

Assistant Commissioner of Vs. Late Har Deo Joshi Through Lh.

Assistant Commissioner of Vs. Late Har Deo Joshi Through Lh.

SooperKanoon Citation : sooperkanoon.com/71028

Court : Income Tax Appellate Tribunal ITAT Jaipur

Decided On : Apr-28-2000

Appellant : Assistant Commissioner of

Respondent : Late Har Deo Joshi Through Lh.

Judgement :

1. This appeal by the Revenue is rejected against the order dt. 17 March, 1993 passed by the CIT(A) by which appeal of the assessee was disposed of. The ground taken is as under : "On the facts in the circumstances of the case, the CIT(A) has erred in holding that the assessment was completed under s. 143(3) of the IT Act and all the relevant facts were in the knowledge of the AO and as such he was not competent to charge his opinion for initiation of proceedings under s. 147 of the IT Act and consequently cancelling the assessment despite the fact that the original assessment was not completed under s. 143(3) but merely processed under s. 143(1)(a)." 2. The assessee was deriving income from salary, pension and interest income. The return was filed showing an income of Rs. 76,920 which was accepted under s. 143(1) on 23rd March, 1989. Later on while examining the wealth-tax records, it was noticed by the AO" that the assessee had sold 25 bighas of agricultural land at Khathipura within the municipal limit of Jaipur to M/s Indira Graha Nirwan Samiti for Rs. 7 lakhs in 1981. The land was transferred to the society through an agreement with the society and possession was actually handed over to the society for being divided into plots. The amounts of Rs. 7 lakhs received from the society was shown as advance from the society against the land sold. As the assessee had received the entire sale proceeds of Rs. 7 lakhs and

the possession of the land was handed over to the society, he should have offered capital gains arising on the sale of the said land for the asst. yr. 1988-89 in view of the insertion of sub-cl. (v) of cl. (47) of s. 2 of the IT Act which was applicable w.e.f. 1st April, 1988.

Consequently, the AO issued notice under s. 148 on 11th March, 1991 and in response to said notice a letter dt. 13th March, 1991 was submitted on behalf of the assessee that the return filed by the assessee on 14th October, 1988 may be treated to have been filed in response to notice under s. 148. The reassessment was completed at an income of Rs. 4,24,920 as under : Income originally assessed 79,920 Add : Capital gains on sale of land : Sale price 7,00,000 Less : Cost 10,000 ----- 6,90,000 Less : 50% thereof 3,45,000 ----- 3,45,000

----- 3. On first appeal, the assessee challenged the proceedings initiated under s. 148 as well as inclusion of amount of capital gains Rs. 3,45,000 vis-a-vis cost of acquisition Rs. 10,000 and not allowing deduction under s. 48(2). The CIT(A) found that in view of insertion of sub-cl. (v) to cl. 47 of s. 2 w.e.f. 1st April, 1988, the AO on the basis of audit objection issued notice under s. 148 and charged the above amount to capital gain for the asst. yr. 1988-89. The CIT(A) while cancelling the proceedings initiated under s. 148 has observed as under : "7. I have considered the entire matter carefully. In the above case all the material facts were fully disclosed by the assessee at the time of original assessment. The assessment was completed under s.

143(3) of the IT Act. All the relevant facts were in the knowledge of the AO. Under these circumstances, the AO is not competent to change of opinion for initiation of proceedings under s. 147 of the IT Act. This view is fully supported by a plethora of judicial pronouncements. After considering the submissions of the learned counsel of the appellant and the facts of the case, I am satisfied that the present reassessment is nothing but mere change of opinion on same set of facts. The present assessment order is therefore bad in law and illegal. The assessment order is, therefore, cancelled." 4. Against the above decision of the CIT(A) the Revenue is in appeal before us. It was submitted by the learned Departmental Representative that in this case the assessment was completed under s. 143(1)(a) and CIT(A) while allowing the assessee's appeal in his favour has wrongly held

that the original assessment was completed under s. 143(2). It was further submitted by the learned Departmental Representative that after introduction of amendment to s. 2(47) all transactions took place before 1st April, 1988 i.e. before introduction of amendment are subject to capital gains for the asst. yr. 1988-89 and, therefore, the order passed by CIT(A) should be reversed and the order of the AO should be restored.

5. On the other hand, the learned authorised representative while strongly relying upon the order of the CIT(A) has submitted that the assessee has disclosed all the facts in the IT returns and as well as in the WT returns. Therefore, the proceedings initiated under s. 147 are review in nature which is outside the purview of s. 147. It was further submitted that the possession of land was given in asst. yr.

1981-82 i.e. much before the introduction of the amendment of s. 2(47) which has come into force w.e.f. 1st April, 1988. It was also submitted that the amendment is not from retrospective effect. Therefore, it is not applicable in this case. It was also argued that the transaction in question does not fit in the definition of transfer as it existed during the relevant time. During the accounting period relevant to asst. yr. 1988-89 no transfer has taken place, therefore no element of any capital gain can be taxed during the year under appeal. It was, therefore, submitted that no interference in the order passed by the CIT(A) is required.

6. We have heard the rival submissions of the parties and have perused the material available on record. Since the land was given possession in asst. yr. 1981-82 therefore, no capital gain arises in the asst. yr.

1988-89. We find support from the order of this Bench in the case of ITO vs. Smt. Shakuntala Devi Ajmera in ITA No. 909/Jp/1993, dt. 10th March, 2000, for asst. yr. 1988-89 [reported at (2000) 68 TTJ (Jp) 663] where it was held by us as under : "We have heard the rival parties and have perused the material available on record. Keeping in view the facts of this case, i.e., agreement to sell dt. 1st January, 1976 and handing over the possession of all the properties on 1st January, 1976, it is crystal clear that transaction took place in the accounting period relevant to asst. yr. 1976-77 tax on capital gain on any such transaction can be charged as per provisions of IT Act then existing. Since the property in question

was not transferred through registered deed, it was outside the purview of the definition of transfer and hence no capital gains could be taxed in that assessment year. Amendment to s. 2(47) was brought on statute from 1st April, 1988. It is not from retrospective effect and hence the definition of transfer as introduced by this amendment would be effective from the transactions which took place only from 1st April, 1988." 7. In view of the above facts and decision, we are of the view that the assessee is not liable to charge capital gains for the year under consideration and we decline to interfere in the order of the CIT(A).

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com