IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.277 of 2010

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The Deputy Commissioner Of Income Tax, Central Circle-4, Patna

.... Appellant/s

Versus

Takshila Educational Society, Patna

.... Respondent/s

==

with

Miscellaneous Appeal No.278 of 2010

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The Deputy Commissioner Of Income Tax, Central Circle-4, Patna

.... Appellant/s

Versus

Takshila Educational Society, Patna

.... Respondent/s

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Appearance :
(In MA No.277 of 2010)
For the Appellant/s : Mr. Rishi Raj Sinha
Mrs. Archana Sinha
For the Respondent/s : Mr.
(In MA No.278 of 2010)
For the Appellant/s : Mr. Rishi Raj Sinha
Mrs. Archana Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 06-04-2015 Heard learned counsel for the appellant.

Both the appeals arise out of a common order and therefore, they have been heard together and are being disposed of by this common order.

These appeals have been preferred against the order dated 30.11.2009 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna, by which the Tribunal has dismissed the appeal of the Revenue.

The matter arose out of reopening of the assessment of the assessee under Section 147 of the Income Tax Act, 1961. The Assessing Officer after recording the reasons issued notice under Section 147 of the Act to the assessee. Upon the assessee appearing, the assessment order has been passed. In the assessment ultimately made by the Assessing Officer, the findings have been recorded with regard to escaped assessment relating to the cost of construction on the basis of report of the DVO; but there is no adverse finding on any of the reasons that the A.O. had recorded while issuing notice as no addition was made by the Assessing Officer on account of alleged undisclosed investment of the funds or payment made to various parties which he had considered to have escaped assessment in the reasons recorded by him while initiating proceedings under Section 147 of the Act nor any benefit was denied under Section 11 of the Act on the basis of violation of Section 13 of the Act which was another ground for initiation of proceedings; rather the finding of escaped assessment was made for entirely different reasons.

Thus, it was contended on behalf of the assessee before the Tribunal that the Assessing Officer had no jurisdiction as the recording of reasons to believe are the preconditions for exercise of jurisdiction under Section 147 of the Act. If he had no valid grounds or reasons to believe, then solely on other grounds it was not open to him to come to the findings of escaped assessment, in view of the provisions of Section 147 of the Income Tax Act.

The said submission on behalf of the assessee was accepted by the Tribunal.

The main part of Section 147 along with Explanation-3 on which the appellant relies is quoted below:-

> "147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).
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> Explanation 3. For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect

of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of Section 148."

From a consideration of the aforesaid provision, it is evident that the power to assess or re-assess any escaped assessment can be exercised not only with regard to the reasons to believe on which the notice had been issued under Section 148 (1) of the Act but also an additional grounds. The relevant part of Section 148 (1) and (2) is quoted below:-

"148. (1) Before making the assessment, reassessment or recomputation under Section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

It is evident from a consideration of the aforesaid provisions that before issuing notice under Section 147 of the Act for initiating proceedings, the Assessing Officer is required to record his reasons for doing so. Thus, the assumption of jurisdiction by him is the reason to believe that certain income of the assessee has escaped assessment or re-assessment, which reasons have to be recorded by him in writing.

It is true that under the provisions of Section 147 of the Act, it has been further clarified in Explanation-3 that the assessment can be made not only with respect to the grounds for which reasons have been recorded under Section 148 (2) of the Act but on any other issue which comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue had not been included in the reasons recorded.

The Tribunal has relied upon a decision of the

Rajasthan High Court in the case of Commissioner of Income-Tax vs. Sri Ram Singh : (2008) 306 ITR 343 (Raj), in paragraph No.23 to 29 of which it has been held as follows:-

> " 23. Reverting back to the language of Section 147, this much is clear, that the sine qua non for conferment of jurisdiction on the Assessing Officer to initiate proeedings under that section is that he should have "reason to believe" that "any income chargeable to tax has escaped assessment for any assessment year" and that situation being available, i.e., the Assessing Officer having entertained a "reason to believe", obviously on valid grounds, he acquires the jurisdiction to assess or reassess "such income", which obviously means, the income, which was chargeable to tax and had escaped assessment for any assessment year, according to his "reason to believe", and while so assessing or reassessing, he can also, in addition, assess or reassess" any other income chargeable to tax which has escaped assessment and which may come to his notice subsequently in the course of proceedings under Section 147.

24. The precise question, thus requiring to be considered is, as to whether, the conjunctive word used, being "and", used between the expression "such income" and" also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under Section 147" is required to be given its due, or is required to be ignored, or is required to be interpreted as "or". Obviously because, if it is to be interpreted as "or", then the language would read as under:

"147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income or also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereinafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

25. But then if it were to be so read, the word "also" becomes redundant, and to make sense of the sentence, the section would be required to be read by ignoring the words "also", as well, in which event, the section would read as under:-

"147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the deprecation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

26. It is established principle of interpretation

of statutes, that Parliament is presumed to be not extravagant, in using the words, and, therefore, every word used in the section is required to be given its due meaning.

27. If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt, in our opinion, that it is only when, in proceedings under section 147 the Assessing Officer, assesses or reassess any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under Section 147.

28. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing

Officer were to come to the conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147.

29. It is a different story that for such other income, the Assessing Officer may have recourse to such other remedies, as may be available to him under law, but then, once it is found that the income, regarding which he had "reason to believe" to have escaped assessment, is not found to have escaped assessment, the Assessing Officer is required to withhold his hands, at that only."

We are in respectful agreement with the aforesaid decision of the Rajasthan High Court.

Once it is found that none of the reasons recorded by the Assessing Officer for initiating proceedings under Section 147 was germane to initiation of such proceedings, then it has to be held that he had no reason to believe that any income had escaped assessment and therefore any further proceeding would be without jurisdiction.

The findings recorded by the Tribunal are unassailable. Thus, no substantial question of law arises in the present appeals and they are, accordingly, dismissed.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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