IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) INCOME TAX APPEAL No. 59 of 2004

C I T JODHPUR
V/S
M/S ARIHANT BUILDERS

(2) INCOME TAX APPEAL No. 60 of 2004

C I T JODHPUR
V/S
M/S ARIHANT BUILDERS

Mr. K.K.Bissa, for the appellant.

Mr. Dinesh Mehta, for the respondent.

Date of Order : 11.2.2008

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI DEO NARAYAN THANVI,J.

ORDER

BY THE COURT (PER HON'BLE GUPTA, J.)

These two appeals arise out of the judgment of the learned Tribunal dated 15.3.2004, with respect to two different assessment years being 1994-95 and 1995-96, and have been admitted on 11.4.2005, by framing following substantial question of law:

> "Whether in the facts and circumstances of the present case, in spite of order of the assessment as well as of the Tribunal having been passed before $30^{th}$ Sept., 2004 but the period of appeal under Section 260A having not expired, it is open for the revenue to

> rely on the provisions of Section 142A on the ground that it would apply to the present case because the assessment has not become final and conclusive.”

The necessary facts are, that the assessee filed return for the two assessment years on 17.7.1995 and 20.7.1995 respectively, along with the requisite information. However, no action was taken under Section 143(1)(a), as it then existed. Obviously, the time permissible for taking action under Section 143(1)(a) had expired. It appears that the assessment for the earlier year, being 1993-94 was also completed. It is only after the expiry of the time permissible for issuance of notice under Sections 143(2) and 143(3), that the Assessing Officer issued notice under Section 148 on 16.10.96, as before that date, though after the expiry of the time permissible for issuance of notice under Sections 143(2) and 143(3), the Assessing Officer had received valuation report prepared by the District Valuation Officer dated 20.5.95, according to which, the Assessing Officer felt, that the income shown in the return was not correct, and treated it to be escapement of income.

The assessee filed a reply thereto, and the Assessing Officer made assessment vide order dated 31.3.1999, which was set aside by the Commissioner (Appeals) vide order dated 21.9.99, mainly relying upon the judgment of Calcutta High Court, in I.T.O. Vs. James Josaph O' Graman, reported in 204 I.T.R. 454, so also the judgments of this Court in C.I.T. Vs. Pratap Singh, Amroo Singh, Rajendra Singh & Deepak Kumar, reported in 200 I.T.R. 788, C.I.T. Vs. Smt. Prem Kumari Surana, reported in 206 I.T.R. 715, Sardar Kehar Singh Vs. C.I.T., reported in (1992) 92 C.T.R. (Raj.) 88 and the judgment of Gujarat High Court in Dinkar Rai Anant Rai Mankad Vs. I.T.O., reported in 155 I.T.R. 406. In appeal, the learned Tribunal upheld the same.

It is contended by the learned counsel for the Revenue, that Section 131(1)(d), as it then existed, confers the power on the Assessing Officer to obtain the valuation report, and for that purpose, it is not necessary, that when the valuation report has been obtained, any assessment proceeding should be pending. Another argument raised by the learned counsel for the Revenue is, that in any case, these proceedings under Sections 147 and 148, culminating into the impugned order of the Tribunal, should also be taken to be the continuation of the original assessment proceedings, with the result, that even for the purpose of Section 131(1)(d), the assessment proceedings were pending and, therefore, the report could very well be had. Learned counsel for the assessee, on the other hand, has supported the impugned judgment.

We have considered the rival submissions and have gone through the impugned orders of the learned Commissioner as well as the learned Tribunal, so also the relevant provisions of law.

As appears from the findings of the learned Commissioner, and the learned Tribunal, that the regular assessment under Section 143 has been taken to have been made, though the date of making that assessment has not come on record, but then, this much is clear, that if the Assessing Officer was not inclined to accept the return as such, then notice was required to be given under Section 143(2), which admittedly has not been given, and in any case, the time for giving that notice, as was permissible being 12 months, had already expired. Therefore, nothing remained with the Assessing Officer, except to make assessment on the basis of the return submitted by the assessee. Obviously, since the present proceedings have been initiated by notice under Section 147, having been given on 16.10.96, these proceedings have been initiated on the basis of Assessing Officer having reason to believe the particular income to have escaped the assessment, and escapement should not be considered either under Section 143(2) though, this word has not been used there, but if the Assessing Officer was not satisfied with the correctness of the income reports, then action under Section 143(2) was required to be taken, otherwise, assuming the assessment to have been completed under Section 143(1)(a), and the income having been escaped, the assessment notice under Section 143(2) could be issued within the permissible time and, therefore, we have to proceed with the assumption, as rightly proceeded by the learned Tribunal, and the learned Commissioner, that notice under Section 147 was given, only after completion of the regular assessment, and also, on account of the learned Assessing Officer, entertaining reason to believe the particular income to have escaped the assessess's assessment.

With these facts, it is not in dispute, that the reason to believe, entertained by the learned Assessing Officer was, only on the basis of the valuation report obtained from the departmental valuation officer by the learned Assessing Officer, which is dated 16.10.96, and for that purpose, support is sought from the provisions of Section 131(1)(d), which came up for consideration before the Hon'ble Supreme Court, in the case of Smt. Amiya Bala Paul Vs. Commissioner of Income-Tax, reported in 2003 Vol. 262 I.T.R. 407, wherein, the provisions of Section 131(1), 133 (6) and 142(2) were considered, and it was found, that this power does not include the power in the Assessing Officer, to refer the matter to the Valuation Officer. Even, the power under Section 142A was held to be not including the power to refer the matter to the Valuation Officer, for the enquiry by the Valuation Officer.

In our view, thus, on the face of the principle laid down by the Hon'ble Supreme Court, in the case of Smt. Amiya Bala Paul (supra), Section 131(1)(d) cannot be said to be available to the Assessing Officer, for the purpose, sought to be invoked. Of-course, by subsequent amendment, introduced in the year 2004, with effect from 1972, the provisions of Section 142A have been inserted, but then, that provision has also its own limitations, inasmuch as firstly, that provision also contemplates the power to be exercisable, only for the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in Section 69 or Section 69B is required to be made, and that it does not confer any power on the Authorities, to have the Valuation Officer's report, for the purpose of initiating proceedings for reassessment, on the ground of escapement of income from the assessment. Then, still important difficulty is, the provisions contained in the proviso thereto, which clearly provides, that nothing contained in this Section shall apply in respect of an assessment made, on or before 30$^{th}$ day of September, 2004, and where such assessment has become final and conclusive, on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of Section 153A. Thus, per force, the language of the proviso, the provision of section 142A can also not be resorted to. The learned Tribunal has also considered this aspect in detail, and has also relied upon the judgment of the Hon'ble Supreme Court, in Smt. Amiya Bala Paul's case (supra), and in our view, rightly.

Thus, the question framed in both the appeals is required to be, and is, accordingly answered against the Revenue and in favour of the assessee. Both the appeals, therefore, having no force, are dismissed.

( DEO NARAYAN THANVI ),J. ( N P GUPTA ),J.

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