iqbal Singh Atwal Vs. Commissioner of Income-tax

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Court : Kolkata

Decided On : Dec-07-1982

Reported in : (1983)34CTR(Cal)179,[1984]147ITR599(Cal)

Judge : Sabyasachi Mukharji and ;Suhas Chandra Sen, JJ.

Acts : Income Tax Act, 1961 - Section 148

Appeal No. : Income-tax Reference No. 517 of 1979

Appellant : iqbal Singh Atwal

Respondent : Commissioner of Income-tax

Advocate for Def. : A.C. Maitra and ;P.L. Shome, Advs.

Advocate for Pet/Ap. : R.N. Bajoria, ;Dilip Dhar and ;D. Pal, Advs.

Judgement :

Suhas Chandra Sen, J.

1. The facts of the case are as follows :

2. The year of assessment involved is 1962-63 for which the previous year ended on December 31, 1961. During the year, the assessee, being a partner, had share income from the- firm of M/s. G.S. Atwal & Co. of Asansol. According to the ITO, the assessee had not, for the year under consideration, filed any return. He, accordingly, issued notice to him under Section 148 of the Act to file the return for the said year for making the assessment. The said notice is dated January 22, 1970. The assessee by his letter dated February 4, 1970, in reply to the said notice under Section 148 of the Act, informed the ITO that the duplicate return filed by him for that year on November 1, 1969, may be treated as a return filed by him in response to the said notice for the said year. The ITO, after issuing notice under Section 143 of the Act, computed the total income of the assessee for the year at Rs. 1,55,875. It may be mentioned that the ITO in the assessment order for the said year had rejected the plea of the assessee that he had filed the return for that year on May 10, 1963 (?). According to him (ITO), there was no material or evidence forthcoming fr6m the assessee to prove that fact. The ITO had also noticed that for the year the assessee had filed a duplicate return dated November 1, 1969, and that there was no evidence to prove that the assessee had actually filed any return before November 1, 1969.

3. Aggrieved by the said assessment, the assessee brought the matter by way of appeal before the AAC of I.T., ' A ' Range, Asansol. The AAC in his appellate order for

that year agreed with the ITO that the assessee had not filed any return on May 10, 1965(?). He has further held that pursuant to the stand taken by the assessee in response to the notice served on him under Section 148 in his letter dated February 4, 1970, to treat the duplicate return of November 1, 1969, to be the return for the year under consideration, it formed a valid basis in law for the completion of the assessment for that year.

4. On further appeal, the Tribunal observed :

' May be that the return if filed on November 1, 1969, is invalid, not having been filed within a period of 4 years as provided in Section 28(4) of the 1922 Act/139(4) of the Act as held by the Allahabad High Court in Smt. Parbati Devi v. CIT : [1970]75ITR625(All) . That decision is of no application in the present case, firstly, because the ITO has not accepted that-the said returns were filed by the assessee on November 1, 1969. Furthermore, the assessments for the years under consideration are not being made on the basis of the returns dated November 1, 1969, alleged to have been filed by the assessee. The assessments here are being completed on the basis of the notices issued by the ITO to the assessee for the years under consideration under Section 148 of the Act calling upon him to file the returns. Pursuant thereto, the assessee had intimated the ITO by his letter that the duplicate returns alleged to have been filed on November 1, 1969, for that year under consideration be treated as returns for the years under consideration. As such, those returns are the returns filed by the assessee for the years under consideration pursuant to the said notice under Section 148 of the Act. The assessments made by the ITO on these returns are valid as laid down by the Madras High Court in K.S. Ratnaswami v. Addl. ITO : [1963]48ITR568(Mad) . Therein, the headnote is as follows :

' If the assessee files a return on any date before the expiry of the four years from the end of the assessment year, before an assessment has been made by the Department, that return would be a valid return and it would not be open to the Department to start proceedings under Section 34 of the Act on the ground that no return had been filed.

A return filed after the expiry of the four year period is not a return which can be properly within the scope of Section 22(3) of the Act and the Department would be entitled to ignore such return and take proceedings under Section 34 of the Act. But if notices under Section 34 were issued and the petitioner was called upon to submit returns in respect of such years, but he did not submit any fresh returns and requested that the returns filed by him already might be deemed to be returns relevant to the Section 34 proceedings : Held, that the assessee was competent to do so and the Department's further action on the original return as the return submitted under Section 34 is not vitiated in any manner. If with a valid return filed by the assessee before it, the Department fails to complete the assessment within the period of four years, the Department would lose the right to send a notice under Section 34(1) of the Act.'

5. This decision, in our opinion, is on all fours. We, therefore, uphold the impugned orders of the AAC that the assessments of the assessee for the years under consideration had been validly reopened and completed. As already stated, there is no dispute in these appeals as to the quantum of the total income of the assessee determined for the years under consideration.

6. The following question of law has been referred to us by the Tribunal under Section 256(1) of the I.T. Act, 1961 :

' Whether, on the facts and in the circumstances of the case; the assessment of the assessee for the year under consideration on the basis of the assessee's letter dated February 4, 1970, that the duplicate return filed on November 1, 1969, be treated as a return pursuant to the notice under Section 148 of the I.T. Act, 1961, is valid and in accordance with law '

7. In our view, the question raised in this reference has been correctly answered by the Tribunal. The Madras High Court had an occasion to go into the question in the case of K.S. Ratnaswami v. Addl. ITO : [1963]48ITR568(Mad) . In view of the principles laid down in that decision, the question is answered in the affirmative and in favour of the Revenue.

8. In the facts and circumstances of the case, there will be no order as to costs.

Sabyasachi Mukharji, J.

9. I agree.