

(1997) 02 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No's. 48 and 49 of 1990, 5 to 11, 14, 15, 17 to 19 and 21 of 1991 and 13 to 15 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Mrs. Manjula Sood

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 256, 263, 263(2)

Citation : (1997) 140 CTR 212 : (1997) 227 ITR 873

Hon'ble Judges : V.K. Bali, J;N.K. Agrawal, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; G.S. Sandhawala, for the Respondent

Judgement

1. We propose to decide these connected cases bearing Nos. 48, 49 of 1990, 5 to 11, 14, 15, 17, 18, 19, 21 of 1991, 13, 14 and 15 of 1996 as common questions of law and fact arise in all these matters. The facts have, however, been extracted from I.T.C. No. 49 of 1990.

2. In this petition filed u/s 256(2) of the Income Tax Act, 1961, in the case of Mrs. Manjula Sood, Ludhiana, for the assessment year 1983-84, the prayer is to direct the Income Tax Appellate Tribunal to refer to this court the question of law as mentioned below, stated to be arising from the Tribunal's order :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the order passed by the Commissioner of Income Tax u/s 263 was barred by limitation ?"

3. The brief facts of the case reveal that the assessment for the year 1983-84 was completed u/s 143(3) on June 27, 1984. Subsequently, the Commissioner of Income Tax, Patiala, vide order dated March 24, 1987, set aside the assessment order passed u/s 143(3) for the assessment year 1983-84, The assessee filed an appeal before the Income Tax Appellate Tribunal and challenged the order of the

Commissioner of Income Tax on the ground that show-cause notice u/s 263 was issued on November 17, 1986, whereas assessment was completed in her case on June 27, 1984, u/s 143(3). The assessee, therefore, pleaded that the order of the Commissioner of Income Tax was passed after the expiry of two years from the date of assessment which was completed on June 27, 1984, and according to the provisions of Section 263 (as it stood before the substitution of Sub-section (2) ibid by the Taxation Laws (Amendment) Act, 1984, with effect from October 1, 1984), the Commissioner of Income Tax had powers to revise the assessment u/s 263 on or before June 27, 1986, which was not done in her case. The assessee, therefore, pleaded that the order of the Commissioner of Income Tax passed u/s 263 was passed after the expiry of the limitation period and, therefore, the same was invalid in the eyes of law. The Appellate Tribunal accepted the contention of the assessee and held that the order u/s 263 passed on March 24, 1987, was barred by limitation. The petitioner thereafter made an application u/s 256(1) to the Income Tax Appellate Tribunal requesting therein to refer to this court the question of law mentioned above. The Appellate Tribunal, however, vide its order dated June 19, 1989, dismissed the reference application with the remarks that no referable question arises from the order of the Tribunal.

4. The sole but forceful contention of Mr. B.S. Gupta, learned senior advocate, appearing on behalf of the petitioner, is that Sub-section (2) of Section 263 was amended by the Taxation Laws (Amendment) Act, 1984, and the time-limit for passing orders u/s 263 was laid down with effect from October 1, 1984, as two years from the end of the financial year in which the order sought to be revised was passed, instead of two years from the date of the order sought to be revised. Therefore, the time-limit for taking action u/s 263 could be taken as October 1, 1984, or thereafter and it stood extended till the end of two years from the financial year in which the order, sought to be revised, was passed. In the present case, the order u/s 143(3) was passed on June 27, 1984, and action u/s 263 could very well be taken on October 1, 1984, the date on which the method of computation of the limitation period was amended as since then not even four months had passed from the date of the order u/s 143(3). The limitation date for taking action u/s 263, thus, became March 31, 1987, by virtue of the amendment of Sub-section (2) of Section 263 as the order u/s 143(5) in this case was passed during the financial year ending March 31, 1985.

5. Notice for revising the order was issued on November 17, 1986, and the order was passed on March 24, 1987. In short, the contention of learned counsel for the petitioner is that when the period of limitation is extended on a date when action under the unamended law has not outlived its tenure, then action can well be taken during the extended period. For his aforesaid contention, learned counsel has relied upon a Full Bench decision of the Andhra Pradesh High Court in *Allied Exports and Imports v. State of Andhra Pradesh* [1971] 28 STC 175, wherein it was held that "since the period prescribed for the exercise of the power to reassess under Rule 17 of the Rules made under the repealed Act had not expired on the date when the repealing Act came into force, and since the

right to tax and liability to pay were subsisting and were saved, and as Section 14(4A) enlarged the period of limitation, it was the new Act, i.e., Section 14(4A), that would apply to the case. The assessing authority was, therefore, well within its jurisdiction in initiating and concluding the proceedings for reassessment within the time prescribed by Section 14(4A). The facts of the case reveal that the petitioner firm was assessed to sales tax for the year 1956-57 by an assessment order dated September 30, 1958. Subsequently, the assessing authority issued on February 24, 1961, a notice of reassessment and assessed the petitioner on an additional turnover as escaped turnover by its order dated March 31, 1963. During the assessment year 1956-57, it was the Madras General Sales Tax Act, 1939, that was in force and under Rule 17 of the Madras General Sales Tax Rules 1939, the assessing authority could have reopened the assessment only within three years next succeeding the assessment year. On June 15, 1957, the Andhra Pradesh General Sales Tax Act, 1957, came into force and it repealed the Madras Act. According to Section 14(4) of that Act, a period of four years was specified for reopening the assessment. Section 14(4) was also amended with retrospective effect from June 15, 1957, and the amended provision provided a period of six years for reassessment in the case of default on the part of the dealer. The petitioner contended that Section 14(4A) of the Andhra Pradesh General Sales Tax Act did not apply to the case and that, as the assessment year 1956-57 ended before the Andhra Pradesh Act, 1957, came into force, it was the Madras Act of 1939, which was applicable and consequently the notice of reassessment issued on February 24, 1961, and the order of reassessment dated March 31, 1963, were barred by time under Rule 17. For the same proposition, learned counsel also relies upon a Division Bench judgment of the Rajasthan High Court in *CTO v. Man Industrial Corporation Ltd.* [1970] 26 STC 169 as also another Division Bench judgment of the Bombay High Court in *Siemens India Ltd. v. State of Maharashtra* [1986] 62 STC 40 and yet another Division Bench decision of the Allahabad High Court in *Hargu Charan Srivastava Vs. Commissioner of Income Tax*, . We are in agreement with the contention raised by learned counsel for the petitioner and hold that the law prescribing the period of limitation is to be considered as procedural rather than substantive. This proposition of law would have only one exception, i.e, if under the existing law of limitation the right to initiate a proceeding has already become time-barred then a subsequent enlargement of time by an amendment of law cannot be availed of. As in the said case, the matter having attained finality, would vest a party with substantive right which has already accrued. This accrued right cannot be taken away by a subsequent amendment. Substantive laws determine the rights and liabilities of the parties concerned, whereas procedural laws govern the manner in which such rights or obligations are to be enforced or realised. When these rights are sought to be exercised, substantial rights get crystallised as on the date when a proceeding to enforce these rights is initiated. Any subsequent change in such rights will not affect the parties concerned, unless it is prescribed so expressly or impliedly. However, procedural rights do not get crystallised in that fashion. If procedure changes, the changed procedure

will apply. Procedure for enforcement of these rights has to be determined with reference to the law in force at the time when such rights are sought to be enforced. Therefore, if there are any amendments or alterations in the procedural law in the course of assessment proceedings, the altered procedural law will be applicable.

6. Learned counsel for the respondents, however, contends that vide clarification on the Taxation Laws (Amendment) Act, 1984, issued by the Central Board of Direct Taxes appearing at [1985] 151 ITR 46, it has not been clarified as to whether the amendment is retrospective in nature. The clarification relied upon reads thus :

"As a consequence of the amendment of Section 263 of the Income Tax Act, 1961, by Section 47 of the Taxation Laws (Amendment) Act, 1984, the limitation for passing an order u/s 263 will, in view of the general principles of interpretation of statutes, stand extended in cases where the period of limitation originally laid down in that section had not expired before October 1, 1984. However, with a view to avoiding controversy and litigation in the matter, it is desirable that orders u/s 263 of the Income Tax Act are passed, as far as possible, within two years of the date of the order sought to be revised in cases where the order sought to be revised was passed before October 1, 1984."

7. The clarification relied upon by learned counsel for the respondent does not and cannot come to the rescue of the assessee as the same is neither clear nor in consonance with the law settled on the point.

8. For the reasons recorded above, these petitions are allowed and we direct the Income Tax Appellate Tribunal to refer to this court the question of law mentioned by us in the earlier part of this judgment.