Commissioner of Income Tax Vs Ram Sankar Prasad

Court: Calcutta High Court

Date of Decision: Dec. 20, 1988

Acts Referred: Income Tax Act, 1961 â€" Section 144, 146, 147, 266(2)

Citation: (1989) 45 TAXMAN 282

Hon'ble Judges: J.N. Hore, J; Ajit K. Sengupta, J

Bench: Division Bench

Advocate: A.C. Moitra, for the Appellant;Chakraborty, for the Respondent

Judgement

Sengupta, J.
At the instance of the Commissioner West Bengal, the following question of law has been referred to this Court u/s 266(2) of

the income tax Act, 1961 for the assessment years 1956-56 and 1956-57 :

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding, in an appeal against the order of the

Appellate Assistant Commissioner setting aside the assessment order of the income tax Officer, that the addition made by the income tax Officer

was not justified and in that view directing deletion of the addition made in the already set aside assessment and whether the Tribunal acted beyond

its jurisdiction in giving such a direction ?

The facts leading to this reference are that the assessee is an individual carrying on business in the name of Binapani Engg. Works. He is also a

partner in two firms, viz., Howrah Iron & Scrap Co. and Bhagwandas Ramasankar.

2. The original assessment for the years 1955-56 and 1956-57 under appeal were completed at Rs. 21,635 and Rs. 30,311 respectively. In the

course of the assessment proceedings for the assessment year 1957-58 the ITO found that there was substantial increase in the capital account of

the assessee in the books of Howrah Iron & Scrap Co. The capital account of the assessee at the end of the accounting year relevant to the

assessment year 1964-55 showed a balance of Rs. 21,938 (in round figures) and it was increased to Rs. 1,41,477 at the end of the accounting

year relevant to the assessment year 1957-58. Accordingly, he submitted a report to the Commissioner containing proposal for reopening the

assessments for the years under consideration.

3. Subsequently he issued necessary notice for reassessment to the assessee. The assessee filed returns under protest. During the reassessment

proceedings, the ITO enquired of the assessee to explain the increase in the capital account in the books of Howrah Iron & Scrap Co. from Rs.

21,938 to Rs. 1,41,477. The ITO in this order dated 28-3-1968 made u/s 144/147 of the Act observed that the capital introduction was made

out of the assessee''s own undisclosed income and accordingly treated a sum of Rs. 1,19,639 (Rs. 1,41,477 minus Rs. 21,938) as the assessee''s

income from other sources. For the assessment year 1956-57, in his order dated 26-3-1968 after observing that the position remained the same

exactly as stated in detail in his assessment order for the assessment year 1955-56, the ITO once again treated Rs. 1,19,539 as the assessee''s

income from "other sources".

4. The assessee thereafter preferred appeals before the AAC and advanced various legal contentions and submitted that the assessments made by

the ITO were bad in law. The AAC in his consolidated order dated 5-11-1971 rejected all the submissions advanced by the assessee. Further,

the AAC was of opinion that the facts and circumstances were not properly investigated by the ITO in order to arrive as to which was the correct

year in which the entire amount of Rs. 1,19,539 should be assessed. Accordingly, he set aside the assessments for both the years under appeal

with a direction to the ITO for making fresh assessment.

5. Being aggrieved by the order of the AAC the assessee had come up in appeal before the Tribunal. The Tribunal allowed the appeal of the

assessee. The Tribunal held as follows :

We have carefully considered the submissions made by the learned representatives for the assessee as well as for the department and are of the

view that the Appellate Assistant Commissioner should have only deleted the additions made by the income tax Officer in the reassessment order.

The learned representative for the department is fully justified in submitting that as the assessee has not preferred an appeal against the order of the

income tax Officer u/s 146 of the income tax Act, 1961, he is precluded from agitating the point regarding the reopening of the proceedings u/s

147 of the 1961 Act. However, in our view, the entire reassessment made by the income tax Officer is nothing but a fishy enquiry about the

inclusion of an amount of Rs. 1,19,539. We use this expression because as stated above, the income tax Officer was not sure as to in which year

the aforesaid sum of Rs. 1,19,539 should be assessed. Further, the Appellate Assistant Commissioner has also observed :

"Thus, there is a third previous year also in the picture, viz., the previous year for the assessment year 1957-58."

It is also against all the provisions of the Act to tax the same income twice over in the two assessment years. Farther, the increase in the capital

account was noticed by the income tax Officer only at the end of the accounting year relevant to the assessment year 1957-58. It is, therefore,

very surprising as to why he deemed it fit to treat the said increase of Rs. 1,19,539 as the income of the asses-see for the assessment year other

than the assessment year 1957-58. However, as noted above, he treated the said sum of Rs. 1,19,539 as the income of the assessee not only for

the assessment year 1956-57 but for the assessment year 1955-56 as well. This is wholly incomprehensible. In this view of the matter, we set

aside the order of the Appellate Assistant Commissioner and delete the addition made by the income tax Officer made u/s 144/147 of the 1961

Act.

6. At the hearing Mr. Moitra, the learned counsel appearing for the Commissioner has contended that the Tribunal was not justified in setting aside

the order of the AAO who directed the ITO to make fresh assessment after proper enquiry.

The Tribunal set aside the order of the AAC should not deleted the addition made by the ITO made u/s 144/147 (sic).

7. The question before the Tribunal was whether the AAC had rightly set aside the orders of assessment for those years. The question was not

whether same income could be assessed for both the assessment years or not. The Tribunal did not come to a finding as to whether income in

question had been rightly included in either of two assessment years 1955-56 and 1956-57. It is not the case that the amount included in both the

assessment years was not liable to tax at all. The question was in which year it should be assessed to tax. Accordingly, the Tribunal should have

come to a finding as to whether the amount in question was assessable either for the assessment year 1955-56 or 1956-57. It is no doubt true that

the same income cannot be taxed twice. If the ITO did not decide the issue conclusively, it was for the Tribunal to redo a decision on the issue or

leave it to the ITO. Since the assessments were set aside the ITO was at liberty to decide the question afresh. In our view the Tribunal was not

right in deleting the addition solely on the ground that the same income was assessed in both the years.

8. For the reasons aforesaid we answer this question in the negative and in favour of the revenue.

Hore, J.

I agree.