

(1999) 10 AHC CK 0153

Allahabad High Court

Case No: Income-tax Reference No. 1 of 1982 11 October 1999 A.Y. 1965-66 to 1967-68

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

OMRAO INDUSTRIAL
CORPORATION (P) LTD.

RESPONDENT

Date of Decision: Oct. 11, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 143, 147, 148, 256

Citation: (2001) 246 ITR 346

Hon'ble Judges: S. Rafat Alam, J; M.C. Agarwal, J

Bench: Full Bench

Advocate: Prahash Krishna, for the Revenue and None appeared, for the Assessee, for the Appellant;

Judgement

The Income Tax Appellate Tribunal, Allahabad, has u/s 256(1) of the Income Tax Act, 1961, referred the following question for the opinion of this

court :

Whether, in the course of making reassessment after having validly initiated reassessment proceedings u/s 147(a) of the Income Tax Act, 1961, in

respect of certain items of escaped income, the Income Tax Officer can also add/disallow in computing the total income of the assessee certain

other items which were allowed by him at the time of framing original assessment u/s 143(3) of the Income Tax Act, 1961 ?

2. We have heard Shri Prakash Krishna, learned counsel for the Commissioner. No one appeared on behalf of the respondent.

The assessee's assessment was reopened u/s 147(a) on the ground that the ammonia compressor on which depreciation had been allowed was

not actually installed. While framing the assessment u/s 148, the assessing officer, however, made several other disallowances from expenditure that was already allowed in the original assessment. This was contested by the assessee and the Tribunal observed as under :

But then while making the assessment the Income Tax Officer almost made a review of the original assessment and started disallowing various amounts which, according to him, should not have been allowed by the Income Tax Officer making the original assessment. It is not the case of the Income Tax Officer that such allowances were made on account of non-disclosure of any facts by the assessee. The disallowances were made by the subsequent officer only because he was of a different opinion.

The Tribunal held that in reassessment proceedings, this could not be done.

At the instance of the Commissioner, the aforesaid question that is stated to arise out of the Tribunal's order dated 2-1-1981. passed in I. T.R.

Nos. 526, 686 and 687 and Cross-objections Nos. 121 and 122 of 1980 for the assessment years 1965-66, 1966-67 and 1967-68 has been referred.

3. We find that the scope of the powers of the Income Tax Officer and making a reassessment u/s 147(a) has been settled by the Supreme Court in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , where the Supreme Court held that though the Income Tax Officer may bring to charge items of income which had escaped assessment other than or in addition to the item or items which have led to the issuance of the notice u/s 148, the Income Tax Officer cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject-matter of proceedings u/s 147 and a matter not agitated in the concluded original assessment proceedings cannot be permitted to be agitated in such reassessment proceedings unless relatable to the item sought to be taxed as escaped income. In our view, therefore, for the reasons that have been recorded by the Tribunal, the Income Tax Officer could not add/disallow other items which were allowed by him in the original assessment merely by taking a different view.

We, therefore, answer the aforesaid question in the negative, i.e., in favour of the respondent and against the Commissioner.