Court No. - 33

Case :- INCOME TAX APPEAL No. - 215 of 2011

(ASSESSMENT YEAR 2001-02)

Appellant :- Commissioner Of Income Tax-Ii, Kanpur
Respondent :- M/S Mirza International Ltd., 14/6, Civil Lines, Kanpur
Counsel for Appellant :- Shambhu Chopra (S.C.)
Counsel for Respondent :- S.D.Singh,Shakeel Ahmad

AND

Case :- INCOME TAX APPEAL No. - 365 of 2012

Appellant :- Commissioner Of Income Tax-Ii, Kanpur
Respondent :- M/S Mirza International Ltd. 14/6, Civil Lines Kanpur
Counsel for Appellant :- Shambhu Chopra (S.C.)
Counsel for Respondent :- S.D. Singh,Shakeel Ahamad

Hon'ble Tarun Agarwala,J.
Hon'ble Dr. Satish Chandra,J.

Heard Shri Shambhu Chopra, the learned counsel for the appellant and Shri Shakeel Ahmad, the learned counsel for the respondent.

On 05.05.2014, a coordinate Bench has admitted the present appeal on the following substantial question of law:

> *"Whether the Tribunal is legally justified in quashing the initiation of proceeding under section 147 on the ground that the notices were issued beyond four years without mentioning in the reason recorded by the assessing authority that there was failure on the part of the asesseе to disclose fully and truly all material facts necessary for the assessment, as such the notice under section 148 is not valid?"*

We find that the return of income was furnished by the assessee on 31.10.2001 and the assessment was framed by the Assessing Officer under Section 143(3) of the Income Tax Act on 18.03.2004. The notice under Section 148 of the Income Tax Act, was issued by the Assessing Officer on 31.03.2007 after a period of four years from the end of the relevant assessment year. In the said notice, the Assessing Officer nowhere disclosed that the assessee had failed to disclose truly and fully all material facts necessary for his assessment. This is an essential requirement as per the decision of the Hon'ble Supreme Court in ***Ganga Saran & Sons P. Ltd. Vs.***

Income-Tax Officer and others, 1981 Vol.130 ITR 1, the Supreme Court held :

> *"It is well settled as a result of several decisions of this Court that two distinct conditions must be satisfied before the Income Tax Officer can assume jurisdiction to issue notice under section 147 (a). First, he must have reason to believe that the income of the assessee has escaped assessment and secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words under section 147 (a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under section 147 (a). It there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to he struck down as invalid."*

In ***Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, 203 ITR 456*** the Supreme Court held:-

> *"From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen assessment under Section 147(a) read with Section 148 of the Income Tax 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true ana full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which where not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which*

tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income-tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if one the basis of subsequent information, the Income-tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment."

In view of the aforesaid, the Tribunal was justified in holding that the initiation of proceedings under Section 148 was barred by limitation.

We do not find any manifest error in the order passed by the Tribunal.

The answer to the substantial question of law is in favour of the assessee and against the Department.

In the result, the appeal filed by the Department is ***dismissed***.

Order Date :- 23.9.2014
Anurag/-

(Dr. Satish Chandra, J.) (Tarun Agarwala, J.)