice could be issued after the expiry of eight years from the close of the previous year and the proceedings were hence invalid. On further appeal by the department, the Appellate Tribunal overruled that view. From the side of the assessee it was also contended before the Appellate Tribunal that the second notice dated February 20, 1958, was bad in law since a return had already been filed and the assessment was made on the basis of that notice. The Appellate Tribunal took the view that the return filed by the assessee in response to the first notice was not a valid return and the ITO was not bound to act upon it and that the assessment made under the second notice was legally valid. At the instance of the assessee the Appellate Tribunal stated a case to the High Court on the question whether the assessment in pursuance of the second notice issued on February 20, 1958, was a valid assessment? The High Court answered the question in favour of the assessee. On appeal, the Supreme Court took a different view. It would be seen that the question which was presented for determination was, whether it was competent to the ITO to issue the second notice dated February 20, 1958, and continue proceedings thereon ignoring the return already filed by the assesseein pursuance of the first notice under that section. The Supreme Court did not agree with the department's contention and held thus (p. 610):

' The Income-tax Officer could not have validly acted on the return filed by the assessee in the status of ' Hindu undivided family ' and any assessment made by the Income-tax Officer on such return would have been invalid in law because the notice under Section 34 had been issued in the status of 'individual' and sanction of the Commissioner for the issue of a notice under Section 34 was also obtained on that basis. We, therefore, consider that the Income-tax Officer was entitled to ignore the return filed by the assessee as non est in law. '

9. Ultimately the view taken was that the proceeding taken under the first notice was invalid and ultra vires and the ITO was legally justified in ignoring the first notice and the return filed by the assessee in response to that notice and consequently the assessment made in pursuance of the second notice was a valid assessment.

10. It would be seen that there is an apparent conflict in these two decisions. We do not think that we should go into the question as to which of these two decisions we should follow or that there is any distinguishing feature in the facts of either of these cases when compared with the facts of the instant case. For the purpose of the present case suffice it to say that this contention was not urged on behalf of the revenue before the Tribunal and hence we do not think that we should express any opinion on it. We, therefore, do not entertain this contention. On the facts as found by the Tribunal it is clear that the notice under Section 148 was issued to an entity which was, as a matter of fact, non-existent and was at any rate different from the entity which filed the return in response to that notice. The notice had been issued to Sardar Arjun Singh, individual, and the return was filed by Sardar Sampuran Singh,

karta of his HUF. The two are absolutely distinct entities in law, as also, as a matter of fact, and thus a valid assessment could not be made on the assessee, HUF, as no notice had been issued to it under Section 148 of the Act. We have already indicated above that the issue of notice under Section 148(1) is the condition precedent to the validity of an assessment under Section 147. It is a jurisdictional issue and unless such a notice is issued the ITO does not get jurisdiction to make an assessment on a particular assessee. In this view of the matter, in our opinion, the Appellate Tribunal has been right in holding that the assessment in question was not valid in law.

11. We, therefore, answer the question in the affirmative, in favour of the assesssee and against the department. The respondent-assessee is entitled to costs which we assess at Rs. 200.