

ito Vs. Vijay Kumar

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Court : Rajasthan

Decided On : Aug-25-2001

Reported in : (2001)73TTJ(NULL)17

Appeal No. : ITA Nos. 1537/Jp/1992 A.Y. 1987-88 & 1498/Jp/1993; A.Y. 1986-87  
25 August 2000

Appellant : ito

Respondent : Vijay Kumar

Advocate for Pet/Ap. : R.N. Jangid, *for the Revenue* Vikas Balia, *for the Assessee*

Judgement :

ORDER

P.M. Jagtap, A.M.

These are the six appeals preferred by the revenue out of which Appeals Nos. 1537 to 1539/Jp/1992 are directed against the common order of the Commissioner (Appeals), Jodhpur, dated 16-3-1992, for assessment year 1987-88 whereas the remaining Appeals Nos. 1496 to 1498/Jp/1993 are directed against the three different orders of Commissioner (Appeals), Udaipur, all dated 13-9-1993, for 1986-87. As the issue involved in these appeals is common the same are taken up together for disposal by a single order for the sake of convenience.

2. The only ground taken by the revenue which is common in all these appeals reads as under :

'On the facts and in the circumstances of the case the learned Commissioner (Appeals) has erred in cancelling the assessment made under section 143(3)/148 by placing reliance on the decision of Honble Rajasthan High Court in the case of Brig. B. Lall v. WTO , as the said proceedings under section 17 of the Wealth Tax Act, 1957, and is not applicable to the reassessment proceedings initiated under section 148 of the Income Tax Act, 1961, in this case.'

3. The facts giving rise to these appeals are that Shri Parmanand, Shri Mahesh Kumar and Shri Vijay Kumar jointly made investment in construction of the hotel building at Mount Abu on co-ownership basis. As per the books of accounts, such investment was shown as Rs. 3,34,132 and Rs. 1,45,868 during the previous year relevant to assessment years 1986-87 and 1987-88 respectively. Initially, the assessments of the relevant years in respect of all the three assessees were completed under section 143(1). Subsequently the assessing officer made a reference under section 131(1)(d) to the Departmental Valuation Officer who furnished his report on 27-3-1989, estimating the total cost of construction at Rs. 8,61,827 out of which the amount of Rs. 5,99,916 was estimated as related to assessment year 1986-87 whereas the balance amount of Rs. 2,61,911 was estimated as having been incurred during the previous year relevant to assessment year 1987-88. Consequently, the assessing officer considered the cost of construction shown less by the assessee as income escaping assessment and notices under section 148 were issued to all the three assessees. Finally the assessments were completed under section 148 by the assessing officer on all the three assessees for assessment year 1986-87 as well as assessment year 1987-88 relying on the report of Departmental Valuation Officer and adding the cost of construction shown less by the assessees as unexplained investment in their hands in equal ratio. The matter was carried before the concerned Commissioner (Appeals) having jurisdiction over the cases who held that all the assessments made under section 148 were ab initio invalid following the decision of Honble High Court of Rajasthan in the case of Brig. B. Lal v. WTO (supra). Aggrieved by the same, the revenue has preferred these six appeals before us.

4. The learned Departmental Representative submitted that the decision of Honble High Court in the case of Brig. B. Lall (supra) is relevant only for initiation of reassessment proceedings under section 17 of Wealth Tax Act, 1957, and is not applicable for initiating the reassessment proceedings under section 148 of the Income Tax Act, 1961. He submitted that section 16A of the Wealth Tax Act and section 131(1)(d) of the Income Tax Act are differently worded with different purpose and, therefore, contended that the ratio of judgment delivered by the Honble jurisdictional High Court (supra) relating to section 16A of the Wealth Tax Act cannot be applied in the present cases involving reference made under section section 131(1)(d) of the Income Tax Act, 1961.

He also submitted that the evidence/information collected by the department from any source and by any means can be used for the purpose of finalising the assessment and, therefore, contended that the assessing officers action in using the report of Departmental Valuation Officer suffered from no infirmity. In support of his contention he placed reliance on the decision of the Honble Supreme Court in the case of CIT v. Dr. Nand Lal Tahiliani : [1988]172ITR627(SC) and also the decision of Honble Rajasthan High Court in the case of Kusum Lata v. CIT .

5. He also submitted that in the present cases a reference was initially made under section section 131(1)(d) in the case of partnership-firm, however, as the firm denied of having made any investment, the information obtained by such reference was used in the case of the assesseees who had made the investment in their capacity as partners. He also contended that the assessing officers action was fully justified and deserves to be upheld.

6. In reply, the learned counsel of the assessee relied on the judgment of the Honble Jurisdictional High Court in the case of Brig. B. Lall (supra) and submitted that the ratio of this decision very clearly applies to the facts of these cases notwithstanding the issue being raised either under the Wealth Tax Act or Income Tax Act. He also referred to the decision of Tribunal, Jaipur Bench in ITA No. 1587/Jp/1992, dated 19-4-1997, involving the facts and circumstances as also the ground which were similar to that of the instant cases wherein the Tribunal held that the ratio of decision of Honble Jurisdictional High Court in the case of Brig. B.

Lall (supra) is fully applicable to the cases under the Income Tax Act also involving similar facts and circumstances. He also submitted that reference under section 131(1)(d) of the Income Tax Act can only be made while trying a suit and not in a completed suit. He, therefore, contended that the assessing officer was not authorised to make such reference in the instant cases wherein the assessments were already completed. He further submitted that the valuation report obtained from the Departmental Valuation Officer was just an opinion and should not have been used by the assessing officer as information for reopening the assessment. He further contended that the Commissioner (Appeals) had rightly cancelled the assessments made in the instant cases and accordingly the orders be upheld. He also cited the following decisions in support of his contentions :

(i) CIT v. Smt. Prem Kumari Surana ;

(ii) Abdul Mazid v. ITO : [1989]178ITR616(MP) ;

(iii) Smt Amaldas v. CIT , and

(iv) Smt. Tarawati Agarwal v. ITO : [1986]162ITR606(Cal) .

7. We have considered the rival submissions and perused the material on record to which our attention was drawn during the course of hearing. We have also gone through the various decisions cited by the learned representatives of both the sides.

8. The findings of the Honble Jurisdictional High Court in the case of Brig. B. Lall (supra) as appearing from the headnotes, are reproduced below :

'Reference to Valuation Officers cannot be made where assessment is completed- Valuation Officers report cannot form basis for reassessment proceedings.

Section 16A has no relevance and cannot be applied after the assessment is completed.

The Valuation Officers report under section 16A can neither constitute information within the meaning of section 17(1)(b) nor provide a reason for the belief that

income has escaped assessment due to assessee's failure to disclose material facts under section 17(1)(a). The report under section 16A cannot lead to the reopening of an assessment under section 17(1)

The reference, in such circumstances, would be based on a sort of roving or finishing equity for either confirming or removing his suspicion. This is not permissible under section 16A.'

The learned Departmental Representative's plea is that the aforesaid decision of Honble Jurisdictional High Court is relevant specifically in respect of proceedings under section 16A of Wealth Tax Act and cannot be applied to income proceedings because section 16A of Wealth Tax Act and section 131(1)(d) of the Income Tax Act are differently worded with different purpose and there is no section in the Income Tax Act which is parallel to section 16A of the Wealth Tax Act. In this regard it is worthwhile to reproduce the relevant portion of the corresponding sections of Income Tax Act and Wealth Tax Act as under :

'16A. Reference to Valuation Officer.(1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, the Wealth Tax Officer may refer the valuation of any asset to a Valuation Officer

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth Tax Officer is of the opinion that the value so returned is less than its fair market value.,

(b) in any other case, if the Wealth Tax Officer is of the opinion

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf., or

(ii) that having regard to the nature of asset and other relevant circumstances, it is necessary to do.'

'131. Power regarding discovery production of evidence, etc. (1) The Income Tax Officer, Appellate Assistant Commissioner and Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the CPC, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:

(d) issuing commissions.'

As far as issuing of commissions is concerned provisions are contained in O. XXVI of CPC, 1908 and relevant portion of the same is reproduced here for ready reference.

Commission to make local investigations In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereof to the court;

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the court shall be bound by such rules. '

From the perusal of these sections, along with the relevant provisions of CPC, 1908, it is evident that though the wording of both the sections seems to be not exactly the same, the purpose and intention of enacting both these sections are undoubtedly the same inasmuch as the assessing officer under both the Acts is empowered to make a reference to the Departmental Valuation Officer for ascertaining a market value of any property for the purpose of making an assessment. Moreover, the Jaipur Bench of Tribunal while deciding a similar issue in ITA No. 1587/Jp/92 (supra) held that it is the ratio of the decision of the Honble Jurisdictional High Court in the case of Brig. B. Lall (supra) which is to be applied and not the relevant provisions of the Wealth Tax Act. The Jaipur Bench, therefore, held that the said decision of Honble jurisdictional High Court applies to cases involving identical facts in the proceedings under the Income Tax Act also.

9. It is also observed that the reference was made by the assessing officer to the Departmental Valuation Officer only after the assessments were completed under section 143(1) and as provided in section section 131(1)(d) such reference could have been made only while trying the suit and certainly not in respect of a completed suit. In the instant cases, the assessment had already been completed and as such the assessing officer had no reason to make the reference to Departmental Valuation Officer under section section 131(1)(d).

10. The contention of the learned Departmental Representative that the reference under section section 131(1)(d) in the instant cases was initially made in the case of a partnership firm, does not get any support from the material available on record inasmuch as all the three assesseees were found to be the co-owners of the property without any reference of partnership anywhere in the assessment order.

11. The other issue which was raised in these cases in whether the report obtained by making reference to Departmental Valuation Officer can be considered as information for making reassessment. This issue is worth consideration in the light of the following decision cited by the learned counsel of the assessee :

CIT v. Smt. Prem Kumari Surana (supra)

'no proceedings under section 147(b) of the Act could be initiated on the basis of valuers report. It is only an information which, without being substantiated by convincing evidence or circumstances, could not be the basis for reopening of an assessment order'

'valuation report did not constitute information under clause (b) of section 147 of the Act and as such the same cannot be a valid basis for reassessment'.

Brig, B. Lall (supra)

'The Valuation Officers report under section 16A can neither constitute information within the meaning of section 17(1)(b) nor provide a reason for the belief that income has escaped assessment due to the assesseees failure to disclose material facts under section 17(1)(a)

Smt. Amala Das v. CIT (supra)

'On the basis of the valuation report, the petitioner cannot possibly be accused of not fully and truly disclosing the facts at the time of assessment as, to my mind, this report is nothing more than a mere opinion about the cost of construction or the fair market value of the building in question. As has already been indicated, mere change of opinion cannot possibly be any ground for the income-tax authorities to reopen the assessments which have already been finalised.'

12. The resume of the aforesaid decisions clearly indicated that the report obtained from the Departmental Valuation Officer is just an opinion and cannot be considered as information for initiating reassessment proceedings. The cases cited by the learned Departmental Representative are, therefore, distinguishable on this basis.

13. Therefore, considering all the facts of the instant cases, the legal position emanating from the various decisions referred above as also the discussion made hereinabove, we are of the view that the Commissioner (Appeals) were quite justified in quashing the reassessment proceedings in the instant cases following the decision of Honble Jurisdictional High Court in the case of Brig. B. Lall (supra). For this view, we also get support from the following decisions :

Abdul Majid v. ITO (supra)

'Once the assessee produces the cost of his property, the source of the income, along with the valuation report by an approved valuer, then it is for the assessing authority to take a decision based on the information so submitted and if such an information is placed before the assessing authority, it will be deemed to be a disclosure of all the primary facts which an assessee is required to place before the authority truly and fully. If the assessing officer, without getting it verified by the Departmental Valuer at the time of assessment, accepts the return, then a subsequent opinion of a Departmental Valuer being different from that of a approved valuer, cannot form the basis for reopening of the assessment.'

Smt. Tarawati Debi Agarwal (supra)

'ReassessmentFailure to disclose material facts necessary for assessmentConstruction of house by assesseeFacts disclosed to Income Tax Officer and details required by him furnishedIncome Tax Officer referring matter to Departmental Valuer and meanwhile completing assessment on the basis of valuation by assesseeSubsequent notice under section 147(a) on the basis of report by Departmental ValuerNor validIncome Tax Act, 1961, section 147(a)Constitution of India, Article 226.'

14. In the result, all these appeals of the revenue are dismissed.

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