Metal Products of India Vs Commissioner of Income Tax

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 23, 2006

Acts Referred: Income Tax Act, 1961 â€" Section 143, 148

Citation: (2007) 293 ITR 618 : (2006) 156 TAXMAN 52

Hon'ble Judges: Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench: Full Bench

Advocate: Pankaj Jain, for the Appellant;

Judgement

1. This order will dispose of ITA Nos. 16 to 21 of 2005 against a common impugned order dated 18-6-2004, passed by the Income Tax

Appellate Tribunal, Chandigarh Bench A, Chandigarh (the Tribunal) in ITA Nos. 205 to 210/Chandi/2004, for the assessment years 1993-94 to

1998-99. The appellant has also framed similar substantial questions of law by filing separate appeals for separate assessment years. The facts are

being taken from ITA No. 16 of 2005. The substantial questions of law sought to be raised are as under :

(i) (a) That whether under the facts and circumstances of the case the Assessing Authority is justified in taking the action u/s 148 and making

reassessment by changing the head of the income from business income to rental income based on the change of opinion and without bringing any

material or evidence to justify the issue of notice u/s 148 and there being interpretation of law and hence the proceedings are unjurisdictional and

need to be quashed.

(b) That under the facts and circumstances of case the Commissioner (Appeals) and Tribunal were justified in not adjudicating upon the issue of

notice u/s 148.

(ii) That whether the Tribunal was justified in upholding the reassessment u/s 148 and reversing the decision of the Commissioner (Appeals) by

holding that hiring of commercial assets being building and plant and machinery is an income from property and from other sources and not the

business income under the facts and circumstances of the case.

(iii) That whether under the facts and circumstances of the case the Tribunal is justified not to have dealt with the various judgments relied upon by

the respondents to adjudicate upon the issue on merits and hence the order is perverse and not a speaking order and against the judicial duty of the

quasi-judicial authority to be performed.

(iv) That whether under the facts and circumstances of the case the Tribunal was justified in not taking into consideration the findings of the Tribunal

for the assessment years 1980-81 to 1983-84 in ITA Nos. 748/Chd/92 to 751/Chd/92 and placing the onus on the appellant to prove that he had

the intention to start the business and completely taking a divergent opinion which is bad in law.

(v) That whether under the facts and circumstances of the case the Tribunal was justified in law in treating the income of Rs. 1,73,894 as rental

income in the reassessment proceedings against the business income claimed by the appellant and having assessed as such for all the impugned

years thereby disallowing the expenditure of Rs. 1,27,020.

2. The assessee filed his return of income on 16-9-1993 declaring an income of Rs. 26,400 which was later on revised on 31-1-1994 declaring

the income at Rs. 4,800 only. Though, the assessee derived income of Rs. 1,73,894 from renting out building and machinery against which he

claimed expenditure of Rs. 1,27,020 including remuneration paid to partners but the same was being shown as income from business. Since in the

opinion of the assessing officer income chargeable to tax as escaped assessment, notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred

to as the Act) was issued to the assessee. In response to the notice, the assessee reiterated his earlier return filed declaring the income at Rs.

4,800. After considering the contention raised by the assessee, the assessing officer taxed entire receipt of the assessee on account of rent of

building and machinery as income from house property and after granting statutorily available deductions demand of tax was raised.

3. Aggrieved against the order of assessment, the assessee went in appeal before the Commissioner (Appeals) (hereinafter referred to as the

Commissioner (Appeals)) who relying upon the order dated 30-7-2001 passed in the case of the assessee by the Tribunal for the assessment

years 1980-81 to 1983-84, directed that the income of the assessee is to be treated as income from the business and not from the house property.

4. While accepting the appeal, the Commissioner (Appeals) observed that the assessing officer had not brought on record any evidence/facts to

prove that the business has really been closed down and not suspended due to slump in the market, While recording this finding the Commissioner

(Appeals) lost sight of the fact that admittedly the business had been discontinued by the assessee since 1980-81.

5. Aggrieved against this order of Commissioner (Appeals) the revenue went in appeal before the Tribunal which was accepted vide order dated

18-6-2004. While accepting the appeal, the Tribunal recorded the following findings in para 6 of the order :

6. We have heard the rival submissions, perused the orders of the tax authorities and gone through the material available on record as well as case

law and the earlier order of the Tribunal in the case of the assessee. Whereas the assessee has relied on order of the Tribunal, Id. DR has

subsequently raised a point as to the intention of the assessee of enjoying income in the form of rental only and not as business income. We find

that facts in assessment years 1980-81 to 1983-84 were somewhat different as the assessee had claimed its closure of business only some time

ago and there could be an intention of the assessee to restart its business and the assessee was given benefit of such intention as the business had

closed down only some time ago. But herein these cases we find that the assessee could not restart its business closed years back and it is also a

fact that the assessee ultimately sold the land. Observing the above facts and circumstances of the case, we find that at no point of time during such

a long gap in closure of business the assessee was able to prove its intention to restart its business. We have also considered the submissions of

learned authorised representative that some work could not be started, as managing partner was ill. However, the contention of the assessee does

not carry much strength due to the fact that the business was never started after its closer and ultimately the land was sold without being used in

business. We, therefore, considering the facts of the case, are of the opinion that the ratio of the decision in the case of Scindia Potteries (supra) is

well applicable to the present case as the intention of the assessee to restart its business was not at all in existence despite lapse of 17 years from

its closure and the assessing officer was left with no option but to treat the income as income from house property and the Commissioner

(Appeals) was not justified in deleting the finding of the assessing officer based on the finding of the Tribunal almost ten years back in almost

different circumstances. We, therefore, restore the orders of the assessing officer in this regard and cancel that of the Commissioner (Appeals).

6. The learned counsel for the assessee reiterated submissions which were made before the authorities to the effect that the issue in the present

case already stood settled by the earlier order of the Tribunal passed in favour of the assessee and there being no change in the facts and in the

circumstances, the same should have been followed by the Tribunal and further that the closure of the business was temporary and the assessee still

had intention to restart the same. Both these issues have been dealt with in detailed by the Tribunal. While deciding the appeals for the assessment

years 1980-81 to 1983-84. The Tribunal had given the benefit of intention of the assessee to restart the business, which according to him, had to

be closed temporarily at that time because of depression in the market, but as the facts speak for themselves, that closed business was not started

even after lapse of 17 years, Not only this even this also could not be disputed by the counsel for the assessee that unit was ultimately sold without

business having been restarted. The reliance on the order passed by the Tribunal in the case of the assessee earlier was correctly found to be

misplaced.

7. Counsel for the appellant relied upon Commissioner of Income Tax, Lucknow Vs. Vikram Cotton Mills Ltd., , Commissioner of Income Tax

Vs. G.V. Rattaiah and Co., and Commissioner of Income Tax Vs. Golden Engineering Works, to support his arguments.

8. We have perused these judgments. In our view these judgments do not in any way support the case of the assessee and rather go against the

assessee. In Vikram Cotton Mills Ltd.s case (supra) the one of the finding of the Tribunal was :

At the end of the lease period, the assessee-company did not dismantle the assets and did not sell away or otherwise dispose of the assets.""(p.

600)

9. Further, Honble the Supreme Court of India in the above case held that it is predominantly a matter of intention. Intention is an inference to be

drawn from the relevant facts and if a plausible conclusion has been drawn on the basis of facts found no objection can be taken. Keeping in view

the findings of facts recorded by the Tribunal that there was intention of restart business by the assessee in the above referred case, the income

from letting out of the machinery on hiring for a temporary period was held to be income from the business.

10. However, in the facts and circumstances of the case in hand, as found by the Tribunal, it is clear that the intention of the assessee was not to

restart the business which was closed about 17 years back. Closure of the business ended ultimately with the sale of land etc.

11. In the case of G.V. Rattaiah & Co. (supra), the Andhra Pradesh High Court while answering the questions referred to the court against the

revenue, held that the finding of the Tribunal could not be lightly interfered with unless the court finds the finding ex facie erroneous and not

supported by any evidence. Further, in the above referred case, the income from leasing out of assets to traders by the assessee was held to be

income from business since the assessee was continuing in the business of buying and selling tobacco and also earning commission by purchasing

tobacco for others because it was found as a fact by the Tribunal in the above referred case that there was no intention to abandon the business.

This judgment also cannot be held to be taking a view in favour of the appellant, keeping in view the findings recorded by the Tribunal.

12. A far as the judgment of this court in Golden Engineering Works case, (supra), while rejecting the application of the revenue seeking reference

of a question of law to this court for opinion, relying upon earlier judgment of this court in Commissioner of Income Tax Vs. Anand Rubber and

Plastics (P.) Ltd., this court held as under :

Counsel appearing for the revenue argued that in Anand Rubber & Plastics (P) Ltds case (1998) 178 ITR 301, what was held by this court was

that the question whether the rent received is assessable income from property or business income, would depend on the facts and circumstances

of each case as what has to be seen is whether the asset is being exploited commercially or whether it is being let out for the purpose of enjoying

rent. The distinction between the two being narrow, the same would depend on the peculiar facts of each case; it was further argued by him that in

this case, the Tribunal has not recorded any finding that the premises were not let out for being exploited commercially and, therefore, a question of

law does arise from the order of the Tribunal.

It is true that the Tribunal has not recorded any positive finding on this point but while dismissing the appeal, it has upheld the finding recorded by

the first appellate authority that the let out promises were leased out for the commercial purpose with a motive to reduce the burden of expenditure

and to reduce the loss. It would have been better if the Tribunal had recorded its own positive finding but on the facts we find that the assessee had

shifted its premises from the old place to the new place due to commercial expediency and let out the old premises with a motive to reduce the

burden of expenditure which it incurred for shifting to the new premises. The finding recorded by the first appellate authority which was upheld by

the Tribunal to the effect that the old premises were let out for commercial exploitation to reduce the burden of expenditure and to reduce the loss,

is a finding of fact, and falls in line with the law laid down by this court in Commissioner of Income Tax Vs. Anand Rubber and Plastics (P.) Ltd.,

and, therefore, no referable question of law arises from the order of the Tribunal. Dismissed."" (p. 776)

13. Keeping in view our above discussions and findings of the Tribunal, recorded on appreciation of evidence, to the effect that intention of the

assessee to restart the business was not in existence, we do not find that any illegality has been committed by the Tribunal by passing the impugned

order. Findings of fact recorded by the Tribunal do not call for any interference by this court.

14. The counsel for the assessee has raised another argument that the proceedings u/s 148 of the Act are bad. Though this issue was not

considered by the Tribunal but the counsel for the assessee stated that this was argued before the Tribunal. We have considered even this issue

raised by the assessee and are of the view that the same is without any merit. There is no weight in the arguments that once the returns were

processed u/s 143(1) of the Act, proceedings u/s 148 of the Act could not be initiated. If the ingredients of section 148 of the Act are satisfied,

there is no bar to initiation of proceedings u/s 148 of the Act. In the present case the counsel could not point out any illegality in the exercise of

power u/s 148 of the Act.

15. In view of our above discussions, we do not find that any substantial question of law arise in the above appeals.

16. Appeals are, accordingly, dismissed.