Commissioner of Income Tax Vs Baid Credit Portfolio (P) Ltd.

Court: Delhi High Court

Date of Decision: Oct. 19, 2010

Acts Referred: Income Tax Act, 1961 â€" Section 139, 142(1), 143, 143(1), 143(2)

Citation: (2011) 241 CTR 58

Hon'ble Judges: Suresh Kait, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Prem Lata Bansal, for the Appellant; Rakesh Gupta and Shashank Agarwal, for the Respondent

Judgement

A.K. Sikri, J.
This appeal was admitted on the following substantial questions of law:

(i) Whether the Tribunal was in the facts and circumstances of the case correct in holding that the AO has expanded the scope of provisions of

Section 143(2)(i) of the Act which is not in accordance with law and thus the net addition of Rs. 1.89 lac made as income from house property is

not sustainable ?

(ii) Whether the learned Tribunal has in the facts and circumstances of the case erred in holding that claims relating to depreciation and maintenance

charges were not specified in the notice since the disallowance of these claims was consequential to the finding that the exemption claimed by the

Assessee in view of Section 22 was not available to the Assessee ?

2. This question arises in the following factual background. The Respondent/Assessee herein filed his return for the asst. yr. 2001-02 declaring loss

of Rs. 39,278. This return of income was processed u/s 143(1) of the IT Act; thereafter on 28th Oct., 2002 the AO issue notice u/s 143(2)(i) of

the Act. Since it is the validity of this notice which is the matter of consideration before us, we deem it proper to reproduce the said notice in its

entirety:

Notice u/s 143(2)(i) of the IT Act, 1961

Office of the ITO,

Ward 2(3), New Delhi-110002

To

Baid Credit & Portfolio (P) Ltd.

Dt. 28th Oct., 2002

4697/3, Ansari Road,

21 A, Darya Ganj, N. Delhi.

Sir/Madam,

I have perused the return of income made by you on 30th Oct., 2001 for the asst. yr. 2001-02. On going through the said return and its

enclosures, I have reason to believe that the below mentioned claims of loss exemption, deduction, allowance or relief are inadmissible.

1. Filing fee Rs. 6,400

2. Income from house property not shown

In connection with the above, you are hereby required to attend my office on 14th Nov., 2002 at 11:45 a.m. either in person or by a

representative duly authorized by you in this behalf to produce or cause to be produced at the said time the following evidence/particulars in

support of your claim.

1. Evidence of payment.

2. Evidence of use of property.

On the above-said date and time, you are also hereby required to furnish such other evidence/particulars on which you may rely in support of the

above-said claims. Please note that in case of failure on your part to comply with the requirements of this notice the matter will be decided on

merits.

Yours faithfully,

(AO)

(S.K. Arora)

ITO,

Ward 2 (3), New Delhi

3. After eliciting information on the basis of said notice the AO completed assessment u/s 143(3) of the Act at Rs. 11,42,340; the Assessee

preferred appeal there against challenging the validity of the notice issued u/s 143(2)(i) of the Act. This appeal, however, was dismissed by the

CIT(A). In the further appeal of the Tribunal, the Assessee has been successful in as much as said appeal is allowed by the Tribunal holding that

assessment of jurisdiction u/s 143(2)(i) of the Act for the purposes stated in the notice was not proper and maintainable. The Tribunal accordingly

set aside the notice as well as assessment made by the AO. In these circumstances, the Revenue preferred the present appeal challenging the

judgment of the Tribunal on which aforesaid two questions were formulated for consideration.

4. Perusal of the two questions would show that they are interconnected in as much as in the notice issued u/s 143(2)(i) of the Act the AO had

claimed that he has reasons to believe that "income from house property not shown". The reason given by the Tribunal in nullifying the aforesaid

notice was that it is not covered by the provisions of Section 143(2)(i) of the Act and notice for that purpose could not have been issued. For

appreciating the controversy we reproduce the provision of Section 143(2)(i) of the Act.

143. Assessment--(2) Where a return has been furnished u/s 139, or in response to a notice under Sub-section (1) of Section 142, the AO shall,--

(i) Where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the

Assessee a notice specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the Assessee

may rely, in support of such claim;

(ii) Notwithstanding anything contained in Clause (i), if he considers it necessary or expedient to ensure that the Assessee has not understated the

income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the Assessee a notice requiring him, on a date to

be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the Assessee may rely in support of

the return.

5. Perusal of the aforesaid provisions shows that the AO has competently issued notice either under Clause (i) of Sub-section (2) of Section 143

or under Clause (ii) thereof. Insofar as Clause (i) is concerned, the AO gets jurisdiction to issue the notice on the fulfilment of the following

conditions:

(i) The AO has "reason to believe" that certain claims, specified therein, made by the Assessee in the return are inadmissible.

(ii) The claims made should be of the nature of the claims of loss, exemption, deduction, allowance or relief.

6. Thus, it is incumbent upon the AO to satisfy himself, before issuing the notice under this provision that the Assessee has made a claim in respect

of loss, exemption, deduction, allowance or relief in the return filed by him and he has reason to believe that such loss is inadmissible. It is on

satisfaction of these conditions that the notice can be issued under this provision to the Assessee to show cause as to why such claim preferred by

the Assessee be not rejected.

7. In the present case the Tribunal recorded that there was no claim made by the Assessee with regard to income from house property or the

deduction related thereto. In the absence of any such claim, the Tribunal opined, there was no question of assuming the jurisdiction on the basis

that such a claim was inadmissible. The relevant portion of the decision of the Tribunal in this regard reads as under:

A conjoint reading of the above two provisions shows that an AO acting u/s 143(2)(i) has a limited scope and cannot travel beyond the return

furnished by the Assessee. Firstly, the AO should have a reason to believe that the Assessee has claimed any inadmissible loss, exemption,

deduction, allowance or relief.

Obviously, when the allegation is of a wrongful claim by the Assessee, the same has to emanate from the return furnished only. Further, in order to

verify such alleged wrongful claim the AO is under an obligation to specify the particulars of such claim in the notice to be served by him u/s 143(2)

(i) of the Act. Still further, after verifying the particulars furnished by the Assessee and after hearing the Assessee, the AO can reject or allow the

claim, but such claim must have been specified in the notice. In other words, the alleged wrongful claim sought to be verified by the AO must be a

claim which is specified in the notice and the claim to be specified in the notice must emanate from the return furnished by the Assessee because it

is the claim of the Assessee which is sought to be verified.

Any item "of income, expenditure, allowance, deduction or relief in respect of which no claim is made by the Assessee, the same cannot find place

in the notice u/s 143(2)(i) of the Act and the same cannot be subjected to scrutiny under the said provision. If the AO does so, then he is

expanding the limited scope of Section 143(2)(i) of the Act. If he wants to do so, he is supposed to resort to the provisions of Section 143(2)(ii)

and issue notice there under.

8. Submission of Ms. Bansal learned Counsel appearing for the Revenue was that when the notice issued u/s 143(2)(i) if read in its entirety it

would clearly demonstrate that the assumption of jurisdiction by the AO was proper and valid. This submission is predicated on the later portion of

the said notice whereby the Assessee was directed to produce the evidence of particulars in support of his claim, inter alia, relating to evidence of

house property. She submitted that the Assessee had claimed depreciation in respect of property in question and in order to find out as to whether

the claim was proper and not. Property in question held by the Assessee was house for business purpose or not. In this line of argument she has

also referred to Section 22 of the Act which relates to income from house property. She argued that normally the annual value of the property is to

be treated as income which is to be taxed under head "Income from house property"; the only exception is that such an annual value of the

property would not be taxed under this head in case it is shown that the property was used for the purpose of any business or profession carried

on by the Assessee, the profits of which are chargeable to income tax. She thus submitted that it was but proper and necessary for the AO to call

for the information regarding the use of the said property.

9. It is difficult to digest the aforesaid arguments of the learned Counsel for the Appellant. As mentioned above provisions of Section 143(2)(i) can

be invoked only to the conditions stipulated therein and as emanated above are fulfilled. This would apply if there was a claim of "income from

house property" not only there was no such claim, even the notice itself accepts this fact as it states that the AO had reason to believe that "income

from house property not shown". No doubt the Assessee had claimed the depreciation in respect of the property belonging to the Assessee on the

premise that it was used for business purpose is that in case the AO wanted to come into the question and wanted to find out as to whether there

was any evidence of the use of said property or not proper course of action was to issue notice under Clause (i) [sic-Clauses. (ii)] of Sub-section

(2) of Section 143 of the Act. The contrast between the perusal would be amply clear from the reading thereof and has been rightly explained or

Tribunal is in consonance with the Department"s own Circular No. 8 of 27th Aug., 2002 ((2002) 178 CTR (St) 9) wherein the provisions of

Section 143, after insertion of Clause (i) therein are explained in the following manner:

59 Providing for assessment of income on limited issues u/s 143.--

59.1 Under the existing procedure of assessment laid down in Section 143 of the IT Act, the AO if he considers it necessary or expedient, issue a

notice under Sub-section (2) of Section 143 of the IT Act, requiring the Assessee to produce any evidence which he may rely on in support of the

return. Sub-section (3) provides that after hearing such evidence and after taking into account all relevant material which he has gathered, the AO

shall pass an order of assessment determining the total income or loss, and the sum payable or refundable to the Assessee.

59.2 Since a minuscule percentage of returns filed are taken up for scrutiny under the existing procedure, in order to evolve a mechanism which

can check wrong claims of deductions, allowances, relief, etc., and prevent leakage of revenue, the Finance Act, 2002 has introduced a concept of

assessment on limited issues in which, if an AO has reason to believe that an Assessee has made a claim of any loss, exemption, deduction,

allowance or relief which is inadmissible, he will issue a notice under the new Clause (i) of Sub-section (2) of Section 143. The notice should

specify the claim and call upon the Assessee to produce evidence and particulars in support thereof. After hearing such evidence and considering

such particulars, he will make an assessment of total income or loss under the Clause (i) of Sub-section (3) of Section 143, limiting himself to the

claims he had set out to verify. If he feels that the case requires further scrutiny on other issues, he will be free to issue a notice initiating

comprehensive scrutiny of the return, as is being done presently.

10. We thus answer the question was formulated against the Revenue and in favour of the Assessee leading to the dismissal of this appeal.

IT Appeal No. 1159 of 2005

Based on the assessment made by the AO, the officer has also initiated penalty as bad in law. Since the addition made by the AO itself is deleted

by the Tribunal and that order of Tribunal is upheld by us in IT Appeal No. 1120 of 2005, as a consequence thereof there could not have been

any penalty imposed upon the Assessee.

This appeal is, therefore, stands dismissed.