
(2012) 01 KL CK 0171

In the High Court Of Kerala

Case No : IT Appeal No"s. 568 and 1166 of 2009 and 88, 89 and 91 of 2011

CIT

APPELLANT

Vs

Jose Kuruvinakunnel

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Income Tax Act, 1961 — Section 143(1)(a), 143(3), 147, 147(a), 148

Citation : (2012) 01 KL CK 0171

Hon'ble Judges : K. Vinod Chandran, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.K.R. Menon and Jose Joseph, for the Appellant; E.K. Nandakumar, A.K. Jayasankar Nambiar and Ramesh Cherian John, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—These are connected appeals filed u/s 260A of the IT Act, two appeals filed by the Revenue and three appeals filed by assessee relating to the assessment of escaped income of the assessee completed u/s 147 for the years 1996-97 to 2000-01. While the original assessment for the year 1996-97 was a scrutiny assessment u/s 143(3), for all the remaining years 1997-98 to 2000-01 intimations were sent u/s 143(1)(a) of the Act accepting the returns filed by the assessee. For the assessment year 1996-97 also the scrutiny assessment u/s 143(3) was completed on the returned income of Rs. 87,280. However, later, the AO received anonymous information about unaccounted income received by the assessee and massive investments made in the construction of 6000 sq.ft. house and purchase of 165 acres of land in Tamil Nadu. Based on the information received, the AO recorded the statement of the assessee's brother-in-law Sri. Francis Jose who stated that the assessee was operating a benami account in his name with 60 blank cheque leaves issued by him. The enquiry also revealed that assessee's manager who is not in receipt of any income is maintaining an SB account with a credit balance of Rs. 26 lakhs, which also according to the AO belongs to assessee. In view of the information available with regard to the unaccounted investments and unaccounted income the AO issued notice u/s 148 for making income escaping assessments u/s 147

of the Act for all the assessment years. The officer issued notice after recording reason for reopening of the assessment u/s 148(2) of the IT Act as follows:

The declared income for income tax purposes of the assessee is remuneration and interest on capital from the firm M/s. Mayoora Hotel, Poovarani. The Investigation Wing of the IT Department made detailed enquiries on the basis of tax evasion petition and has ascertained the details of his investments in movable and immovable properties as under which are found to be not in proportion to his declared receipts/income.

1. Has commenced construction of a palatial residential house of about 6000 sq.ft. in 1995 and the admitted cost so far is Rs. 42 lakhs.
2. Has acquired 165 acres of land at Theni recently investing about Rs. 50 lakhs.
3. Shri Alex Manuel the manager of the Hotel to whom no salary or other benefits are paid as per the sworn statement of the assessee, is seen to have maintained a S.B. account with Federal Bank, Trichur and has a total credit of Rs. 26 lakhs. As Sri. Alex had no separate source of income, he is only a benami of Sri. Jose Kuruvinakunnel and the credit in the bank account is only the unaccounted receipts of the hotel. In a statement recorded from Sri. Francis Jose, though the account No. 3075 at Federal Bank, Kalluppara was opened in his name the same was operated by Sri. Jose Kuruvinakunnel only utilizing 60 blank cheques leaves signed and given to him. These transactions are also found outside the books of accounts.

From the above, it is clear that Sri. Jose Kuruvinakunnel has invested the undisclosed income in the construction of the residential building, purchase of landed property. The income offered for assessment is only very meager and do not commensurate with the investments made. For these reasons, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the IT Act, 1961. Issue notice u/s 148.

2. Based on identical reasons the AO completed income escaping assessments u/s 147 of the Act for the assessment years 1996-97 to 2000-01. It is to be noted that except for the first year revised assessments u/s 147 were completed within 4 years from the end of the relevant assessment years. However, since assessment for 1996-97 was reopened after four years the AO got approval from the CIT u/s 151(2) of the IT Act. The assessee contested the assessments in first appeals challenging validity of reopening and also the additions made. In the first round of appeal the first appellate authority confirmed the validity of assessments by stating that the reasons recorded by the AO u/s 148 are sufficient to make reopening of the assessment u/s 147 of the IT Act. However, on second appeal filed by the assessee, the Tribunal cancelled the assessments for the years 1996-97 and 1997-98 for the reason that reopening is not supported by valid reasons recorded by the AO u/s 148(2) of the Act against which Revenue has filed IT Appeal Nos. 568 of 2009 and 1166 of 2009. For the remaining years the Tribunal remanded the case to the CIT(A) for reconsidering

the validity of reopening as also the additions. The CIT(A) found that the AO was not debarred from issuing notice u/s 148 as the assessments were u/s 143(1) (a). However, on his findings that the reasons stated were not sufficient for formation of belief on escaped income the appeal of the assessee was allowed. The Revenue filed appeals before the Tribunal which were allowed upholding the validity of reopening. The assessee has filed remaining three appeals against the said orders of the Tribunal.

3. We have heard the senior counsel Sri. P.K.R. Menon appearing for the Revenue and senior counsel Sri. A.K.J. Nambiar for the assessee.

4. We first proceed to consider the two appeals filed by the Revenue for the assessment years 1996-97 and 1997-98. The question we are called upon to consider is whether the Tribunal was justified in holding that the reasons recorded by the AO u/s 148(2) are vague and inadequate affecting the validity of the reassessment completed u/s 147 of the Act. Additional grounds raised for the assessment year 1996-97 is whether the CIT failed to exercise his jurisdiction in approving reopening of assessment u/s 151(2) of the Act. Admittedly, any assessment could be reopened u/s 147 of the Act only if the AO has reason to believe that income chargeable to tax has escaped assessment for the year. In this context, section 148(2) of the Act requires the AO to record his reasons for reopening the assessment u/s 147 of the Act. The question to be considered is whether in the first place, the AO has sufficient reason to believe that income chargeable to tax has escaped assessment and if so, he has complied with the statutory requirements of recording the reasons u/s 148(2) of the Act.

5. According to the assessee's counsel the reasons recorded by the AO were rightly found by the Tribunal to be not sufficient to justify reopening of assessment which is regular assessment completed u/s 143(3) for the assessment year 1996-97 and assessments completed for the balance years by issuing intimations u/s 143(1)(a) of the Act. In this context assessee's counsel brought to our notice that the main ground for reopening assessment is unexplained investment in the construction of house by the assessee which is dealt with in the regular assessment completed u/s 143(3) of the Act. The correctness of the reopening of assessment for 1996-97 is to be considered with reference to regular assessment completed u/s 143(3). We hence felt the need to refer to the regular assessment and Revenue's counsel furnished a copy of the regular assessment completed in the case of the assessee for the assessment year 1996-97. On going through the same what we notice is that as stated by the AO the regular assessment is completed accepting reported income of Rs. 87,280. It is seen from the said order that assessee has stated that he is engaged in the construction of a house and he has spent Rs. 6.5 lakhs during the previous year relevant for assessment year 1996-97. The source for the said investment was also explained by the assessee and is seen accepted in the assessment order. However, from the said order it is clear that the assessee did not concede completion of the construction of 6000 sq.ft. house in the previous year relevant

for the assessment year 1996-97 or whether the assessee has disclosed full investment for the house until completion of construction. Further, the other grounds recorded by the officer in support of the reopening of assessment being the investment of Rs. 50 lakhs for acquisition of land in Tamil Nadu and the amounts found in the benami accounts of the assessee do not figure in the original assessment. The money invested in the accounts of the Manager and the benami account in the name of the assessee's brother-in-law as such is not seen considered in the regular assessment. So much so, the contention of the assessee which found acceptance with the Tribunal that the reasons recorded by the AO are vague u/s 148(2) or inadequate is not tenable.

6. If the assessee may be engaged in construction of a house, the AO in the course of assessment is entitled to examine whether investments are fully disclosed and explained. The source of investment also has to be explained and assessment of 1996-97 deals with investment of Rs. 6.5 lakhs for the 6000 sq. ft. house constructed by the assessee. Similar is the position with regard to the unexplained cash found in the benami account as also the account in the name of the manager. In our view, the materials collected by the AO recorded in the assessment order are sufficient to justify reopening of completed assessment u/s 147 for detailed examination as to whether there has been escapement of income in the regular assessment. In our view all that is required to be considered while considering the validity of reopening an assessment u/s 147 is whether the grounds recorded by the AO for reopening are "reasons" that would justify assumption of escapement of income from assessment and not to consider whether the grounds are sufficient reasons to justify assessment. What is relevant is to examine whether the data gathered and recorded by the officer are relevant in the determination of total income to be assessed under the Act. If investments, cash or valuables are discovered after completion of assessments and those are not disclosed in the original assessment certainly discovery of such materials offer sufficient ground of reopening assessment u/s 147 of the Act. However, the detailed question whether the assets found or investments made are assessable fully or partly need not be considered by the AO at the time of reopening the assessment u/s 147.

7. It is to be noticed that the Hon'ble Supreme Court in the case of Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., , held:

As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. Vs. I.T.O., Nagpur, , for initiation of action u/s 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so

because the formation of belief by the AO is within the realm of subjective satisfaction (see INCOME TAX OFFICER Vs. SELECTED DALURBAND COAL CO. (P) LTD., ; Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others,).

In our view the reasons to be recorded u/s 148(2) are the reasons to believe that income has escaped assessment as is referred u/s 147 of the Act. It is to be noted that no separate proceeding is contemplated u/s 148(2) that should be the subject matter of appeal or revision under the Act. On the other hand section 148(2) is only an inherent safeguard against the misuse of authority by the AOs. In other words, if the grounds recorded by the AO for reopening assessment are relevant for the purpose of determination of income under the Act, then the same can be treated as sufficient reason for reopening assessment if it was not available or considered while completing regular assessment. On facts therefor we do not find any rationale for the Tribunal to hold that the reasons recorded by the AO are irrelevant, incomplete or vague. We therefore, reverse the order of the Tribunal on this issue.

8. The next question raised by Revenue is whether the Tribunal is justified in holding that the CIT has not exercised his jurisdiction properly u/s 151(2) of the Act which independently affects the validity of reassessment completed u/s 147. In this context we find that section 151 is applied only for the assessment year 1996-97 because regular assessment u/s 143(3) was completed only for that year and section 151 applies only for reopening of assessment completed u/s 143(3) or 147 of the Act and not for assessment recorded by issuing intimation u/s 143(1)(a) of the Act. The CIT has in the proceedings u/s 151(2) held as follows:

Yes, I am satisfied that this is fit case for reopening the assessment.

The Tribunal held that the proceeding recorded as above is not sufficient exercise of jurisdiction u/s 151(2) authorising reopening of assessment. The finding of the Tribunal is that the CIT has not independently considered the reasons recorded by the AO u/s 148(2) to justify reopening of assessment section 147. The senior counsel appearing for the Revenue challenged the finding by stating that when the CIT states that he is satisfied with the reasons recorded by the officer, it is evident that the CIT has gone through the reasons recorded and he was satisfied about the correctness and the sufficiency of the reasons for reopening of the assessment. We are in complete agreement with the contention of the Revenue because when statutory authority records that he is satisfied with the reasons recorded by the AO, it should be taken as satisfaction recorded after reading the reasons stated and endorsing the views recorded by the AO. We do not think there is any need for the CIT in proceeding issued u/s 151(2) to repeat the same reasons stated by the AO in the proceedings issued u/s 148 of the Act. What is recorded by the CIT is satisfaction of the reasons recorded by the AO and in our view the same is proper compliance of section 151(2). We are therefore unable to sustain the findings of the Tribunal that the CIT has not granted approval u/s 151(2) for reopening assessment u/s 147 and therefore we reverse the finding of the Tribunal on this issue. Consequently the appeals filed by the Revenue both

for 1996-97 and 1997-98 stand allowed by vacating the orders of the Tribunal and by remanding the case for reconsideration by the Tribunal on merits with regard to the additions made.

9. One additional ground raised by the senior counsel for the assessee for the assessment year 1996-97 is that the assessment could be reopened u/s 149(1) (b) only if the escaped income is one lakh and above. According to the appellants counsel while recording reasons u/s 148(2) the AO has not concluded in so many words that the escapement is to the level of one lakh or above. However, on going through the reasons recorded what we notice is that the single investment of 50 lakhs in acquisition of land by the assessee outside Kerala and the investment on house construction of the extent of 6000 sq.ft. for the value of 42 lakhs would necessarily indicate the limit having been exceeded. In this context, the question to be considered is with reference to the income assessed in the original assessment which has to be reopened u/s 147. Admittedly, the income returned by the assessee and assessed by the AO u/s 143(3) in regular assessment for 1996-97 is only Rs. 87,280. The investment explained in the regular assessment of 1996-97 is only 6.5 lakhs whereas the investment in the house is 42 lakhs and in the property acquired is 50 lakhs. We therefore, do not find any merit in this contention of the assessee. So far as the appeals filed by the assessee are concerned we notice that there is a technical flaw in the orders of the Tribunal because Revenues challenge of the first appellate order are not on the grounds on which Tribunal has sustained the said orders. For the assessment years 1998-99 to 2000-01 the assessee contends that the Tribunal was not justified in upholding the validity of assessment on the grounds stated by them which were not the grounds raised by the Revenue to challenge the first appellate orders. Even though we find force in this contention by the appellants counsel, we do not find any justification for remanding the matter to the Tribunal to consider the validity of the reopening of assessment because the decision rendered by us on the validity of assessment for the appeals filed in the earlier two years above stated is equally applicable here. The remaining question to be considered is whether the same grounds that justifies reopening assessment for 1996-97 and 1997-98 are valid grounds for reopening assessment for subsequent years namely 1998-99 to 2000-01. Assessee's counsel rightly pointed out that if investment found in a year is the only ground for reopening assessment for the assessment year relevant to previous year, then the same will not offer as a ground for reopening assessment for subsequent years. According to the learned counsel for the assessee the regular assessment specifically refers to the investment in a house which according to him is seen considered in the regular assessment completed u/s 143(3) of the Act for the assessment year 1996-97. The learned senior counsel for the Revenue on the other hand referred to other grounds recorded in reopening and also to the regular assessment completed for 1996-97 and contended that the reasons recorded are relevant for subsequent years too. In the first place so far as investment in the house of 6000 sq.ft. is concerned investment of 6.5 lakhs is only seen considered in the

relevant assessment year 1996-97. Secondly, standing counsel pointed out that the maintenance of benami account is justification for reopening of assessment for all assessment years during which assessee has been operating the said benami account. We find force in this contention because if assessee has investments in house property or landed property, the period during which such investments were made and the period during which the source of funds were raised for repayment of loans if any taken for such investments are the period, during which there is likelihood of escapement of income justifying reopening assessments. So much so, we feel the grounds recorded are such as to justify reopening of assessment for subsequent years as well. Learned senior counsel for the assessee referred to the reassessment completed and contended that the grounds on which the assessments were reopened are not the basis on which additions are made in the assessment. In this context senior counsel for the Revenue has referred to a Division Bench decision of this Court reported in Commissioner of Income Tax Vs. Popular Vehicles and Services Ltd., wherein this Court interpreted the provisions of section 147, amended w.e.f. 1st April, 1989, and held that any escaped income could be brought to tax in an assessment completed u/s 147, no matter the reason recorded by the AO u/s 148(2) does not relate to all such income assessed as escaped income. The fact that the AO has recorded certain reasons to believe that the income escaped assessment to tax justifying reopening of assessment does not mean that reassessment should be confined only to such income but the officer is authorised to assess the whole of the income that escaped assessment. It is always open to the assessee to establish before the AO in the course of reassessment proceedings that there has been no escapement of income from assessment to tax and if the AO is satisfied, he has to drop the reassessment proceedings. It is also trite law that in reassessment the AO can bring to assessment any other income that escaped assessment other than the item or items of escaped income in respect of which he has recorded reasons u/s 148(2) for reopening.

In view of the above findings we reject assessee's grounds by sustaining the orders of the Tribunal on validity of assessment not on the grounds found by them but on the grounds decided above. However, we vacate the orders of the Tribunal with regard to further remand of the case. We remand the matter to the Tribunal for restoring appeals for decision on issues raised on additions other than those pertaining to validity of assessments completed u/s 147 of the IT Act and direct that the appeals of the Revenue also to be considered on merits.