

(2001) 07 P&H CK 0186

High Court Of Punjab And Haryana At Chandigarh

Case No: Income-tax Appeal No. 115 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Usha Mathur

RESPONDENT

Date of Decision: July 24, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 143, 143(1), 147, 148, 260A

Citation: (2001) 171 CTR 308 : (2001) 252 ITR 179 : (2001) 119 TAXMAN 439

Hon'ble Judges: Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: R.P. Sawhney and Rajesh Bindal, for the Appellant; B.S. Gupta, Senior Advocate and Sanjay Bansal, for the Respondent

Judgement

Jawahar Lal Gupta, J.

The Revenue has filed this appeal u/s 260A of the Income Tax Act, 1961. It claims that the following substantial questions of law arise in this case :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in :

(i) holding that the assessment u/s 147 based on the valuation report was void, in view of the fact that the assessment was framed for the first time u/s 143 and there was no regular/scrutiny assessment earlier and also in view of the facts that the provisions of Section 147 have been amended with effect from April 1, 1989, which no longer requires failure of the assessee to disclose material facts as a precondition ?

(ii) deleting the addition of Rs. 68,518 even when the question regarding adequacy of profits was never examined earlier, thus, making it factually incorrect to say that the issue should (be) concluded, and even after the amended law specifically authorising the Assessing Officer in Section 147 to examine any issue where income

was not correctly assessed ?"

2. A few facts may be noticed.

3. The assessee derives income from job work and interest. She filed her return of income for the assessment year 1989-90. The assessment was completed u/s 143(1).

4. The assessee along with her husband constructed a house No. 28, Sector 14, Faridabad. She held a share of 50 per cent. in the property. During the assessment proceedings in the case of the assessee's husband, the Assessing Officer referred the matter to the valuation cell. On the basis of the report, certain additions were made in the cost of construction. As a result, an addition of Rs. 10,705 was made "in the hands of the assessee's husband, Shri B. C. Mathur, on account of investment in the construction of house". On the basis of the valuation report, the Assessing Officer issued notice u/s 148 to the assessee and reopened her case.

5. The assessee's husband challenged the action of the Assessing Officer in making addition in his income. Finally, vide order dated October 18, 1993, the Deputy Commissioner of Income Tax (Appeals) accepted the contention of the assessee's husband. The Revenue did not challenge that order.

6. In the present case, the assessee challenged the validity of the order reopening her assessment and also the addition made to her income on account of the cost of construction. Her appeal was dismissed by the Commissioner of Income Tax. Aggrieved by the order, the assessee filed an appeal before the Tribunal. After consideration of the matter, the assessee's claim has been accepted. It has been found that "the valuation report cannot be made the basis of reopening the assessment which has already been finalised . . ."

7. The assessee had another grievance. An addition had been made to her income relating to the sale of jewellery. Her appeal against that part of the order passed by the Assessing Officer had been dismissed by the Commissioner. Even this addition was challenged. After consideration of the matter, the Tribunal found that "the assessee has already returned her income on the basis of the previous history as well as by giving profit and loss account and balance-sheet, which was accepted by the Department. Having accepted that, the Department while reopening the assessment u/s 147 cannot validly reassess the income which will amount to a review of the order". Thus, the addition was not sustained.

8. Aggrieved by the order, the Revenue has filed the present appeal.

9. Mr. R. P. Sawhney has contended that the assessment had been validly reopened. The addition was warranted by the record. Consequently, the two questions as raised by the Revenue arise in the present case.

10. We are unable to accept this contention. The Tribunal has examined the whole case at length. A detailed order running into 12 pages has been passed. Each finding

has been recorded on the basis of the evidence on the file. No error in the findings of fact recorded by the Tribunal has been pointed out. Consequently, we do not find that any substantial question of law arises for the consideration of this court in this appeal.

11. There is another aspect of the matter. Even if the contention raised by the Revenue were to be gone into, the ultimate tax liability would be of a very small amount. Keeping in view the fact that the financial implications are of a very trivial nature, we do not find any ground to interfere u/s 260A of the Income Tax Act, 1961.

12. No other point was raised.

13. In view of the above, the appeal is dismissed. No costs.