IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2010

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.720 to 725 of 2004

Commissioner of Income Tax-VI Chennai	..	Appellant in all the tax case appeals

-vs-

Sri Ravindran Prabhakar Adyar, Chennai	..	Respondent in all the tax case appeals

Memorandum of Grounds of Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 14.10.2003 made in ITA Nos.1423/(Mds)/2003 , 1424/(Mds)/2003, 1425/(Mds)/2003, 1422/(Mds)/2003, 1426/(Mds)/2003 & 1427/(Mds)/2003 for the assessment years 1996-97, 1997-98, 1998-99, 1995-96, 1999-2000 & 2000-2001 respectively.

For Appellant :: Mr.Patty B.Jaganathan

For Respondent :: Mr.R.Sivaraman

JUDGMENT
(Judgment of the Court was delivered by D.MURUGESAN, J).

These appeals are at the instance of the revenue and the appeals were admitted by this Court on the following substantial questions of law:-
(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Assessing Officer has not validly assumed jurisdiction to reopen the assessments in the assessee's case for the assessment years 1995-96 to 2000-01 on the ground that all material facts were disclosed in the return?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Assessing Officer could not invoke the provisions of Section 147, on the grounds that he has not issued notice under Section 143(2) within time and therefore the proceedings stood terminated?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the reopening of assessments under Section 147 for the assessment years 1995-96 to 2000-01 was bad in law without considering the amended provisions with effect from 01.04.1989 as per which the proviso to Section 147 relating to failure to disclose material facts would be applicable only to cases where the assessments were completed under Section 143(3) and not to cases where intimations under Section 143(1)(a) were sent?

2. Before we delve upon the facts in issue and consider the same, we may point out that all the three substantial questions of law relate to one issue, namely, when the annual returns of income filed by the assessee were accepted by the assessing officer under Section 143(1) thereby forming an opinion and when such orders were later on challenged, whether the Tribunal could interfere with such orders on the ground that there was a change of opinion to reopen the assessments. Once this issue is resolved, it will consequently resolve all the questions of law raised in these appeals.

3. The respondent-assessee filed the returns of income for the assessment years 1995-96 to 2000-01 showing the total loss of Rs.3,36,550/-, Rs.5,49,810/-, Rs.5,98,820/-, Rs.8,64,590/-, Rs.12,73,640/- and Rs.17,38,995/- respectively and the same were accepted under Section 143(1) of the Income Tax Act. Thereafter, notices under Section 148 were issued and the assessee explained that the original returns filed may be treated as the returns in response to the notices under Section 148. Thereafter, notices under Section 143(2) and 142(1) were issued to the assessee requesting for furnishing certain information. Only thereafter, the assessee filed the details in regard to the information called for. The assessing officer went into the issue with reference to the materials and factually rendered a finding regarding the Will and the corresponding share of 50% income received on the basis of the said Will. Consequently, the assessing officer did not find any merit in the assessee's reply as to the 1/3rd share admitted in the returns according to the oral desire of late Mrs.Kanti Prabhakar. These orders were questioned before the Commissioner of Income Tax (Appeals) VIII, who confirmed the said finding of the assessing officer. However, when the matter was taken to the Tribunal, it found that inasmuch as the reopening of the assessments was made on the basis of change of opinion and nothing else, the reassessment orders were bad and accordingly, set aside the orders of reassessment. In view of the above legal finding, the Tribunal did not go into the other grounds on merit.

4. Aggrieved by the orders of the Tribunal, the revenue has come up with the present appeals mainly on the ground that the communication under Section 143(1) could at best be called only an intimation to the assessee to furnish certain details and there was no occasion for the assessing officer to form any opinion as to the materials placed before him and in that circumstance, such a finding cannot be set aside by the Tribunal on the ground that there was a change of opinion.

5. Mr.Patty B.Jaganathan, learned counsel appearing for the revenue would submit that the Tribunal is not right in holding that there was a change of opinion. He

would submit that when an intimation is made under Section 143(1) of the Act to the assessee to furnish certain details, the same cannot be construed to be an order of assessment made by the assessing officer thereby forming any opinion and that the question of change of opinion does not arise, as has been held by the Apex Court in Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Borkers P.Ltd., (2007) 291 ITR 500 (SC).

6. We have also heard Mr.R.Sivaraman, learned counsel for the assessee as well.

7. We have considered the rival submissions. As the issue raised in these appeals lies in a narrow compass, we are not inclined to go into the merits of the case in detail. Suffice for this Court to dispose of the appeals by referring to the following few facts. It is not in dispute that after the returns were accepted by the assessing officer under Section 143(1), at that point of time, no materials were placed before the assessing officer relating to the Will in particular, on which basis 1/3rd share was claimed by the assessee. It is also an admitted fact that only thereafter notices under Section 143(2) and 142(1) were issued to the assessee for furnishing certain information, which the assessee had filed. As per Section 143(2) of the Act, after the materials which were available on the file of the assessee and if they are considered, then the question of change of opinion may arise. But that cannot be the case when a communication calling for certain particulars was issued to the assessee under Section 143(1) of the Act. In the absence of any entitlement for the assessing officer to form any opinion at the stage when the proceedings were pending under Section 143(1), the Tribunal is not right in holding that there was a change of opinion. To support the above, we may refer to the following finding of the Apex Court in Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Borkers P.Ltd., case reported in (2007) 291 ITR 500 (SC):

"In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(1)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimize the Departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K.Jain, J.) in Apogee Internatinoal Limited v. Union of India (1996) 220 ITR 248 (Delhi). It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under section 143(1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more

can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise."

8. In view of the above, the orders of the Tribunal setting aside the orders of reassessment passed by the assessing officer only on the ground that there was a change of opinion cannot be sustained. Accordingly, the orders questioned in all these appeals are set aside. As there was no consideration on merit and as already pointed out, all the appeals are disposed of only on the ground of change of opinion, we will have to necessarily remit the matter to the Tribunal for fresh consideration on the merits of the case and without reference to the issue of change of opinion. Accordingly, all the appeals are allowed, the substantial questions of law are answered in favour of the revenue and against the assessee. No costs.