IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

ITA-99-2009
Decided on : 23.07.2024

Sukhvinder Singh

. . . Appellant(s)

Versus

Commissioner of Income Tax (Appeals),
Karnal and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Akshay Bhan, Sr. Advocate with
Mr. Shantanu Bansal, Advocate
for the appellant – assessee.

Ms. Gauri Neo Rampal, Sr. Standing Counsel
for the respondents – revenue.

****

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Vide order dated 02nd April, 2012, while admitting the appeal, following substantial questions of law were framed by this Court:-

> "(i) Whether in the facts and circumstances of the present case, the action of the authorities below in ex parte framing assessment without providing the appellant an opportunity of presenting his side is legally sustainable in the eyes of law?
>
> (ii) Whether in the facts and circumstances of the present case, the action of the authorities below in holding the assessment made by the AO is in violation of Section 145 of the Income Tax Act?
>
> (iii) Whether in the facts and circumstances of the present case the impugned order A-1 to A-3 are legally sustainable in the eyes of law?"

2. Learned counsel for the appellant submits that there was no

occasion for the authority to pass an *ex-parte* order and make an *ex-parte* framing assessment without providing fair and proper opportunity to the appellant – assessee. It is his submission that that the order **be set-aside** and the questions of law as framed by the Court, therefore, be answered in his favour.

3. He further submits that the AO has passed the assessment order wrongfully and in clear violation of Section 145 of the Income Tax Act, 1961 (for brevity, 'IT Act'). Further submits that in the circumstances, the impugned orders dated 13.10.2006, 06.09.2007 and 04.07.2008 (appended as Annexures A-1 to A-3, respectively), are liable to be set-aside, as they are legally unsustainable.

4. We have considered the submissions, and analyze the substantial question of law No.(i), which is as under:-

> (i) Whether in the facts and circumstances of the present case, the action of the authorities below in ex parte framing assessment without providing the appellant an opportunity of presenting his side is legally sustainable in the eyes of law?

It is the submission of the appellant that the AO did not give a reasonable opportunity of hearing and passed the *ex-parte* assessment order under Section 144 of the IT Act. However, it is purely against the provisions of the IT Act. It is his further submission that no valid notice under Section 143(2) of the IT Act or notice for *ex-parte* proceedings were never served upon the assessee, and therefore, the concerned authority has wrongfully proceeded *ex-parte*, and passed the assessment order.

5. From the order passed by the AO, it reveals that the case was

taken up for scrutiny and first notice under Section 143(2) of the IT Act was issued to the petitioner on 02.03.2005 for 21.03.2005, another notice was issued on 19th April, 2005 and thirdly, notice under Sections 143(2) and 142(1) of the IT Act alongwith questionnaire was issued on 22.06.2006 for 17.07.2006. It was also noticed from the record that the assessee had admitted the service of notice upon him and he, therefore, observed that the notice had been properly served upon the assessee. Instead of thereto, he had chosen not to appear in terms of the notices.

6. The contention of the learned counsel for the revenue that the assessee had submitted wrongfully and that no notices were ever served upon him. In fact, the assessee was represented by a lawyer, who had appeared on several dates before the AO and sought adjournments, therefore, it cannot be said that the action taken by the AO is unjustified.

She further invited the attention to the impugned order, whereby the authority has noticed that the representative Advocate of the assessee had appeared in response to the notice and filed power of attorney, which is sufficient to prove that notice had been served upon the assessee, which was received by a person, signed as 'Gurmeet Kaur' his wife.

7. We are satisfied, therefore, the action taken by the AO does not warrant any interference and the question of law No.(i) as framed, is answered in favour of the revenue.

8. The second substantial question of law, is as under:-

> (ii) Whether in the facts and circumstances of the present case, the action of the authorities below in holding the assessment made by the AO is in violation of Section 145 of the Income Tax Act?

9. In order to examine this question, it would be apposite to quote Section 144 of the IT Act (however, Section 145 is mentioned therein), which is as under:-

> *"**144. Best judgment assessment.**— (1) If any person—*
>
> *(a) fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or*
>
> *(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or*
>
> *(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,*
>
> *the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assesse on the basis of such assessment:*
>
> *Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:*
>
> *Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.*
>
> *(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year."*

10. From the perusal of the aforesaid provision, it is apparent that the petitioner having not further pursued after having been appeared through his counsel, the AO had no other option, but to invoke the provisions of Section 144 of the IT Act above, which provides that if any person fails to make return, AO shall proceed on best judgment assessment basis in the absence of the answered assessee.

11. Keeping in view above, the action taken by the AO does not warrant any interference. Question No.(ii) is accordingly answered in favour of the revenue.

12. Since, questions No.(i) & (ii) have been answered in favour of the revenue, therefore, no interference is warranted in the impugned orders Annexure A-1 to A-3. Thus, question No.(iii) also stands answered in favour of the revenue.

13. Appeal is accordingly dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

July 23, 2024
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No