Cit Vs. C.V. Jayachandran

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Court : Kerala

Decided On : Feb-19-2009

Reported in : [2009]184TAXMAN68(Ker)

Judge : C.N. Ramachandran Nair and; K. Surendra Mohan, JJ.

Appellant : Cit

Respondent : C.V. Jayachandran

Advocate for Def. : Shri. P. Balakrishnan

Disposition : Appeal by Revenue allowed

Judgement :

C.N. Ramachandran Nair, J.

1. The question raised in the appeal filed by the revenue is whether the Tribunal was justified in holding that the income 'escaping assessment completed under Section 147 of the Income Tax Act in the case of respondent assessee for the year 1989-90 is invalid. An item of property belonging to the assessee was notified for acquisition on 3-6-1986. The possession was taken over on 24-10-1987 and the initial compensation was paid to the assessee on 17-1-1989. Even though assessee filed IT return for the year 1988-89 assessee did not include any income from capital gain. Though the transfer took place in the previous year relevant for

the said assessment year, by Finance Act, 1991, amendment was introduced to Section 45(5)(a) providing for levy of income-tax on capital gains arising out of compulsory acquisition of land on receipt of initial compensation. Since assessee received initial compensation only on 17-1-1989 and under the amended provisions which came into force retrospectively with effect from 1-4-1988 the income by way of capital gain was assessable for the assessment year 1989-90. The assessing officer issued notice under Section 147 and completed the assessment for the assessment year 1989-90. The assessee filed appeal against assessment which was allowed by Commissioner (Appeals) holding that amendment of the statute will not justify reopening of assessment under Section 147. This order is confirmed by the Tribunal in the second appeal filed by the revenue against which this appeal is filed under Section 260A of the Income Tax Act.

2. We have heard senior counsel appearing for the revenue and Shri P. Balakrishnan appearing for the respondent.

3. The contention of the appellant is that since there is no challenge against the assessment completed under Section 147, the Commissioner (Appeals) as well as the Tribunal went wrong in holding that the revised assessment is illegal. The case of the respondent/assessee is that under the unamended law capital gains if any ought to have been returned and assessed for the assessment year 1988-89 as the transfer took place by way of compulsory acquisition and taking over of possession in the previous year relevant for the said assessment year. The specific case of the assessee is that assessee did not file return because the property taken over was agricultural land and so much so there is no liability for tax on capital gains. However, there is nothing to indicate that there is any bona fides in this claim because land was not agricultural and even if it is agricultural land it was situated within the municipality and so much so there is no justification for claiming exemption on this ground. Further, this ground was found against the assessee by all the authorities and the assessee is not in appeal before us. Therefore, the only question to be considered is whether the assessment completed under Section 147 for the assessment year 1989-90 is valid or not. Even though transfer took place on 24-10-1987 by virtue of the retrospective

amendment to Section 45(5) (a) of the Act the capital gains on account of compulsory acquisition of land should be assessed in the year in which the original compensation is received. Admittedly assessee received compensation on 18-1-1989 and under the amended provision which came into force from 1-4-1988 capital gains is first assessable for the year 1989-90. The assessee has no case that even under the unamended provision the proceedings initiated and completed under Section 147 is time-barred In other words even it there was no amendment income by way of capital gain could have been assessed under Section 147 for the assessment year 1988-89. Counsel for the assessee has relied on the decision of the Gujarat High Court in Denish Industries Ltd. v. ITO : (2004)271 ITR 340 (Guj) and that of the Punjab & Haryana High Court in Mahavir Spinning Mills Ltd. v. CIT : (2004) 270 ITR 290 (P&H;) and contended that Section 147 proceedings cannot be initiated based on a retrospective amendment. We are unable to uphold this argument because Section 147 is not controlled by the amendment that is applicable in this case. The amendment is a beneficial position by which assessees are required to pay tax on capital gain only in respect of consideration received. The provision prior to the amendment by virtue of Section 45(5)(a) was to levy tax in the assessment year relevant for the previous year in which the transfer took place. All what has happened in this case is assessee did not concede any income on capital gain either under the unamended provision or under the amended provisions. Therefore, the recource open to the department is to make income escaping assessment under Section 147 which is not time-barred or otherwise invalid. The next question to be considered is whether while making assessment under Section 147 the assessing officer is bound to follow the amended provisions of the law or the law prevailing as on the date the transfer of property took place. The amendment has taken effect with retrospective effect. Since amendment introduced by Finance Act, 1991, with retrospective effect from 1-4-1988 was in force as on the date of initiating proceedings under Section 147 the assessing officer is bound to follow the law in force as on the date of initiation of proceedings. We therefore, allow the departments appeal by reversing the order of the Tribunal and the first appellate authority and by restoring the assessment completed under Section 147 of the Act. Consequently we set aside the orders of the Commissioner (Appeals) and that of the Tribunal.