

B. Vijayakumar Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Madras

Decided On : Sep-26-1986

Reported in : (1987)20ITD254(Mad.)

Judge : M Sikka, Vice, T Natarajachandran

Appellant : B. Vijayakumar

Respondent : inspecting Assistant

Judgement :

1. These appeals are stated to be barred by time by three days. It is found on verification that with reference to date of actual service of orders the appeals filed are within time.

2. These appeals are consolidated and disposed of by a common order for the sake of convenience. They involve a common issue. The assessees are closely related to one another and have 1/20th share in leasehold rights in the coffee estate in Attapadi. For the assessment year 1979-80 for which the valuation date is 31-3-1979 the assessees admitted share interest therein at Rs. 22,780 each and this was adopted by the WTO who passed the assessment orders on 5-11-1983 in the case of L.G. Balakrishnan, L.G. Varadarajulu, L.G. Ramamurthy and N.G.Nityanand while he passed the assessment orders on 25-10-1983 in the case of Shri B. Vijayakumar and Smt. B. Sarojini. The Commissioner found on verification of the records that the assessee sold their individual share of interest in the aforesaid coffee estate for a consideration of Rs. 1,72,500 each in the month

of November 1980 and the value of the share was determined at Rs. 1 lakh in the assessment year 1980-81 though by way of reassessments. On this basis he felt the value adopted for the assessment year 1979-80 was pretty low and, therefore, the assessments made were erroneous and prejudicial to the interests of revenue.

3. Before the Commissioner the contention of the assesseees was that the order of revision should have been passed within two years from the date of assessments sought to be revised in terms of Section 25(2) of the Wealth-tax Act, 1957 ('the Act') and, therefore, the revisionary orders passed on 16-12-1985 were clearly barred by time. The Commissioner rejected this contention by relying on the amendment made by the Taxation Laws (Amendment) Act, 1984 in Section 25(3) which is effective from 1-10-1984 whereby all the orders where action under Section 25(2) was possible on that date could be revised within the extended time limit, namely, two years from the end of the financial year in which the orders sought to be revised were passed. Another contention raised by the assesseees was that the assessment orders were subject-matter of appeals before the Commissioner (Appeals) and, therefore, there was merger of the subject-matter and, therefore, the Commissioner could not revise those assessment orders. This contention was rejected by the Commissioner. According to him, the theory of merger does not apply so long as the issue involved in the revision has not been the subject-matter of appeal before the appellate authority.

On merits, it was contended that there was spurt in the value of coffee estates during 1980-81 but the Commissioner observed that the value assessed on 31-3-1979 differed vastly from the value assessed in 1980-81 and the sale price realised in November 1980 and, therefore, there was underassessment for the year 1979-80. Consequently, the Commissioner set aside the assessments with a direction to the WTO to pass fresh orders in the light of the discussion contained in the revisionary orders.

4. Shri J.B. Swaminathan, the learned Counsel for the assesseees, reiterated the grounds taken by the assesseees and also the same contentions were raised before the Commissioner at the time of revision proceedings. According to him, the old law of limitation of two years' time limit from the date of assessment order

is applicable and not the amended law which has been relied upon by the Commissioner. Reliance was also placed on the Board's Circular No. 402, dated 1-12-1984 [see Taxmann's Direct Taxes Circulars, Vol. 1, 1985 edn., page 1286] wherein it has also been stated that with a view to avoid controversy and litigation it was desirable that the orders under Section 263 of the Income-tax Act, 1961 ('the 1961 Act') are passed, as far as possible, within two years of the date of the order sought to be revised in cases where the order sought to be revised was passed before 1-10-1984. His argument was that the latter part of the circular stated above is directory and is binding on the authorities and the Supreme Court has held that the circulars issued by the Board are binding on the authorities, even if they are not strictly in accordance with the provisions of law. In this connection he has pointed out that the words 'as far as possible' are quite relevant and inasmuch as the Commissioner was aware of the factual position of reassessments made for the assessment year 1980-81, In April 1985 itself adopting the value of Rs. 1 lakh, it was possible for him to revise the impugned assessment orders before the time limit of two years from the date of the impugned assessment orders, i.e., on or before 24-10-1985. Having failed to do so, the impugned revision orders, it was argued, were clearly barred by time and is also against the circular referred to above which is binding on the Commissioner. He also referred to the grounds regarding merger. On merits his contention was that just because the assessment for 1980-81 was revised presumably on the basis of audit objection and though the assessees had acquiesced in the reassessment proceedings without raising any technical objection, there was no reason to hold that there was underassessment for the earlier assessment year 1979-80 on the score of reassessment for the assessment year 1980-81.

5. The learned departmental representative supported the orders of the Commissioner by relying on the amended provisions of law and also relied on the decision of the Supreme Court in the case of S.C. Prashar v. Vasantsen Dwarkadas [1963] 49 ITR 1 and the decision of the Madras High Court in the case of Chettinad Corpn. (P.) Ltd. v. CIT [1983] 141 ITR 693 and the observation of A.C. Sampath Iyengar in his commentary on the Law of Income-tax, Seventh edn., Vol. 5, page 4818 for the proposition that the prescription of the period of limitation has been held to be a matter of procedure and it is settled law that rules of

limitation are rules of procedure and the rules applicable are the rules which are in force at the time when the proceedings were taken.

In other words, the amendment will be retrospective in the sense that it will apply to all those matters which are pending and which had not become closed or dead on the date on which the amendment took effect.

Further he submitted that the share income shown by the assessee at Rs. 22,780 year after year was adopted by the WTO without applying his mind and in such a case the Commissioner was justified in invoking jurisdiction under Section 25(2). Reliance was placed on the ratio of the decision of the Madras High Court in the case of D. Padmanabhan v.CIT [1980] 126 ITR 751 (sic). He also submitted that theory of merger would not apply.

6. In reply the learned representative of the assessee referred us to the observations of A.C. Sampath Iyengar in his commentary on the Law of Income-tax, Seventh edn., Vol. 5, page 4608, wherein it has been stated that the Board has instructed that the old limitation period should be adhered in all cases where the order sought to be revised was passed before 1-10-1984.

7. We have considered the rival contentions on the record. In our opinion the assessee's contention that the revision orders passed by the Commissioner were barred by time is not correct in view of the clear provisions of law contained in the amendment to Section 25(3) and which has been clearly elucidated by the Board in the first part of Circular No. 402 dated 1-12-1984 which is reproduced below, for the sake of facility : As a consequence of the amendment of Section 263, by Section 47 of the Taxation Laws (Amendment) Act, 1984, the limitation for passing an order under Section 263 will, in view of general principles of interpretation of statutes, stand extended in cases where the period of limitation originally laid down in that section had not expired before October 1, 1984....

8. In these cases the assessment orders were passed by the WTO on 5-11-1983 and 25-10-1983 and, therefore, the old law of limitation prior to amendment would expire on 4-11-1985 and 24-10-1985. Before these dates, the amendment had come into force with effect from 1-10-1984 and thereby the time limit for revision

had been extended and, therefore, the revisionary orders passed by the Commissioner on 16-12-1985, 30-12-1985 and 7-1-1986 as the case may be, are clearly within the extended time limit provided by the amended law.

Accordingly, they are valid and in accordance with law.

9. In the case of Chettinad Corpn. (P.) Ltd. (supra) which related to levy of penalty for filing prima facie wrong estimate of advance tax, the question of limitation of time was involved for levy of penalty in terms of Section 275 of the 1961 Act. In that case, the assessment was completed on 20-1-1971 and penalty was levied on 9-3-1973 which was beyond the period of two years envisaged by Section 275 as it was in force at the time when the default was committed, i.e., 14-3-1970, in the meantime, an amendment was made in that a new provision was substituted by the Taxation Laws (Amendment) Act, 1970 with effect from 1-4-1971, according to which the time limit was extended, namely, two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated are completed. The Madras High Court observed that Section 275 is in the nature of procedural provision and there is no question of any vested right according to any assessee by reason of the assessment being completed on any particular date and it is well settled that there is no vested right in any procedural matter. The Madras High Court held that the amended provisions of Section 275 alone will apply so long as the period of limitation has not expired on 1-4-1971 when the amended provision was brought into force. The same view has been expressed by the Madras High Court in the earlier case of CWT v. Savithri [T C Nos. 165 to 167 of 1975, dated 17-12-1979] which relates to similar amendment made to Section 18 of the Act by the Finance Act, 1969. Following respectfully, the aforesaid judgment we hold that the Commissioner was justified in invoking his revisionary jurisdiction in passing the impugned orders which are well within time as per amended law of limitation.

10. As regards merger, it was not seriously disputed either before the Commissioner or before us. The Madras High Court in the case of CIT v. Eimco-K.C.P. Ltd. [1984] 147 ITR 603, observed that while the AAC would have to deal with the aspects of the order of the ITO which are prejudicial to the assessee the

Commissioner in exercising his powers under Section 263 will have to concentrate on the aspects of the ITO's order which are prejudicial to the department. In such circumstances, there is no curb on the revisional powers of the Commissioner under Section 263 merely because certain aspects of the ITO's order have been carried on appeal to the AAC. In that case while an appeal was pending before the AAC, the Commissioner revised the order of the ITO to cancel the relief under Section 35A of the 1961 Act granted and the High Court upheld the revisionary order of the Commissioner. Following respectfully the aforesaid judgment of the Madras High Court there is no merit in the contention raised by the assessee in this regard and, therefore, it is rejected.

11. As regards merits, the contentions of the learned representative for the assessee are not valid inasmuch as, the assessee had acquiesced to the reassessment proceedings taken by the department for the assessment year 1980-81 wherein enhanced valuation of Rs. 1 lakh was adopted by the WTO on the basis of the same information, namely, the assessee has sold their share of interest for Rs. 1,70,500 each in November 1980.

On this premise, therefore, the same consideration would be applied so far as underassessment for the assessment year 1979-80 also. It is only a case of distinction without there being any difference between reassessment under Section 147 of the 1961 Act for the assessment year 1980-81 and fresh order for the assessment year 1979-80 passed to give effect to the revisionary order of the Commissioner.

12. In the case of K.G. Kemptur v. Second WTO (1984] 146 ITR 611 the Karnataka High Court observed that the report of the Valuation Officer under Section 16A of the Act, for a later year though it is only an opinion it would be an information as to a fact to confer jurisdiction under Section 17(1)(b) of the Act and reassessment proceedings on the basis of such report are valid. In the case of the assessee there has been an actual sale in November 1980 for Rs. 1,72,500 and, therefore, it constitutes information on the basis of which the underassessment in the impugned assessment year 1979-80 is patent and obvious on record which conferred the jurisdiction for the Commissioner to revise the impugned

assessments. In the case of D. Padmanabhan (supra) (sic), the ITO while computing the capital gains, took the cost of shares on the basis of market value as on 1-4-1964 in respect of certain shares which were acquired or allotted as bonus shares after that date. The Commissioner revised the order of the ITO which was upheld by the Tribunal. On reference, the High Court upheld the order of the Tribunal as a mere look at the order of the ITO indicated that the basis adopted was erroneous and, therefore, the Commissioner rightly exercised the jurisdiction under Section 263. On the facts and circumstances of the case, and in the light of case laws referred to above, we uphold the revisionary orders of the Commissioner and reject the grounds taken by the assessee.

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