

R. K. Upadhyaya

Vs

Shanabhai P. Patel

Civil Appeal No. 544 of 1975

(Ranganath Misra, G. L. Oza JJ)

28.04.1987

JUDGMENT

RANGANATH MISRA, J. -

1. This is an appeal by the revenue by special leave and is directed against the judgment of the Gujarat High Court dated August 20, 1973 in a writ petition. The High Court quashed the notice of reassessment issued under Section 147(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 1965-66. In spite of service of notice, the assessee-respondent has not appeared.

2. The High Court has quashed the notice by accepting the assessee's contention that the action of the Income Tax Officer was barred by limitation prescribed by the Act. There is no dispute that the notice in this case under Section 147(b) of the Act was issued by registered post on March, 31, 1970, and was received by the assessee on April 3, 1970. To the facts of the case, Section 147(b) of the Act applies. The two relevant provisions are in Sections 148 and 149 of the Act which provide :

148(1) Before making the assessment, reassessing or recomputation under Section 147, the Income Tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

#(2) * * *##

149(1) No notice under Section 148 shall be issued,

#(a) * * *##

(b) in cases falling under clause (b) of Section 147, at any time after the expiry of four years from the end of the relevant assessment year.

(2) The provisions of sub-section (1) as to the issue of notice shall object to the provisions of Section 151.

The High Court relied upon the decisions of this Court in the case of Banarsi Debi v. ITO (53 ITR 100 : AIR 1964 SC 1742 : (1964) 7 SCR 539) where the validity of a notice under Section 34(1) of the Income Tax Act, 1922 and the scope of Section 4 of the Income Tax (Amendment) Act of 1959 by which sub-section (4) was introduced into Section 34 were considered. The Court indicated,

keeping the provisions of Section 34 in view, that there was really no distinction between "issue" and "service of notice". Section 34, sub-section (1) as far as relevant provided thus :

34(1) If -

#(a) * * *##

(b) ... he may in cases falling under clause (a) at any time within 8 years and in cases falling under clause (b) at any item within four years of the end of that year, serve on the assessee, ... and may proceed to assess or reassess such income, ...

Section 34 conferred jurisdiction on the Income Tax Officer to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within limitation was the foundations of jurisdiction. The same view has been taken by this Court in J. P. Janni, I. T. O. v. Induprasad D. Bhatt (72 ITR 595 : AIR 1969 SC 748 : (1969) 1 SCR 714) as also in CIT v. Robert J. Sas (48 ITR 177 : 1963 Supp 2 SCR 209). The High Court in our opinion went wrong in relying on the ratio of Banarsi Debi v. ITO (53 ITR 100 : AIR 1964 SC 1742 : (1964) 7 SCR 539) in disposing of the case in hand. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in Section 34 of the 1922 Act has been spread out into three sections, being Sections 147, 148 and 149 in the 1961 Act. A clear distinction has been made out between 'issue of notice' and 'service of notice' under the 1961 Act. Section 149 prescribed the period limitation. It categorically prescribed that no notice under Section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitation, jurisdiction become vested in the Income Tax Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service. The requirement of the issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income Tax Officer to deal with matter but it is a condition precedent to making of the order of assessment. The High Court in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in Banarsi Debi v. ITO (53 ITR 100 : AIR 1964 SC 1742 : (1964) 7 SCR 539). As the Income Tax Officer had issued notice within limitations, the appeal is allowed and the order of the high Court is vacated. The Income Tax Officer shall now proceed to complete the assessment after complying with the requirements of law. Since there has been no appearance on behalf of the respondents, we make no orders for costs.

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