

was right in holding that the A.O. was not justified in initiating proceedings u/s. 147 of the Act and accordingly, upholding the order of the CIT(A) in holding that the whole assessment is annulled?

b) Whether on facts and in the circumstances of the case, the Tribunal in law was right in holding that the A.O. was not justified in initiating the proceedings u/s. 147 even though the Assessing Officer had sufficient reasons in the form of nine issues to believe that the income chargeable to tax has escaped assessment?

3) On 13 October 2002, the respondent assessee had filed his return of income declaring his income at Rs.14.99 crores for the Assessment Year 2002-03. Thereafter, on 31st March, 2002, the respondent assessee filed a revised return of income declaring his total income for the assessment year 2002-03 wherein he claimed expenses at 30% adhoc amounting to Rs.6.31 crores and determining his income at Rs. 8.11 crores. However, before the assessment for the Assessment Year 2002-03 could be completed, the respondent assessee by a letter dated 13th March 2004 withdrew the revised return along with his claim of deduction of 30% adhoc expenses from his total income. On 29th March 2005, the Assessing Officer completed the assessment for the Assessment Year 2002-03 determining the respondent's income at Rs.56.41 crores.

4) On 5th April, 2006, a notice under Section 148 of the said Act was issued to the respondent assessee seeking to reopen the assessment proceedings for the Assessment Year 2002-03. The reasons recorded for reopening the assessment were as under:

“3. On perusal of the records, it is seen that the assessee filed the revised return claiming estimated expenses @ 30% on the professional receipts, based on adhoc estimated expenses claimed by the Insurance Agents because they cannot prove certain expenses being incurred to persuade the Insurers. However, when the Assessing Officers asked to substantiate these expenses, the claim was withdrawn by the assessee without furnishing the details regarding sources for incurring these expenses were incurred out of undisclosed source which required further verification under the provisions of Sec.69 of the Income Tax Act. Further there are certain issues for verification like :

- I) Applicability of Sec.40A(3) in respect of cash journal expenses.
- II) Personal element in respect of vehicle expenses claimed.
- III) Professional expenses claimed were exactly for the purpose of profession or not.
- IV) Books of accounts maintained by the assessee were not examined.
- V) Assessee maintained 7 bank accounts, but details in respect of 6 bank accounts were furnished. Details in respect of S.B. A/c. No.107456 with SBI were neither provided nor called for by the A.O. Which might have been maintained by the assessee for professional receipts from EEL/Star TV etc.
- VI) Receipts of dividend from Vithal Nagar Co. op Society with reference to investment in house property.

VII) Sources of cash deposits in saving Bank A/c.11155

VIII) Distribution income from M/s. Ethnic Enterprises.

ix) Deposits in S.B. A/c. No.11155 under the head "Receipts on behalf of Mrs. Jaya Bachchan."

5) Consequent to the above notice by an order dated 31st December 2007 the respondent was assessed to a total income of Rs.20.05 crores. This was arrived at after adding an amount of Rs.6.31 crores as unexplained expenses under Section 69C of the said Act for which notice under Section 148 of the said Act had been issued.

6) The respondent assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals), challenging the initiation of proceeding under Section 147 of the said Act and consequent completion of reassessment by order dated 31st December 2007. By an order dated 4th March, 2009 the Commissioner of Income Tax (Appeal) set aside the reassessment order dated 31st December 2007 by holding that the Assessing officer has wrongly assumed jurisdiction under Section 147 of the said Act. The material on the basis of which the assessment was sought to be reopened was always available during the time of the original proceeding leading to the assessment order dated 29th March, 2005. Being aggrieved, the appellant revenue filed an appeal to the Tribunal.

7) On appeal, the Tribunal held that the reasons recorded for initiating reassessment proceeding under Section-147 of the said Act clearly indicates that there was no new material which had come to the notice of the Assessing Officer so as to lead to a reasonable belief that

income assessable to tax has escaped assessment. The adhoc expenses of 30% from the receipts was the subject matter of consideration of the Assessing officer when he passed the assessment order on 29th March,2005 under Section 143(3) of the said Act. Consequently, there was no fresh tangible material for the Assessing Officer to initiate reassessment proceeding under Section 147 of the said Act.

8) Both the Commissioner of Income Tax (Appeal) and the Tribunal have correctly come to the conclusion that there was no fresh tangible material before the Assessing Officer to reach a reasonable belief that the income liable to tax has escaped assessment. The order passed originally on 29th March 2005 under Section 143(3) of the said Act was passed after the respondent had made adhoc claim for expenditure at 30% of the professional receipts in the revised return of income which was later withdrawn. In fact the reasons for reopening the assessment for the year 2002-03 itself records that the the claim of 30% adhoc expenses was withdrawn when the respondent assessee was asked to substantiate the claim. Therefore, the same material was a subject matter of consideration during the proceedings for assessment leading to order dated 29th March, 2005. In the circumstances there could be no basis for the Assessing Officers to form a belief that income has escaped assessment. It is a settled position of law that review under the garb of reassessment is not permissible. In the circumstances, we uphold the order of the Tribunal dated 19th March, 2010.

9) In view of the above, no substantial question of law arises for consideration by this court. Appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

(S. J. VAZIFDAR, J.)