

(1996) 08 MAD CK 0049

In the Madras High Court

Case No : Tax Cases Nos.981 and 982 of 1984

Commissioner of Income Tax

APPELLANT

Vs

K. Ashok

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Income Tax Act, 1961 — Section 147, 256(2), 28

Citation : (1998) 232 ITR 790

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, J.—As per the direction of this Court, the Tribunal referred the following two questions for the opinion of this Court for the

asst. yrs. 1970-71 and 1971-72 under s. 256(2) of the IT Act, 1961 :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the reassessments for the asst. yrs. 1970-71 and

1971-72 under s. 147(b) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the decision of the Supreme Court in the

case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, would apply to the facts of the case ?

2. There was an agreement of sale of certain properties. One of the conditions in the agreement was that if the entire consideration was not paid

before 31st December, 1967, the purchaser should pay interest at 9 per cent per annum on the balance amount remaining unpaid on 31st

December, 1967. The assessee received for these two years such interest of Rs.

7,942 for each of the two years 1970-71 and 1971-72. The assessee filed returns for the asst. yrs. 1970-71 and 1972-73 disclosing the interest income for the delayed payment as sale consideration for the purpose of making assessment towards capital gains tax. The ITO accepted the returns and completed the assessment. Later, the assessments were reopened under s. 147(b) of the Act for the reason that the interest received on belated payment of sale consideration as per the agreement on the amounts due after 31st December, 1967, was wrongly taken as part of the sale value and it should have been assessed under the head "Other sources" and not under the head "Capital gains". The assessee objected to the reopening of the assessments on the ground that the assessee had furnished all information and disclosed fully and truly all material and primary facts at the time of the original assessments, that there was no omission or failure on the part of the assessee to disclose fully and frankly all the material and primary facts necessary for the assessments and that, therefore, the reassessment proceedings initiated under s. 147(b) of the Act was on a mere change of opinion and, therefore, the reopening is bad in law. The ITO refused to accept the reasoning given by the assessee and completed the reassessments by bringing to tax the sum of Rs. 7,942 in each of the assessments under consideration under the head "Other sources". Aggrieved, the assessee filed an appeal before the AAC who confirmed the order passed by the ITO. Not satisfied with the order passed by the AAC, the assessee went in appeal to the Tribunal. The Department conceded that the reassessments were made under s. 147(b) of the Act on the basis of the internal audit report. The Tribunal following the decision of the Supreme Court in the case of Indian Newspaper Society vs. CIT (supra), held that the reassessments were not valid in law.

3. Before this Court, learned standing counsel appearing for the Department submitted that the concession was given only to the extent that the audit report was the basis for reopening the assessments under s. 147(b) of the Act and it does not mean that the Department accepted that the audit report indicated pointing out the law to be applied in this case. Therefore, according to learned standing counsel inasmuch as the reopening was made on the basis of the audit report which pointed out only the factual position, it cannot be said that the reopening is bad. It was, therefore,

submitted that the Tribunal was not correct in holding that the reassessments made under s. 147(b) of the Act are bad in law.

4. On the other hand, learned counsel appearing for the assessee while supporting the order of the Tribunal submitted that the Tribunal had seen

the audit report. The Tribunal is the highest fact-finding authority. On going through the report of the internal audit party, the Tribunal came to the

conclusion that the audit party's report formed the basis for reopening the assessments under s. 147(b) of the Act. Therefore, the order passed by

the Tribunal on the basis of the facts cannot be doubted. If a doubt is raised with regard to the order passed by the Tribunal, then it must be based

upon a strong piece of evidence which is absent in the present case. It was further pointed out that neither the internal audit party's report nor the

agreement were produced so as to ascertain whether the order passed by the Tribunal is correct or not. In order to support this contention,

learned counsel appearing for the assessee relied upon a decision in the case of Needle Industries (I.) Ltd. Vs. Commissioner of Income Tax, .

5. We have heard learned standing counsel appearing for the Department as well as learned counsel appearing for the assessee. In the returns filed

by the assessee for the assessment years under consideration, the assessee has disclosed the interest received on belated payment of the balance

of the sale consideration as part of the sale consideration for the purpose of levying capital gains tax. The returns filed by the assessee were

accepted by the ITO and the assessments were completed. Later, on the basis of the internal audit report, the ITO came to the conclusion that the

interest received in the assessment years under consideration for belated payment of sale consideration should not form part of the sale

consideration and the interest payment received by the assessee should be assessed separately under the head ""Other sources"". Accordingly, the

assessments were reopened under s. 147(b) of the Act and the ITO completed the reassessments by assessing the interest payment separately

under the head ""Other sources"".

The point for consideration now is whether the internal audit party's report would form the basis for reopening the assessment under s. 147(b) of

the Act. If the internal audit party's report pointed out any point of law that has got to be applied in this case, then the reopening of the

assessments under s. 147(b) of the Act on the basis of such internal audit report cannot be sustained; on the other hand, if the internal audit party's

report pointed out only the factual position, then the reopening made on the basis of such report under s. 147(b) of the Act would be valid.

6. In the present case, the Tribunal, which is the highest fact-finding authority, after perusing the internal audit party's report as well as the

agreement, ultimately came to the conclusion that the audit party's report formed the basis for the reopening under s. 147(b) of the Act and,

therefore, the reassessments were invalid. Now learned standing counsel for the Department submitted that the facts on record would go to show

that in the report filed by the internal audit party, they would have pointed out only the factual position and they would not have pointed any

question of law that has got to be applied in the present case. If this is the submission put forward by the Department, then it is for the Department

to establish that the order passed by the Tribunal is on the wrong assumption. Generally, the orders passed by the authorities below are presumed

to be correct unless the contrary is proved by convincing cogent evidence. In the present case, the audit report was not made available and so also

the agreement, dt. 29th March, 1967, was not produced before this Court. Particularly, in the absence of the internal audit report, we cannot say

that the audit report pointed out only the factual position and not any question of law that has got to be applied on the facts of this case. A similar

question came up for consideration before this Court in *Needle Industries (I) Ltd. vs. CIT* (supra) referred to above wherein this Court held as

under :

We are, therefore, constrained to go by the order of the Tribunal in so far as the contents of the audit report are concerned. The Tribunal has

made a passing reference to the audit report in para 9 of its order and has stated that the audit had set out its reasons for its opinion that the surplus

amount was liable to be included in the taxable income. From this reference to the report of the audit party, we are unable to hold that the audit

report did not embody its opinion either in regard to the application or even the interpretation of the law and this certainly cannot be taken note of

and acted upon by the ITO.

7. Thus, in the present case also, in the absence of the internal audit report, we

are unable to accept the submission made by learned standing counsel for the Department that the audit report contains only pointing out of factual position and there is no pointing of any question of law that has got to be applied in this case. Thus, considering the facts arising in this case, and in the absence of any evidence on the side of the Department that the audit report contains pointing out of only the factual position, we hold that the Tribunal was correct in coming to the conclusion that the audit report forms the basis for reopening the assessment under s. 147(b) of the Act. The presumption is that the internal audit report would have contained particular pointing out of question of law that has got to be applied in this case. In that view of the matter, we see no infirmity in the order passed by the Tribunal in holding that the reassessments made under s. 147(b) of the Act are bad in law in the assessment years under consideration. In that view of the matter, we answer the questions referred to us in the affirmative and against the Department. No costs.