(1994) 72 TAXMAN 375

Calcutta High Court

Case No: IT Reference No. 27 of 1991

Metal Import (P.) Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: May 7, 1993

Acts Referred:

- Income Tax Act, 1922 - Section 22(2), 34
- Income Tax Act, 1961 - Section 143(3), 147, 147(a), 148, 152(2)

Citation: (1994) 72 TAXMAN 375

Hon'ble Judges: Shyamal Kumar Sen, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Ajit K. Sengupta, J

1. In this reference u/s 256(2) of the income tax Act, 1961 ("the Act"), the following question of law has been referred to by the Tribunal:

Whether, the Tribunal is justified in law in holding that once the assessment was reopened and completed on 31st December, 1983, the original assessment order dated 28th November, 1978 did not exist and consequently the Commissioner (Appeals) did not have any jurisdiction to pass any order on the appeal preferred against the assessment order dated 28th November, 1978 completed u/s 143(3) of the Income-Act, 1961 for the assessment year 1977-78?

The facts giving rise to the question are that in the original assessment for the assessment year 1977-78 made u/s 143(3) of the Act, the ITO added a sum of Rs. 1,500 being the legal expenses and further disallowed the loss of Rs. 28,854 representing share of loss from partnership business with Industrial Plastic India Ltd. The carry-forward of the losses of earlier years was also disallowed, inter alia, on the ground that the provisions of section 79 of the Act are attracted. The said additions and dis-allowances were

challenged in appeal before the Commissioner (Appeals). The Commissioner (Appeals) deleted the addition of legal expenses of Rs. 1,500 and also directed the ITO to allow the carry-forward of losses of the previous years.

But meanwhile before the disposal of the appeal reassessment proceedings were initiated by issue of notice u/s 148, read with section 147(a) of the Act for the said assessment year on the ground that the income chargeable to tax for the said year had escaped assessment within the meaning of section 147(a). In pursuance of said notice, the assessee filed a return disclosing therein the total income at Rs. 40,620. The reassessment was completed u/s 143(3), read with section 148 and the taxable income was computed at Rs. 41,392 as against the return income of Rs. 40,620. The revenue was aggrieved by the order of the Commissioner (Appeals) on the appeal from the original assessment. According to the revenue, the original assessment became non-existent in the wake of the reassessment proceeding and, therefore, no appealable matter from such non-existent assessment could survive for decision by the Commissioner (Appeals). Thus, in the view of the revenue, the Commissioner (Appeals) did hot have any jurisdiction to adjudicate on the said appeal.

2. The matter was taken by the revenue to the Tribunal in second appeal raising therein the aforesaid contentions. The Tribunal by its order dated 8-8-1989 concluded that as the reassessment was made on 31-10-1983 the Commissioner (Appeals) was not justified in entertaining the appeal of the assessee which arose out of the original assessment order passed on 28-11 -1978. Thus, the contentions of the revenue succeeded before the Tribunal.

3. We have heard the rival contentions of the parties. The learned counsel for the revenue reiterated before us the same contention that once the reassessment proceeding is initiated, the original assessment gets effaced and the entire assessment becomes open at large. Therefore, the assessee''s grievance in the original assessment loses relevance and materiality and could not form the basis of an appeal. Therefore, there could be no question of giving relief to the assessee on an appeal from such nonexistent assessment. The Commissioner (Appeals) fell into error in not dismissing the appeal in limine. For this purpose reliance was placed on behalf of the revenue upon the decision of the Supreme Court in V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh,

4. Indeed, there is a passage in the said decision largely misunderstood. There has been much divergence in the reading and interpretation of the total purport and effect of the ultimate ratio therein. Much of mis-understanding of the said decision flows from the fact that certain passages have been lifted and read in isolation from the facts in the context of which the passages occur in the judgment. It is one principle of jurisprudence that the ratio of the decision includes the state of facts from which the decision arises. Divorced from facts, there is no ratio decidendi In that case, the assessee made investment in acquisition of a spinning mill for a sum of Rs. 54,731 but at the time of purchase there

were certain litigations between vendors'' sons and the vendor in respect of the mill. The final disposal of the said litigation resulted in a receipt by the assessee of a sum of Rs. 1,09,618 as lease income of the mill. Reassessment u/s 34 of the Indian income tax Act, 1922 [corresponding to section 147(a) of the 1961 Act] was initiated. The same was impugned as invalid on the ground that at the time the original assessment order was passed, the ITO who had legitimately assessed one- third share of the income which was due to be assessed according to the judgment of the Madras High Court and that there was, therefore, escape only to the extent of two-third share of the income. So, the assessee did not challenge the factum of escapement as a whole but only in part. In that context, the Supreme Court held that once reassessment proceedings were validly initiated with regard to two-third share of the income, the ITO would not be confined only to that portion of the income but would extend to the entire escaped income and set aside the under-assessment previously made. All observations that appear in the said judgment have to be construed not as widely as has been done by the various High Courts. Its implication is limited within this parameter of the facts of the case. It only means that once the factum of escapement is proved, the escapement may on actual reassessment be larger or smaller than the escapement visualised at the time of initiating proceedings in respect of the particular item. The inaccuracy of the estimate of escapement at the point of initiation does not invalidate the proceedings. It is only in the limited sense that the original assessment with regard to the particular item of escapement is wiped off and the assessment of escapement of that particular item becomes at large.

5. Some decisions in connection with sales tax assessments are ordinarily taken in aid of to support the contention that reassessment overrides the earlier assessment in its entirety. One case in point is the decision of the Supreme Court in The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, But in our view the case under sales tax cannot be of assistance in deciding issues arising under the Act. Under the sales tax, the quantum determination has no compartmentalised division as in income determination. In other words, in the determination for sales tax is involved only the quantum of turnover but under the Act the income itself is classified in multiple quanta. The mode of determination for each quantum is separated from the other. Therefore, what might be true of sales tax may not be apposite for income tax assessment.

6. The implication of the decision either in V. Jaganmohan Rao''s case (supra) or the decision in the sales tax cases has been lately gone into by the Supreme Court in a recent case of Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., There, the Supreme Court has distinguished the sales tax cases, we extract from the said decision, the following passage which explains the true scope of the judgment in V. Jaganmohan Rao''s case (supra):

The principle laid down by this Court in V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh, therefore, is only to the extent that once an assessment is validly reopened by issuance of a notice u/s

22(2) of the 1922 Act (corresponding to section 148 of the 1961 Act) the previous underassessment is set aside and the income tax Officer has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. What is set aside is, thus, only the previous underassessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not affect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character and identity. It is only is cases of "under-assessment" based on clauses (a) to (d) of Explanation 1 to section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in V. Jaganmohan Rao"s case (supra), therefore, cannot be read to imply as laying down that, in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim recomputation of the income or redoing of an assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment which has since acquired finality. Of course, in the reassessment proceedings, it is open to an assessee to show that the income alleged to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in V. Jaganmohan Rao"s case (supra), as laying down that reassessment wipes out the original assessment and that reassessment is not only confined to "escaped assessment" or "under-assessment" but to the entire assessment for the year and starts the assessment proceedings de novo giving the right to an assessee to reagitate matters which he had lost during the original assessment proceedings, which had acquired finality, is not only erroneous but also against the phraseology of section 147 of the 1961 Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings...

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... 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. An assessee cannot resist validly initiated reassessment proceedings under this section merely by showing that other income which had been

assessed originally was at too high a figure except in cases u/s 152(2). The words ''such income'' in section 147 clearly refer to the income which is chargeable to tax but has ''escaped assessment'' and the income tax Officer''s jurisdiction under the section is confined only to such income which has escaped assessment. It does not extend to reconsidering generally the concluded earlier assessment. Claims which have been disallowed in the original assessment proceedings cannot be permitted to be reagitated on the assessment being reopened for bringing to tax certain income which had escaped assessment because the controversy on reassessment is confined to matters which are relevant only in respect of the income which had not been brought to tax during the course of the original assessment. A matter not agitated in the concluded original assessment proceedings also cannot be permitted to be agitated in the reassessment proceedings unless relatable to the item sought to be taxed as ''escaped income''. Indeed, in the reassessment proceedings for bringing to tax items which had escaped assessment, it would be open to an assessee to put forward claims for deduction of any expenditure in respect of that income of the non-taxability of the items at all. Keeping in view the object and purpose of the proceedings u/s 147 of the Act which are for the benefit of the revenue and not an assessee, an assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision, in disguise, and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to ''escaped income'', and reagitate the concluded matters. Even in cases where the claims of the assessee during the course of reassessment proceedings relating to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of ''reassessment'' cannot be reduced beyond the income originally assessed.'' (p. 319)

From the judgment in Sun Engg. Works (P.) Ltd.''s case (supra) it is clear that the assessee''s grievance arising from the original assessment order have to be agitated by the assessee in the appellate forum against the said original assessment, because the assessee is precluded from agitating such grievances in the course of reassessment proceeding. That being so, the entire appellate remedy shall be denied to the assessee if the ratio in V. Jaganmohan Rao''s case (supra) is blown up out of all proportion. Therefore, the only pragmatic reading of that judgment could be that the reassessment proceeding shall confine itself to the points of underassessment. It cannot embrace the entire assessment. In the instant case, the assessee took the right course in prosecuting its cause of grievance in regular appeal forum. The Commissioner (Appeals) was very right in adjudicating upon the assessee''s grievance arising from the original assessment. There is no infirmity in the appeal order of the Commissioner (Appeals). Rather, the dismissal of the appeal by the Commissioner (Appeals) on the allegation of non-maintainability of the appeal would have been a gross error of law to the deprivation of the assessee''s vital statutory right to appeal.

7. For the reasons stated, we answer the question in the negative and in favour of the assessee and against the revenue. There will be no order as to costs.

Sen, J.

I agree.