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Court : Delhi

Decided On : Mar-17-2006

Reported in : [2006]7SOT151(NULL)

Appeal No. : IT Appeal No. 257 (Chd.) of 2002 , A.Y. 1991-92 , 17 M

Appellant : Ch. Ranjit Singh

Respondent : ito

Advocate for Pet/Ap. : M.S. Syali and; Tarandeep Singh, ;for the assessed; P.K. Pr

Judgement :
ORDER

A.D. Jain, Judicial Member

This is assessed's appeal for assessment year 1991-92 against the order dated 25-2-2002 passed by the learned Commissioner (Appeals), Rohtak. The following grounds have been taken :-

'1. That the learned Commissioner (Appeals) has erred in law as well as on facts in upholding the assumption of jurisdiction under section 147 by the assessing officer and issuance of a notice under section 148 of the Act to the appellant inasmuch as there has been no escapement of assessment of income chargeable to tax and as such, resort to action under section 147 is illegal and without

jurisdiction.

2. That no reason appears to have been recorded before issuance of a notice under section 148 to determine the legality of the action under section 148 of the Act and as such, the action is unwarranted.

3. That in any case, the notice under section 148 having been issued without there being any mention of the status of the assessed-appellant is erroneous, and opposed to legal provisions of the Act. The status in which the notice was issued ought to have been stated in the notice.

4. That without prejudice to the above, the assessed had no income in his individual status except the salary as a Member of the Rajya Sabha during the year under appeal while the other source of income is from ancestral agricultural lands held as Karta of his HUF comprising of his wife and a son. Thus, there being no individual taxable income of his, the impugned assessment in the individual status is null and void.

5. That half share in the property rented out of Punjab & Sind Bank, Dabwali is the property of the HUF constructed on a plot owned by the HUF with the agricultural income derived from the ancestral lands of the HUF and as such, the rental income from this property has been wrongly assessed in the hands of the assessed-individual.

6. That merely because a part of the amount spent in the construction of the property was raised by way of loan from the bank to whom the property has been rented out, does not lead to the conclusion that the property does not belong to the HUF and belongs to the assessed as an individual.

7. That the learned Commissioner (Appeals) has further erred in upholding the addition of Rs. 15,00,000 as income from other sources holding that the amount has been received from Jain Brothers as illegal gratification being a member of the Rajya Sabha found as recorded in their diary against the mention of initials 'RS' and associating the receipt to the appellant which is arbitrary and unjustified.

8. That the additions wholly illegal, arbitrary and unjust being unsupported and unsubstantiated by any other independent material or evidence to support the entry recorded in the diary of Jain Brothers which cannot be attributed to the appellant by any stretch of imagination.

9. That the learned Commissioner (Appeals) has further erred in upholding the addition of Rs. 70,00,000 for the alleged unexplained investment in the purchase of property at Malcha Village, Delhi benami in the name of Shri Laxmi Narain which is arbitrary and unjustified.

10. That Shri Laxmi Narain admittedly advanced a sum of Rs. 10 lakhs towards the purchase of the said land which he disclosed in the VDIS, 1995 and stands duly accepted by the Income-tax department and as such, the appellant has no connection whatsoever with the purchase of the said land.

11. That the onus to prove the benami character in respect of the property was on the department which it has failed to discharge and as such the addition is arbitrary, illegal and unjustified.

12. That the statements relied upon by the assessing officer during the course of assessment, were recorded at the back of the assessed without affording an opportunity to the assessed to cross examine them in utter disregard of the principals of natural justice and hence, the assessment is a nullity.'

2. At the time of argument, the learned counsel for the assessed took up further preliminary argument that the notice under section 148 of the Act in this case was issued beyond time, since as per section 149(1)(b) of the Act, if the notice has been issued beyond 4 years and the escaped income is below Rs. 25,000, the issue of notice is void. It was stated at the bar that the learned counsel would be restricting his arguments to this preliminary issue only.

3. Section 149(1), as applicable to the assessment year under consideration, i.e., assessment year 1991-92, reads as follows :-

'149(1) : No notice under section 148 shall be issued for the relevant assessment year-

(a) In a case where an assessment under sub-section (3)(iii) of section 143 or section 147 has been made for such assessment year,-

(i) If 4 years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) If 4 years, but not more than 7 years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 50,000 or more for that year;

(iii) If 7 years, but not more than 10 years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 1 lakh or more for that year;

(b) In any other case-

(i) If 4 years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) If 4 years, but not more than 7 years have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 25,000 or more for that year;

(iii) If 7 years, but not more than 10 years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 50,000 or more for that year.'

4. The learned counsel for the assessed has stated in this regard that a bare perusal of the provisions of section 149(1) (as quoted above), makes it evidently clear that the issuance of notice was in violation thereof. The learned counsel has stressed that section 149 provides for the limitation for the issuance of notice there under. As per the applicable provisions thereof, notice under section 148 shall not be issued if for the relevant assessment year, the income chargeable to tax which has escaped assessment, is less than Rs. 25,000, as per section 149(b)(ii).

5. As to how the present case is so covered by section 149(1)(b)(ii) of the Act, the submissions of the learned counsel for the assessed have been that as is available from the working done by the assessing officer at page 2 of the assessment order, it is the amount of Rs. 40,158 representing half share of rental income of the assessed from the Punjab & Sind Bank, which has been taken as chargeable to tax less a sum of Rs. 6,693, ie., 1/6th for repair and interest paid on loan as per bank certificate, amounting to Rs. 32,993. The contention of the learned counsel is that if the sum of Rs. 32,993 representing the interest paid on loans as per bank certificate is taken into consideration, the taxable amount comes to less than Rs. 25,000 which is the limit prescribed by section 149 (1)(b)(ii) (supra).

5.1 The learned counsel has submitted that it is only 'income chargeable to tax', which can be so taxed. Reference in this regard has been made to sections 4, 5, 14 and 22. It is contended that in all these sections, the expression used is 'income chargeable to tax'. So, according to the learned counsel, it is such income which has to be computed - there is no other choice. This also gathers support from Explanation 2 to section 147 of the Act, which deems certain cases where 'income chargeable to tax' has escaped assessment. As per the learned counsel, this provision also makes it clear that it is income which is to be computed. So, the amount with respect to which the limitation for issuance of notice to be seen is the amount computed as per the provisions of the Act. In the present case, before the issuance of the notice, the assessed had already filed a return showing rental income and claiming interest. With regard to the notice dated 30-8-1998, under section 148 of the Act, the return was filed on 10-7-1998, for assessment year 1993-94 pages 209 and 210 of the assessed's Paper Book ('APB', for short). The net income here is of Rs. 23,092. This amount is less than the statutory amount of Rs. 25,000. So, this return/ information was available with the assessing officer at the time of issuance of the notice. It stands acknowledged by the assessing officer that the reasons are common for assessment years 1991-92 and 1993-94. Notices were issued for both the assessment years 1990-91 and 1993-94, both on 30-3-1998. The notice with regard to assessment year 1990-91 is contained at page 199 of the APB. In this notice, no status of the assessed has been indicated. So for assessment year 1990-91, the assessed filed the return in the status of an

individual and for assessment year 1993-94, as an HUF The return for assessment year 1990-91 is at pages 201 and 202. thereforee, it was before the assessing officer, firstly, that loan had been taken and secondly, that interest had been paid and that the income was less than the statutory amount of Rs. 25,000, if this is taken into account. The learned counsel has submitted that the impact of section 149 of the Act has been discussed in the decision of the Hon'ble Allahabad High Court in the case of CIT v. Motilal Padampat Sugar Mills (P.) Ltd. : [1992]196ITR25(All) and that of the Hon'ble Karnataka High Court in the case of A.R. Mahendra v. State of Karnataka : [1991]192ITR351(KAR) .

5.2 In Motilal Padampat Sugar Mills (P.) Ltd.s. case (supra), it was held that where in a case of reassessment, there was a valuation to disclose material facts necessary for assessment and the notice was issued after 8 years, the facts involving receipt of compensation, and the finding being that only Rs. 12,500 out of the amount received was assessable, the notice was held to be not valid.

5.3 In A.R. Mahendras case (supra), considering the provisions of the Karnataka Agricultural Income Tax Act, 1957, the Hon'ble Karnataka High Court held, inter alia, that having regard to the limitations prescribed for exercise of jurisdiction under section 36 of the Act as it stood at the relevant time, i.e., three years, the reassessment proceedings were barred by time.

5.4 The learned counsel has further averred that, thus, limitation always places a fetter on action. So, in the present case, the reassessment does not survive. Then, before issuance of the notice, what the assessing officer had before him, is available at APB 218. This is a letter dated 23-6-1999, issued to the assessed by the assessing officer. In this letter, the Assessing Officer has stated that a perusal of the return of the assessed for assessment year 1990-91 showed that the assessed had shown only income from salary, whereas, as per the information available with his (the assessing officer's) office, the assessed had received 1/2 rent at Rs. 40,158 from the building which was occupied by the Punjab & Sind Bank. It was further submitted that on the basis of this very information, notices under section 148 had been issued for assessment years 1992-93 and 1993-94. The learned counsel contends that from these contents of the said letter of the

assessing officer to the assessed, it was on record that the Assessing Officer had acknowledged the assessed's filing of return of income for assessment year 1990-91. The assessing officer accepted that the reasons were common for assessment years 1991-92 and 1993-94. For the first time, the information from the bank was good, but not so for the other two years. The assessing officer had before him the notice dated 30-3-1998 for assessment year 1990-91 (APB page 199), the notice dated 30-3-1998 for assessment year 1993-94 (APB page 208), the HUF return (APB pages 209 and 210), notice under section 142(1), for assessment year 1990-91, dated 15-3-1999 (APB page 200) and the notice dated 15-3-1999, for assessment year 1993-94 (APB page 211). Then, assessment orders under section 143(3) of the Act stood passed for assessment years 1990-91 and 1993-94 (APB pages 206 and 214 respectively). Here, no income from rent was added, in the status of the assessed as an individual, where the department accepted that it was not there - that it need not be there.

5.5 The learned counsel for the assessed has placed reliance on Sheo Nath Singh v. AAC : [1971]82ITR147(SC) to state as to what the expression 'reason to believe' means. It is submitted that the assessing officer is not to act on mere suspicion, gossip or rumour. In the present case, as on 30-3-1998, yes, there could be such a reason to believe. However, the same cannot be said to be the position on 30-3-1999. The assessing officer did not go into the assessed's claim of taxability in the hands of HUF. thereforee, there was no reason to believe available with the assessing officer.

5.6 The learned counsel for the assessed has further placed reliance on the decision of the Hon'ble Supreme Court in the case of Income Tax Officer v. Lakhmani Mewal Das : [1976]103ITR437(SC) , wherein it has been, inter alia, held that there is a necessity of live link between the material and the belief, so as to sustain the reasons for belief. Reliance has also been placed on the decision of the Hon'ble Delhi High Court in the case of United Electrical Co. (P.) Ltd. v. CIT (2002) 258 ITR 317, wherein, in a similar manner, it has been held that for existence of reason to believe that income has escaped assessment, facts should exist, on the basis of which, such belief is entertained and that there should be a rational nexus or a relevant bearing. Where reasons are de hors recorded, there is

no jurisdiction to issue a notice.

5.7 Further, it has been submitted that assessing officer has gone into other incomes that does not justify this reassessment. For this proposition, the learned counsel has placed reliance on Dr. Devendra Gupta v. Income Tax Officer .

5.8 In Dr. Devendra Gupta's case (supra) it was held, inter alia, that there is no bar on issuing notice under section 148 on the basis of DDIT's report, but the condition is such report should contain some solid basis indicating escapement of income; that existence of income for which the assessing officer formed belief to have escaped assessment, is a pre-condition for including any other income chargeable to tax escaping assessment and coming to notice of the assessing officer subsequently in the course of proceedings; and that where all reasons recorded by the assessing officer for issuance of notice under section 148 were non-existent, the order passed under section 143(3), read with section 147 assessing 'other incomes' based on the assessed's alleged statement before the DDIT, not forming part of reasons to believe for issuance of notice under section 148, could not be allowed to sustain.

5.9 The learned counsel has argued that if the question of validity of the notice is decided in favor of the assessed, the remaining issues involved herein need not be gone into. For this, reliance has been placed on the Special Bench decision of the Tribunal in the case of Rahul Kumar Bajaj v. Income Tax Officer .

6. In response, the learned Departmental Representative other than putting forward his arguments, has also placed written submissions on record. It is contended that apropos the proposition that the action of the assessing officer was bad in law in so far as the income chargeable to tax have escaped assessment was less than Rs. 25,000, the limit laid down in section 149(1)(b) of the Act, for the relevant assessment year, the position is that the assessed did not of his own file the return of income for assessment year 1991-92. As per the information available with the assessing officer, the assessed received Rs. 40,158 as 50% share of rental income received. It was, thereforee, that the notice under section

148 of the Act was issued. During the relevant previous year, the maximum amount not chargeable to tax was Rs. 22,000. The amount of deduction allowable under section 24(1)(i) towards repairs was 1/6th of the annual value. Other deductions under section 24(1) of the Act were allowable on actual payment basis. No other deduction was allowable in respect of any kind of expenditure. thereforee, prima facie, the amount of income chargeable to tax as income from house property worked out to Rs. 33,465, i.e., the assessed's share of rent received amounting to Rs. 40,158 plus the deduction under section 24(1)(1), of Rs. 6,693. The submission is that since the said income had exceeded the maximum amount not chargeable to tax, i.e., Rs. 22,000 and since the assessed failed to file his return of income voluntarily, the assessing officer was right in invoking sections 147 and 148 of the Act, after duly recording reasons.

6.1 Apropos the arguments of the learned counsel for the assessed with regard to 'income chargeable to tax which has escaped assessment', attention has been drawn to Explanation 1 to section 149(1) and Explanation 2 to section 147 of the Act. In the present case, according to the learned Departmental Representative, the assessed did not file his return despite factum of his income having exceeded the maximum prescribed amount not chargeable to tax. As such, according to the learned Departmental Representative, the case is one falling under the deeming provisions of Explanation 2 to section 147, as per which, the rase of the assessed is deemed to be one where income chargeable to tax has escaped assessment. The learned Departmental Representative, in this regard, has placed reliance on the decision of Jodhpur Bench of the Tribunal in the case of Income Tax Officer v. Mahesh Kumar Pandya (2001) 73 TTJ (Jodh.) 194.

6.2 The learned Departmental Representative has further contended that the position of law is that at the stage of initiation of proceedings for reassessment, it is only a formation of reasonable belief alone which is needed and not a conclusive finding on facts. There should be, with the assessing officer, a 'reason to believe' that any income chargeable to tax has escaped assessment. The word 'reason' here means 'cause', 'justification'. Where the assessing officer has a cause or justification to think or suppose that income has escaped assessment, he

can be said to have a reason to believe that such income, has indeed, escaped assessment. The assessing officer without having reason to believe, cannot be expected to have finally and ultimately ascertained the facts by sifting and considering legal evidence. It only means that the belief of the assessing officer is formed from the examination he makes. If from such examination he is of the view on having discovered it to be so, that taxable income has escaped assessment, it is this which would amount to the assessing officer having formed 'reason to believe' that such income had, in fact, escaped assessment. Such justification for the assessing officer's belief is not to be judged from the exacting standards of proof as required for arriving at a final conclusion.

6.3 The learned Departmental Representative has placed reliance on the following case laws

1. Raymond Woollen Mills Ltd. v. Income Tax Officer : [1999]236ITR34(SC) ;

2. Indo-Aden Salt Mfg. & Trading Co. (P) Ltd. v. CIT : [1986]159ITR624(SC) .

3. Grover Nursing Home v. Income Tax Officer

4. Praful Chunilal Patel: Vasant Chunilal Patel v. MJ. Makwana, Assistant Commissioner : [1999]236ITR832(Guj) ;

5. Phool Chand Bajrang Lal v. Income Tax Officer : [1993]203ITR456(SC) ;

6. Rattan Gupta v. Union of India : [1998]234ITR220(Delhi) and

7. CIT v. Kelvinator of India Ltd. (2002) 256 ITR 1

7. A written replication has also been filed on behalf of the assessed. Here it has been submitted, firstly, as per the department, if the income under the head 'House property' was to be computed, accounting for only deduction under section 24(1)(i), it would stand Rs. 33,465, which amount exceeds the maximum requisite statutory amount not chargeable to tax of Rs. 25,000. This proposition has been supported by the department by resort to the Explanation to section 149(1) of the Act. The contention of the assessed is that the said Explanation only fictionally

includes the contents of Explanation 2 to section 147 within the ambit of 'income chargeable to tax which has escaped assessment'. Explanation 2 to section 147 provides that where no return of income has been furnished, though the total income exceeds the maximum amount not chargeable to tax, it shall be deemed to be a case where income chargeable to tax has escaped assessment. Thereafter, it is presumed that since the income of the assessed exceeded the maximum amount not chargeable to tax, these provisions are applicable. In the facts of the present case, undoubtedly it remains irrefutable that interest payable to the bank on loans taken for investing house property are an allowable deduction under section 24. Further, the income referred to in section 149 is that computed under the Act, which is the agreed position. The assessing officer himself allowed 1/6th repairs, while arriving at the figure of Rs. 33,465. Still further, the proposition that interest is allowable, is also not disputed, the assessing officer having himself allowed the same as a deduction. According to the assessed, had it been a case where there was nothing on record before the assessing officer, at the stage of recording to reasons to believe, so as to indicate the factum of loan or payment of interest thereof, it would have been understandable. On the contrary, here is a case where it is not so. In response to the notice under section 148, the assessed had filed returns in two capacities, ie., individual and HUF, prior to the recording of reasons for assessment year 1991-92. In the 'independent' return, income from house property had not been shown, whereas in the 'HUF' return, the assessed had duly shown income from house property, loan from the bank and interest thereon. thereforee, it cannot be said that the assessing officer was not aware of the situation. The assessing officer was in the know of the fact that the interest was paid on the loan from the bank. It is in these facts that the presumption that the income exceeded the maximum amount not chargeable to tax, stand belied as baseless.

7.1 It is argued that this mandated by the provisions of section 149(1) that income chargeable to tax which has escaped assessment should 'amount to or is likely to amount to' the stipulated figure. This, on the face of it, indicates an application of mind at the hands of the assessing officer. The examination of the validity or otherwise of assumption of jurisdiction by the assessing officer is to be done from the reasons recorded, and nothing more. Satisfaction to reassess should be amply

visible from the reasons themselves, shorn of anything supplementing them. As such, the amount of the income chargeable to tax should be indicated in the reasons themselves, as has been held by the Hon'ble Madhya Pradesh High Court in the case of Arjun Singh v. Asstt. Director of Income-tax (Inv.) (2006) 246 ITR 363. The jurisdiction otherwise in available cannot be assumed illegally by mentioning such figure incorrectly.

7.2 Then, it is submitted, the word 'likely' as occurring in section 149(1) indicates that it is essential to give the basis and that a mere assertion, unconnected with material, is entirely uncalled for and unacceptable. Prima facie, if the ultimate income is less than the qualifying figure, the reassessment will be invalid, as has been held in Income Tax Officer v. Smt. Chakka Bai Baid .

7.3 Still further, it has been contended that existence of reason to believe is essential. Not only to valid assumption jurisdiction apropos escapement of income, but also for the determination of the amount entitling such assumption of jurisdiction vis-a-vis limitation. However, this aspect of the matter has conveniently been given the go-bye.

8. We have carefully heard the rival contentions and meticulously gone through the material on record. The question arising for consideration here is as to whether the assessing officer needed to go only into considering deductions prima facie available to the assessed under section 24(1) of the Act, i.e., deduction allowable towards repairs. The case of the assessed is that as on 30-3-1999, the stand of the assessed regarding interest on loan was in the record of the assessing officer and this ought not to have been ignored in determining income chargeable to tax under section 149 of the Act. If this had not been ignored, the amount would not have been exceeded Rs. 25,000, Le., the maximum amount not chargeable to tax. That being so, the reopening in question is not valid. On the other hand, the department contends that it was only the deduction of 1/6th repairs which was prima facie perceivable by the assessing officer, which could go to reduce the income. The interest on loan, on the contrary, was a matter which could have been considered only at the time of actual assessment. There may be various aspects which may have to be gone into before deciding upon its allowability. Merely

because it has been allowed in the preceding year does not necessarily make it allowable for the year under consideration too.

9. The existing legal position, as we understand it, is that for the formation of a reasonable belief that income has escaped assessment the assessing officer needs to form only a prima facie opinion and not a conclusive one. Had it been otherwise, the whole exercise of reopening the assessment would have been redundant. In that case, the formation of the belief would not at all be a formation of 'belief'. It would, rather, amount to a final conclusion - a concluded assessment. This, however, is not the purport of the provisions of section 149. Though the assessed has contended that the expression 'amount to or is likely to amount to' indicates application of mind, nothing turns on this in favor of the assessed. 'Likely to amount to' here indicates a further stage at which the final conclusion would be arrived at. Again, an illustration would not be out of place. An assessing officer may form a prima facie belief that the assessed has suppressed sales of say Rs. 3 lakhs. This prima facie belief itself will entitle the assessing officer to reopen the assessment. It is quite common that in most of such cases, only g.p. would be added. But to issue notice under section 148, the assessing officer need not compute the g.p. as it would depend on several variable factors. It may also happen that the transactions of suppressed sales may result into a loss, but that would not make the reopening of the assessment invalid. If the argument of the learned counsel were to be accepted, perhaps it would render the entire provisions relating to reopening of assessments otiose. One cannot lose sight of the basic principle behind the provisions of section 147 that they are meant for the benefit of the revenue and not the assessed. The argument of the learned counsel cannot be accepted. In the present case, the stand of the department cannot be negatived when it says that only 1/6th repairs allowable could be reduced under section 149. This is a statutory allowance. in making this allowance, nothing further is to be gone into. Whereas, in the case of the loan in question, facts are to be delved into. Short of doing this, no conclusion with regard thereto can be arrived at and such delving into facts definitely lies in the realm of reassessment proceedings and not the proceedings prior to it and leading to it, i.e., the formation of a belief under section 149. In sum, it was the gross income of the assessed minus the statutory deductions directly available to the assessed without the assessing officer having

to go into the facts, which was the amount to be considered for the purpose of limitation and that has been duly done. Hence, the notion of the assessed that the interest on loan also ought to have been considered, is misconceived. Ergo, the dispute raised by the assessed with regard to limitation goes against him. It is decided accordingly.

10. Since at the outset, the learned counsel for the assessed had made a statement at the bar that he is not going to argue the merits of the case and is going to confine his arguments to the above discussed preliminary issue, we are not going into the merits of the case. The preliminary issue, as above, stands decided against the assessed.

11. In the result, appeal No. 257(Chd.) 2002 filed by the assessed is dismissed, as indicated.

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