

Reserved on: 31.01.2019
Delivered on: 11.02.2019

Court No. - 35

Case :- WRIT TAX No. - 105 of 2015

Petitioner :- Pawan Sood

Respondent :- Income Tax Officer Kanpur

Counsel for Petitioner :- Abhinav Mehrotra

Counsel for Respondent :- C.S.C. It, Ashish Agarwal, S. Chopra

Hon'ble Bharati Sapru, J.

Hon'ble Piyush Agrawal, J.

(Delivered by Hon'ble Piyush Agrawal, J.)

By means of the present writ petition, the petitioner has challenged the re-assessment proceedings initiated against him for the Assessment Year 2007-08 and prayed for issuing a writ of certiorari quashing the impugned notice dated 29.03.2014 issued under section 148 of the Income Tax Act, 1944 (hereinafter referred to as, 'the Act').

The facts of the case are that the petitioner is an individual assessee and is running a Proprietorship concern in the name and style of "M/s National Thread Manufacturing Company" at Kanpur. The original assessment order dated 05.05.2009 was passed under

section 143(3) of the Act, in which a total income of Rs. 6,54,620/- was assessed to tax.

It was alleged that a survey under section 133-A of the Act was conducted at the business premises of M/s Indian Overseas Trading Company on 23.10.2007 and it was found that in the partnership concern, the petitioner is one of the partners and also, the business as Proprietorship is run by him in the name and style of M/s National Thread Manufacturing Company from the same premises.

The case of the petitioner was selected for scrutiny as per the guidelines of Central Board of Direct Taxes, New Delhi.

Thereafter, proceedings under section 154 of the Act were initiated. It was found that sundry credit amounting to Rs. 79,88,253/- shown by the petitioner were not verified during the course of original assessment proceedings under section 143(3) of the Act. It was further alleged by the Department that the

petitioner has created fake and fictitious liability, which is not ascertainable; hence, the same should be disallowed and added back to the income of the petitioner, which resulted in escapement of tax to the tune of Rs. 24,44,404/-.

Proceedings under section 154 of the Act were initiated and subsequently, the same were dropped vide order dated 25.03.2014.

Thereafter, proceedings under section 148 of the Act were initiated by issuing a notice dated 29.03.2014 on the ground that the petitioner has declared a huge amount of sundry creditors as on 31.03.2007 in the name of two concerns, viz., M/s Dulbecco Meyer & Company Limited and La-grand Consumables at Rs. 34,30,503/- and Rs. 45,57,750/- respectively, which lacked due confirmation/ verification.

This impugned re-assessment notice dated 29.03.2014 has been assailed in the present writ petition.

We have heard Ms. Bhavna Mehrotra, assisted by Shri Abhinav Mehrotra, learned counsel for the petitioner and Shri Ashish Agarwal, learned counsel for the respondent – Department.

Ms. Mehrotra has vehemently argued that there is no fresh material for initiating re-assessment proceedings against the petitioner, as at the time of passing of the original assessment order, the petitioner has disclosed fully and truly all material facts necessary for his assessment; hence, the present proceedings have been initiated only on the basis of a change of opinion, which is not permissible under the Act.

It has further been argued that the proceedings under section 154 of the Act were initiated on the same fact as mentioned in the impugned notice and the proceedings under section 154 of the Act have already been dropped by the order dated 25.03.2014. Learned counsel for the petitioner submits that the alleged issue for initiating re-assessment proceedings has been

decided twice by the respondent – Department; one at the time of passing of the original assessment order and subsequently, under the proceedings initiated under section 154 of the Act and therefore, the proceedings of re-assessment under section 148 of the Act are impermissible in the eyes of law.

In support of her contention, she has relied upon the judgments of the Hon'ble Supreme Court rendered in ***Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I, Calcutta and Another*** reported in 41 ITR 191 (SC), ***Ganga Saran & Sons P. Ltd. Vs. Income Tax Officer & Others*** reported in (1981) 130 ITR 1 (SC), ***Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited*** reported in (2010) 2 SCC 723, ***Phool Chand Bajrang Lal and Another Vs. Income Tax Officer*** reported in (1993) 4 SCC 77 and ***State of Uttar Pradesh and Others Vs. M/s Aryaverth Chawal Udyog and Others*** reported in 2016 (91) VST 1 (SC).

On the basis of the aforesaid judgments, learned counsel for the petitioner has tried to argue that the Income Tax Officer must have reasons to believe that the income chargeable to tax had either been under-assessed or escaped assessment and such escapement or under-assessment was occasioned by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment and the Income Tax Officer must have reasons to believe that the income chargeable to tax had either been under-assessed or escaped assessment.

Learned counsel for the respondent – Department has tried to rebut the contentions raised by the learned counsel for the petitioner.

On perusal of the record, it would reveal that at the time of passing of the assessment order dated 05.05.2009, the then Assessing Authority has noted that there was certain difference in creditors' account and the assessee has given explanation that due to wrong

posting done by the Accountant, the total amount of purchase made by him during the year, is much more than recorded. The said fact was confirmed by submitting the copy of the accounts of those party. On verification of the said documents produced by the petitioner, the Assessing Authority was satisfied that the total purchases were much more than the purchases found.

Further, the re-assessment proceedings have been initiated on the ground that two concerns, namely, M/s Dulbecco Meyer & Company Limited and La-grand Consumables, are not genuine sundry creditors and is unverifiable and unjustifiable, which is liable to be added back to the income of the petitioner.

The proceedings under section 154 of the Act were also initiated against the petitioner on the same set of facts and vide order dated 25.03.2014, the same were dropped.

The Hon'ble Supreme Court in the case of State of

Uttar Pradesh and others vs. Aryaverth Chawal Udyog and others (2015) 17 SCC 324 has held that mere change of opinion while perusing the same material cannot be a “reason to believe” that a case of escaped assessment exists requiring assessment proceedings to be reopened. The Apex Court in paragraph 30 has held as follows:

“30. In case of there being a change of opinion, there must necessarily be a nexus that requires to be established between the "change of opinion" and the material present before the assessing authority. Discovery of an inadvertent mistake or non-application of mind during assessment would not be a justified ground to reinitiate proceedings under section 21(1) of the Act on the basis of change in subjective opinion Commissioner of Income-tax v. Dinesh Chandra H. Shah [1972] 3 SCC 2311 and Income-tax Officer v. Nawab Mir Barkat Ali Khan Bahadur [1975] 4 SCC 3602) (emphasis supplied).”

In view of the aforesaid judgment of the Hon'ble Apex Court, even if, at the time of passing of the original assessment order, there is a mistake or non-application of mind, it would not justify the respondent – Department to re-initiate the proceedings of re-assessment.

In the case, in hand, the Assessing Authority had applied its mind and passed the original assessment order and there is no fresh material on record permitting the respondent – Department to initiate re-assessment proceedings. The impugned notice dated 29.03.2014 amounts to change of opinion on the same set of facts, which were available at the time of passing the original assessment order.

This Court is of the opinion that the initiation of the re-assessment proceedings is bad in law and is liable to be set aside.

In view of the aforesaid facts and circumstances of the case, the impugned notice dated 29.03.2014, issued under section 148 of the Income Tax Act, 1944, is hereby quashed.

The writ petition succeeds and is allowed.

Order Date :-11.02.2019

Amit Mishra