

Commissioner of Income Tax, Shillong

Vs

Tarajan Tea Co. (P) Ltd.

Civil Appeal No. 1941 of 1993

(M. Srinivasan, U. C. Banerjee JJ)

04.02.1999

JUDGMENT

M. Srinivasan J

1. The three questions referred to the High Court for answer in this matter are as follows :

"1. Whether on the facts and in the circumstances of the case, the tribunal having held that there was no case for re-opening the assessment under Section 147(a) of the Income Tax Act, 1961 on the reason recorded, nor any cause for re-opening of the assessment under section 147(b) of the Act on the reasons recorded on 31.3.1977 was justified in law in sustaining the re-opening of assessment under Section 147(b) of the Act on the reasons and grounds given in the order passed an appeal ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the re-assessment proceeding initiated under Section 147(a) of the Act by issue of notice dated 31.12.1976 under Section 148 of the Act on the reasons recorded, could be validly converted into a proceeding under Section 147(b) of the Act subsequently ?

3. Whether on the facts and in the circumstances of the case the tribunal was justified in law in setting aside the order of the Appellate Assistant Commissioner of Income Tax cancelling the re-assessment orders passed by the Income Tax Officer in ignorance of Section 144-B of the Act and in directing the Income Tax Officer to resort to the provisions of Section 144-B afresh instead of annulling and/or cancelling the re-assessment orders and without also taking into consideration the legal bar of limitation for the passing of re-assessment orders under Section 153 of the Act ?"

2. The short facts which gave rise to that reference were that the respondent-assessee was dully assessed by the Income Tax Officer (ITO) for the relevant period on the basis of the information supplied by the assessee. No particulars were left out by the assessee for enabling the completion of his assessment. However, the ITO re-opened the assessment and issued a notice under Section 147(a) of the Income Tax Act on the basis that in the case of another Tea Company, the Appellate Court Commissioner had taken the view that sale of standing trees constituted revenue receipts and, therefore, liable to tax. The ITO was of the opinion that the decision of the Appellate Assistant Commissioner in the other case would amount to 'information' within the meaning of Section 147(a) of the Act in so far as the assessee-company is concerned.

3. In the course of the proceedings under Section 147(a), the ITO found that it could not be sustained under that sub-section and converted the same into a proceeding under Section 147(b) and concluded the matter. The order of the ITO was challenged before the Appellate Assistant Commissioner (AAC) who set aside the same. But on further appeal by the Revenue, the Tribunal modified the order of the AAC and permitted the ITO to proceed afresh under Section 144B of the Act. When the matter came before the High Court, the reference was answered in favour of the assessee and the order passed by the ITO on re-assessment was set aside. In fact, the High Court observed that the Tribunal ought to have quashed the order converting the proceedings under Section 147(b) from that under Section 147(a).

4. On perusal of the records, we find that neither Section 147(a) nor Section 147(b) would apply in this case. The said Section at the relevant period (and prior to Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989) read as follows :

"If -

(a) the Assessing Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under Section 139 for any assessment year to the Assessing Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Assessing Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of section 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereinafter in sections 148 to 153 referred to as the relevant assessment year).

5. A perusal of the record in this case shows that there was no omission or failure on the part of the assessee to make a return under Section 139 as contemplated in clause (a); nor was there any information in the possession of the Assessing Officer obtained by him subsequent to the assessment order. Whatever information was necessary was already available to the Assessing Officer when the first assessment was made. The order passed by the AAC in another case is not 'information' within the meaning of the Section. Hence, neither clause (a) nor clause (b) of the Section would apply in this case.

6. In the circumstances, it is unnecessary for us to consider the question whether a proceeding under Section 147(a) could be converted into a proceeding under Section 147(b) in the course of the proceedings without issuing a fresh notice and initiation of a fresh proceeding. Without deciding that question, we come to the conclusion in this case that the order of the Assessing Officer re-opening the earlier order and passing a fresh assessment order is unsustainable and the view taken by the revenue authorities has been rightly set aside by the High Court.

7. The appeal fails and is dismissed. No costs.