

Bhagwant Kishore Sud

Vs

Income Tax Appellate Tribunal, Chandigarh

Civil Appeal No. 812 of 1978

Civil Appeal No. 3450 of 1996

(B. N. Kirpal, S. P. Bharucha JJ)

06.02.1996

ORDER

1. The appellant impugns the order of a Division Bench of the High Court of Himachal Pradesh whereby his writ petition was dismissed.
2. The appellant, an assessee under the Income Tax Act, 1961 disclosed income from 14 trucks under a voluntary disclosure scheme. That scheme, it is submitted, made provisions prohibiting the use of disclosures thereunder in subsequent assessment proceedings. The disclosure made by the assessee was accepted on 31-3-1966. On 28-2-1973, the ITO issued a reassessment order under Section 148 of the Income Tax Act, pertaining to Assessment Years 1959-60 to 1962-63 and brought to tax additional amounts which, he held, were income from trucks. The assessee appealed and contended that the ITO had no power to invoke the relevant provisions of the Income Tax Act relating to the said assessment years because his disclosures under the voluntary disclosure scheme were protected. Not only did the Appellate Assistant Commissioner reject the appeal but, after notice, enhanced the amount found by the ITO to have been income which had escaped assessment.
3. The assessee thereupon appealed to the Income Tax Appellate Tribunal. On 22-5-1975, the assessee wrote to the Tribunal that its representative had suffered a heart attack and sought an adjournment. A reply was received declining the adjournment. It is the case of the assessee that the reply was received too late for him to make alternative arrangements to appear before the Tribunal. Accordingly, on 31-5-1975 the Tribunal proceeded ex parte. It deleted the addition made by the AAC but, it is the assessee's case, ignored his contention that the reassessment proceedings were invalid. An application for restoration of the appeals was made to the Tribunal. It was dismissed on 31-8-1976.
4. On 20-10-1976, the assessee asked the Tribunal to refer to the High Court the following questions :
 - "(1) Whether on the facts and in the circumstances of the case, the order of the Tribunal is legal and in accordance with law ?
 - (2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the action of the ITO under Section 148 of the Income Tax Act, 1961 ?"

The Tribunal declined to make the reference. It said that the first question did not arise out of its order dated 31-8-1976; as far as the second question was concerned, no dispute had been raised before the Tribunal in the appeals, "against the action of the Income Tax Officer under Section 147 ...". The assessee then made an application to the High Court requesting the High Court to direct the Tribunal to refer the said questions to it, but withdrew the application after some arguments.

5. Thereafter the assessee filed the writ petition before the High Court, the order upon which is impugned before us. By the writ petition, the assessee prayed that the Tribunal's order dated 31-5-1975 as also the reassessment made by the ITO for Assessment Years 1959-60 to 1962-63 be quashed. On 13-5-1977, the High Court dismissed the writ petition. It noted that what was put in issue before it in the writ petition ought to have been before it by way of reference, but the reference applications had been withdrawn.

6. It is necessary, first, to note the grounds upon which the assessee appealed to the Tribunal. He submitted that the AAC was not justified in dismissing his appeal and making an enhancement of the amount, that the dismissal was arbitrary and that the order was bad in law and on facts, the validity of the reassessment proceedings was not questioned. Secondly, it was open to the assessee to assail the order of the Tribunal declining the adjournment in the writ petition. This the assessee did not do. Thirdly, it was open to the assessee to assail the correctness of the Tribunal's order on merits in reference before the High Court, but he chose to withdraw the applications for reference of those questions to the High Court and elected to file the writ petition instead. The High Court was entirely justified in declining to entertain in the writ petition questions that arose out of the Tribunal's order which the assessee could have brought before the High Court through a reference application.

7. Accordingly, the appeal is dismissed with no order as to costs.