

(2005) 05 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No"s. 4000 to 4012 of 1984

Col. Sir Harinder Singh Brar

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Income Tax Act, 1961 — Section 147, 147, 148, 148, 149
Land Acquisition Act, 1894 — Section 18, 18

Citation : (2006) 202 CTR 536 : (2006) 282 ITR 371

Hon'ble Judges : N.K. Sud, J

Bench : Division Bench

Advocate : None, for the Appellant; N.L. Sharda, for the Respondent

Judgement

N.K. Sud, J.—This order will dispose of 13 writ petitions, viz., C.W.P. Nos. 4000 to 4012 of 1984, involving common question of law arising out of identical facts.

2. Challenge in these writ petitions is to the notices issued u/s 148 of the Income Tax Act, 1961, dated March 27, 1984, by which proceedings for reassessment have been initiated for the assessment years 1967-68 to 1979-80.

3. The assessee's land measuring 787 kanals 12 marlas and 1 kanal 12 marlas in the Revenue Estate of Village Balahgarh, District Gurgaon, was acquired by the State and possession thereof taken on October 21, 1966. The Land Acquisition Collector gave the award on October 21, 1966. The petitioner applied for a reference u/s 18 of the Land Acquisition Act and, ultimately, the matter came up to the High Court which, vide order dated June 1, 1977, enhanced the compensation. Letters Patent Appeal filed by the State was also dismissed vide order dated March 20, 1979. As a consequence thereof, the assessee was paid enhanced compensation amounting to Rs. 14,64,006. A further sum of Rs. 10,30,320 was paid to him as interest for the period October 21, 1966, to June 30, 1979.

4. Similarly, another tract of land measuring 26 acres 1 kanal 10 marlas

belonging to the petitioner in the Revenue Estate of Balabgarh was also acquired in respect of which the award was given on April 9, 1973. The compensation was enhanced on a reference u/s 18 of the Land Acquisition Act and the enhanced compensation of Rs. 2,68,830 was paid during the accounting period relevant to the assessment year 1980-81. The assessee was also paid a sum of Rs. 80,966.50 as interest for the period April 9, 1973 to April 6, 1979. The compensation was further enhanced by the High Court vide order dated May 21, 1980. Consequently, the assessee received a sum of Rs. 13,38,688 as enhanced compensation and a sum of Rs. 6,07,534 as interest from April 9, 1973, to March 1, 1983, during the accounting period relevant to the assessment year 1983-84.

5. While completing the assessment for the assessment year 1980-81, the Assessing Officer treated the entire interest on enhanced compensation received by the assessee during the accounting period relevant to the assessment year 1980-81 as income for that year. He, therefore, vide his order dated July 19, 1983, added a sum of Rs. 12,57,753 to the total taxable income of the assessee on this score.

6. Against the assessment order dated July 19, 1983, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Jalandhar, in which amongst other grounds, the addition of Rs. 12,57,753 was also challenged. The assessee, firstly pointed out that the amount of interest received by him during the accounting period relevant to the assessment year 1980-81 was Rs. 10,30,320 and Rs. 80,966.50 whereas the Assessing Officer had included a sum of Rs. 12,57,753. He further pleaded that even the aforesaid two amounts were not taxable as the same were in the nature of damages for depriving the owner of the usufructus of agricultural land and, thus, represented agricultural income and not interest. In the alternative, it was pleaded that even if the said amount was to be treated as interest, the entire amount could not be assessed in the assessment year 1980-81 in view of the judgment of this Court in Commissioner of Income Tax Vs. Dr. Sham Lal Narula, in which it has been held that interest on enhanced compensation accrues from year to year. The Commissioner of Income Tax (Appeals) by his order dated January 16, 1984, partly accepted the claim of the assessee. He held that the interest received by the assessee was not in the nature of damages or agricultural income but was interest liable to be included in his taxable income. He, however, accepted the claim of the assessee that such interest was assessable only on accrual basis and, therefore, only interest pertaining to the accounting period relevant to the assessment year 1980-81 could be added to the total income of the assessee. He directed the Assessing Officer to recompute the addition accordingly. The Commissioner of Income Tax (Appeals) also directed that even out of the amount of Rs. 6,07,534 received by the assessee on account of interest from April 9, 1973, to March 1, 1983, in the accounting period relevant to the assessment year 1983-84, interest pertaining to the accounting period relevant to the assessment year 1980-81, estimated by the Assessing Officer at Rs. 1 lakh would also be assessable in the hands of the assessee in the assessment year 1980-81.

7. While giving effect to the order of the Commissioner of Income Tax 7 (Appeals) dated January 16, 1984, for the assessment year 1980-81, the Assessing Officer issued the impugned notices u/s 148 dated March 27, 1984, to assess the interest excluded by the Commissioner of Income Tax (Appeals) on accrual basis in the corresponding assessment years, i.e., the assessment years 1967-68 to 1979-80.

8. Simultaneously, the Revenue also preferred an appeal before the Tribunal against the order of the Commissioner of Income Tax (Appeals), which was dismissed vide order dated January 19, 1985. Thereafter, at the instance of the Revenue, the Tribunal referred this issue for the opinion of this Court u/s 256(1) of the Act, in ITR No. 55 of 1985. The said petition was also decided against the Revenue vide order dated August 10, 2004.

9. It is in the above factual background that the validity of the proceedings 9 u/s 147 of the Act initiated by the impugned notices, has to be determined.

10. According to the assessee, no proceedings could be initiated under 10 Clause (a) of Section 147 of the Act as, admittedly, there was no failure on his part to make a full and true disclosure of all material facts at the time of filing the original return. It was further claimed that even under Clause (b) of Section 147, which permits initiation of proceedings u/s 147 on the basis of fresh information, no notice u/s 148 could be issued as the period of limitation of four years prescribed u/s 149 of the Act had already expired. It has also been claimed that there is no direction by the Commissioner of Income Tax (Appeals) in his order dated January 16, 1984, for the assessment year 1980-81 for assessing the interest on accrual basis in the earlier years and, therefore, the said order does not lift the bar of limitation prescribed u/s 148 of the Act.

11. The Revenue, on the other hand, has claimed that the period of limitation of four years prescribed u/s 149(1)(b) of the Act for initiating proceedings u/s 147(b) is not applicable in the present case as notice has been issued to give effect to the findings contained in the order passed by the Commissioner of Income Tax (Appeals) dated January 16, 1984. Reliance for this purpose, has been placed on the provisions of Section 150(1) of the Act.

12. In my view, the controversy raised in the present petitions stands concluded by a Division Bench judgment of this Court in Parveen Kumari Vs. Commissioner of Income Tax and Another, In that case, the Assessing Officer had brought to tax capital gains arising on the compensation received by the assessee in the assessment year 1978-79. On appeal, the Commissioner of Income Tax (Appeals) annulled the assessment on the ground that the same was assessable in the year in which possession of the land was taken by the State Government, i.e., November 5, 1976, and not in the assessment year 1978-79. The Revenue's appeal before the Tribunal on this ground also failed. The Tribunal observed that since the possession had been taken over on November 5, 1976, the capital gains was assessable in the assessment year 1977-78 and not in the assessment

year 1978-79. On the basis of the observations recorded by the appellate authority, the Assessing Officer issued notice u/s 148 of the Act for the assessment year 1977-78 on March 1, 1996, which was challenged by the assessee. This court at page 345 of the report held as under :

The order of the Tribunal dated December 14, 1995, did not permit the assessment of the amount of compensation and interest in the assessment year 1978-79 on the ground that the income was assessable in the assessment year 1977-78. Thus, it was a finding within the meaning of Sub-section (1) of Section 150 read with Explanation 2 below Section 153(3) of the Act.

13. Thus, the plea of the assessee that the case was not covered u/s 150(1) of the Act was negated as under (at page 346 of the report):

The finding recorded by the Tribunal in the case in hand, in our opinion, is a finding as envisaged in Sub-section (1) of Section 150 read with Explanation 2 below Section 153(3) of the Act. The first plea raised by Shri A.K. Mittal, learned Counsel for the petitioner, is, therefore, found to be devoid of any merit. It is held that the Assessing Officer was within his jurisdiction to issue a notice u/s 148 of the Act to the petitioners for the purposes of reassessment so as to give effect to the finding contained in the appellate order of the Tribunal.

14. However, this Court accepted the second limb of the argument that where a case falls under Sub-section (2) of Section 150 of the Act, the provisions of Sub-section (1) are not attracted, as under (at pages 346 and 347 of the report):

The second limb of the argument put forward by Shri A.K. Mittal is that under Sub-section (2) of Section 150 of the Act, there is a bar of limitation and, in view of that bar, issuance of notice u/s 148 by the Assessing Officer on March 1, 1996, was beyond the period of limitation.

Sub-section (2) of Section 150 lays down an exception and, where such an exception exists, the provisions of Sub-section (1) would not be applicable. Sub-section (1) of Section 150 shall not apply where the notice for reassessment for an assessment year had become barred by limitation at the time when the order, which was the subject-matter of appeal, revision or reference, was passed. Generally, the time limits prescribed in Section 149 shall not apply where reassessment proceedings are initiated by a notice to give effect to any finding or direction, under Sub-section (1) of Section 150 of the Act. But, under Sub-section (2) of Section 150, the period of limitation as laid down in Section 149 shall come into play. If the action for assessment or reassessment cannot be initiated for an assessment year on the date of the order, which was a subject-matter of appeal, reference or revision, that would prevent the Assessing Officer from proceeding u/s 148 of the Act.

According to Sub-section (2) of Section 150, the provisions of Sub-section (1) of that section shall not apply where, by virtue of any other provision limiting the time within which action for assessment or reassessment may be initiated,

issuance of notice for such assessment or reassessment is barred on the date of the order, which is the subject-matter of appeal, reference or revision, in which the finding or direction is contained. It would, thus, mean that an appellate or revisional authority cannot give a direction for assessment or reassessment which goes to the extent of conferring jurisdiction upon the Assessing Officer if his jurisdiction had ceased due to the bar of limitation. If the issuing of a notice for assessment or reassessment for a particular assessment year had become time-barred at the time of the order, which was the subject-matter of the appeal, the provisions of Section 150(1) cannot be invoked to the aid of the Revenue for making an assessment or reassessment.

15. In the present case, a finding has been recorded by the Commissioner of Income Tax (Appeals) in his order dated January 16, 1984, that the entire interest received by the assessee during the accounting period relevant to the assessment year 1980-81, was not assessable in that year as the same was assessable on accrual basis from year to year. Thus, the interest pertaining to the earlier years was excluded. This finding was, thus, a finding as envisaged in Sub-section (1) of Section 150 read with Explanation 2 below Section 153(3) of the Act.

16. However, the question of limitation has also to be considered. In the present case, the assessment order which was the subject-matter of appeal before the Commissioner of Income Tax (Appeals) for the assessment year 1980-81 was passed on July 19, 1983. Thus, no proceedings u/s 147(b) could be initiated in the assessment years for which period of limitation of four years prescribed u/s 149 had expired on that date. The years involved in the present writ petitions are assessment years 1967-68 to 1979-80. The period of limitation of four years prescribed u/s 149 for the assessment years 1967-68 to 1978-79 had expired on or before March 31, 1983 which is prior to the date of order dated July 19, 1983. These assessment years are clearly covered within the exception provided by Sub-section (2) of Section 150, thereby taking them out of the purview of Sub-section (1) of Section 150.

17. Consequently, the impugned notices u/s 148 dated March 27, 1984, in respect of these assessment years are clearly barred by limitation. The same are quashed.

18. As far as the assessment year 1979-80 is concerned, the limitation for initiating proceedings u/s 147(b) of the Act was available up to March 31, 1984, whereas the order, the subject-matter of appeal before the Commissioner of Income Tax (Appeals) was passed on July 19, 1983. Thus, the proceedings in respect of this assessment year did not fall under Sub-section (2) of Section 150 of the Act. Accordingly, the impugned notice cannot be said to be barred by limitation.

19. In view of the above, C.W.P. Nos. 4000 to 4011 of 1984 are allowed whereas C.W.P. No. 4012 of 1984 is dismissed.

20. No costs.