

Varkey Jacob Co. Vs. Cit

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Court : Kerala

Decided On : Apr-11-2002

Reported in : (2002)175CTR(Ker)536

Appeal No. : O.P. No. 10460 of 1995 11 April 2002

Appellant : Varkey Jacob Co.

Respondent : Cit

Advocate for Pet/Ap. : N. Srinivasan, M.P. Abraham, Philip Mathew & Biju Varghese, *for the Assessee* P.K. Ravindranatha Menon & George K. George, *for the Revenue*

Judgement :

C.N. Ramachandran Nair, J.

Petitioner, an unregistered dealer, was the lessee of a rubber estate which was acquired by the government. Consequent on the acquisition, petitioner got share of the compensation for the land acquired and consequent termination of lease. The initial award was in March, 1974. Thereafter there was a claim for enhancement of compensation which ended up in the judgment of this court in (sic-on) 28-1-1987. Pursuant to the said judgment, the petitioner returned the income received as interest by filing returns for the assessment year 1979-80 to 1984-85 admitting its share of interest awarded in the land acquisition case. The

assessing officer on receipt of the returns dated 3-1-1990, initiated reassessment proceedings apparently by issuing notices under section 147(a) of the Income Tax Act, 1961. It may be noticed that the assessments were completed under section 143(3) read with section 147(a) of the Act. The impugned assessments are dated 30-10-1990. Even though the petitioner-filed returns offering to pay tax on the interest, petitioner later felt that the department is not authorised to complete the assessments on account of limitation for proceeding under section 147(b) of the Act which was only 4 years. According to the petitioner its case is not one falling under section 147(a) of the Act and that is the position conceded by the department also. Therefore, revision petitions were filed challenging the assessments before the first respondent under section 264 of the Act. The Commissioner overruled the objections of the petitioner and sustained the assessments under the amended provisions of section 147 of the Act which was introduced with effect from 1-4-1989. The Commissioner found that the section quoted as 147(a) in the assessment is an obvious mistake and the assessments can only be under the amended provisions of section 147. Further, he has relied upon section 292B of the Act to hold that the assessments are not invalidated by the misquoting of the section. The Commissioner has gone into the period of limitation and on being satisfied, he has held that the assessments are completed within time. Thus, he has sustained the assessments. It is against the order of the Commissioner produced as Exhibit P13, the petitioner has approached this court by filing this O.P. under Article 226 of the Constitution of India.

2. I have heard Mr. N. Srinivasan and Mr. M.P. Abraham, learned counsel for the petitioners and Mr. P.K.R. Menon, learned senior Central Government standing counsel for the Income Tax Department.

3. Learned counsel for the petitioner contended that section 147(b) of the Act is the section that has to be applied for completion of the assessments because according to him the returns filed by the petitioner after so many years of the relevant assessments are non est returns not to be taken note of. According to him assessments completed have to be treated as orders under section 147(b) of the Act. In view of the limitation, he prays for cancellation of the orders on this basis. On the other hand, learned standing counsel for the Income Tax Department

contended that sub-sections (a) and (b) of section 147 of the Act have no relevance as the same are no longer available with effect from 1-4-1989, when the same was substituted by section 147 of the Act which provides new set of situation including the ground and limitation for completing the assessment. The further contention of the learned standing counsel is that the assessments are not completed on the basis of the returns, but the department has taken note of same information for the purpose of proceeding under section 147. According to him, the assessing officer by mistake quoted section 147(a) instead of section 147. Besides this, section 292B of the Act provides the settled position of law that misquoting of any section cannot invalidate an order provided the officer passing the order has authority to issue the order under any other section. Now it is a settled position by virtue of the decision *Rama Bai v. CIT* : [1990]181ITR400(SC) that interest on enhanced compensation in land acquisition matters accrues from year to year. In fact the filing of returns by the petitioner after the final award of compensation by this court is consistent with the law laid down by the Supreme Court. In fact the Full Bench of this court has taken the same view in *Peter John v. CIT* : [1986]157ITR711(Ker) . Learned counsel for the petitioner relied upon the decision of the Calcutta High Court in *L. Madanlal (Aluminium) (P) Ltd. v. ITO & Ors.* : [1978]115ITR293(Cal) and contended that the basis for the assessment that is the information based on which the assessment was completed was not intimated. That was of course was a case under the preamended provision of section 147 of the Act wherein the Supreme Court has held that a subsequent decision of the Supreme Court which lays down no new information but reaffirms the view taken earlier does not itself constitutes information for reopening the assessment under section 147(b) of the Act. Petitioner has also relied upon the decision of the Madras High Court *CWT v. Varadharaja Theatres (P) Ltd.* : [2001]250ITR523(Mad) and contended that the amended provisions will not apply to the case and what is relevant is section 147(b) of the Act. On the other hand, learned standing counsel for the Income Tax Department has contended that section 147 (a) and (b) are not retained for any purpose when the same was substituted by section 147 of the Act with effect from 1-4-1989, and, therefore, the petitioner cannot rely on section 147 (a) and (b) of the Act which is no longer available in the statute. Therefore, the short question is, whether the amended

provision of section 147 or section 147 (a) and (b) is to be taken for the purpose of assessment.

4. There is nothing provided in the said amended provision of section 147 to retain sub-sections (a) and (b) of the section 147 for the purpose of assessment for years prior to 1989-90 when the new provision came into force. Further, on going through section 147 of the Act in the substituted form, it is clear that all assessments initiated after 1-4-1989, have to be only under the said section and not under the repealed section. In fact section 147 introduced with effect from 1-4-1989, itself provides for complete assessment and pending assessments. Further, it is a settled position of law that a procedural section which provides for assessment has to be in force as on the date of initiation of the proceedings. In the circumstances, I feel that section 147 that is in force as on the date of initiation of the assessment has to be applied. Petitioner admitted escaped income by filing of revised returns on the basis of which assessment was initiated. Since there was no assessment prior to section 143(3), limitation available for department is 10 years. Since tax that would have been evaded for these years is more than Rs. 50,000 for each year notice could be issued within 10 years under the new section 147. Therefore, I feel that the Commissioner is right in rejecting the contentions of the petitioner. The contention of the petitioner that returns are non est does not have any relevance because the returns are not treated as returns for the purpose of assessment. The assessing officer has got information regarding the escaped income and thereafter assessment was completed after issuing notice under section 147 though mistakenly quoted as section 147(a) of the Act. Section 147 of the Act authorises the assessing officer to make an assessment for charging the escaped income if the officer has reason for the same. In this case, the assessment on the settled position of law is about the returned income which constituted information for invoking the amended provision of section 147 of the Act. When the assessing officer has sufficient reason for the assessment, there is no scope for examination as to whether the officer has proceeded under the amended provision of section 147 of the Act.

In the circumstances, I see no ground to interfere with the order passed by the Commissioner under section 264 of the Act and the O.P. is, therefore, dismissed.

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