

**Cit Vs. Bithal Das Modi**

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**Court :** Allahabad

**Decided On :** Apr-12-2005

**Reported in :** [2006]154TAXMAN145(All)

**Appeal No. :** IT Reference No. 249 of 1992 12 April 2005

**Appellant :** Cit

**Respondent :** Bithal Das Modi

**Advocate for Pet/Ap. :** A.N. Mahajan *for the Assessee.*

**Judgement :**

ORDER

The Income Tax Appellate Tribunal, Allahabad, has referred the following questions of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for opinion to this court:

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was neither any omission or failure on the part of the assessee to disclose the primary facts necessary for completing the assessment under section 147(b) nor there was any information in possession of the Income Tax Officer within the meaning of section 147 whereas it is a fact that the assessee had thrown his individual property into the common hotchpotch after 31-12-1969 and, thus, whole of the income arising from that property will be the individual income of the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the order of the Dy. Commissioner (Appeals), whereas it was a sufficient ground for invoking the provisions of section 148 on the basis of the above information ?'

2. The reference relates to the assessment year 1978-79.

3. Briefly stated the facts giving rise to the present reference are that the original assessment in this case was made on an income of Rs. 4,24,574 which was reduced in appeal to Rs. 3,900. Subsequently, it was found that the respondent has thrown his house property into the common stock of the HUF consisting of self, wife and sons. Since the conversion of the property from individual to HUF took place after 31-12-1969, the entire income derived from such property shall be deemed to arise in the hands of individual and not to the HUF. It may be mentioned here that in the original assessment 2/5th of the income from the property amounting to Rs. 6,200 was included in the respondent's assessment and the remaining 3/5th of the house property income remained escaped. A notice under section 148 of the Act was issued to the respondent on 19-1-1983. In compliance whereof the respondent did not file any return of income. However, after providing reasonable opportunity of hearing, the case was finally completed under section 144 of the Act and a sum of Rs. 9,300 was added towards the income from house property. The above addition was challenged by the respondent before the Appellate Assistant Commissioner who had quashed the order of the assessing officer on the ground that there was no information available with the Income Tax Officer. He had further noticed that all the necessary information with regard to the issues was already on record. The order passed by the Appellate Assistant Commissioner was upheld by the Appellate Tribunal.

4. We have heard Sri A.N. Mahajan, learned standing counsel for the revenue. Nobody has appeared on behalf of the respondent-assessee.

5. The learned standing counsel submitted that in view of the provisions of section 64(2)(b) of the Act as the property was thrown by the respondent-assessee into a common hotchpotch after 31-12-1969, the income of the said property was to be assessed in his individual capacity at the hands of the HUF and, therefore,

provisions of section 147(b) have rightly been invoked. The submission is misconceived. From the record we find that 2/5th of the income of the house property amounting to Rs. 6,200 was included in the respondent-assessee's hand in the individual capacity. At the time of original assessment this fact that the property has been thrown in hotchpotch has been fully disclosed and we are not in a position to state as to how a sum of Rs. 6,200 was included as income from that property which was brought to tax in the individual capacity in the original assessment. It is also noticed by the Appellate Assistant Commissioner that before passing the order no information was received by the Income Tax Officer. The Appellate Assistant Commissioner while dealing with the issue has held as follows :

'Similarly, it was submitted that even the provisions of section 147(b) were not available to the Income Tax Officer as all the necessary information with regard to the issues that had been dealt with by him in the impugned order was already on record. It was further submitted that information within the meaning of section 147(b) should be such which the Income Tax Officer receives after the assessment is completed. For this proposition, he relied on the decision of Hon'ble Supreme Court in the case of Bankipur Club Ltd v. CIT reported in : [1971]82ITR831(SC) .

I have considered the preliminary issue with regard to the validity of initiation of proceedings under section 147 as argued by the Id. counsel. On a perusal of records, I find that neither there was any occasion at the part of the assessee to disclose the primary facts that were necessary for the completion of assessment within the meaning of section 147(1) there was any 'information' within the meaning of section 147(b). I therefore, hold that the initiation of proceedings are not valid and, accordingly, the assessment is hereby directed to be annulled. Since the assessment is being annulled on the preliminary issue itself, the rest of the grounds are not adjudicated upon on this regard.'

6. The Tribunal has rightly upheld the order of the Appellate Assistant Commissioner. We do not find any legal infirmity in the said order. We, accordingly, answer the questions referred to us in the affirmative, i.e., in favour of

the assessee and against the revenue. However, there shall be no order as to costs.

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