
(1980) 02 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 124 and 125 of 1979

Commissioner of Income Tax (Central)

APPELLANT

Vs

Smt. Bimla Vati

RESPONDENT

Date of Decision : 12-02-1980

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1980) 18 CTR 94 : (1980) 124 ITR 891

Hon'ble Judges : S.P. Goyal, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; G.C. Sharma, Prem Singh and S.S. Mahajan, for the Respondent

Judgement

Goyal, J.—The following two questions of law have been referred to this court by the Income Tax Tribunal, Amritsar, at the instance of the revenue:

"(I) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that, there was no proper information available to the Income Tax Officer to proceed u/s 147(b) of the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the reopening of the assessments of the years 1970-71 and 1971-72 u/s 147(b) of the Income Tax Act, 1961, was invalid ?"

2. The assessment for the two years 1970-71 and 1971-72 was completed by the ITO on September 19, 1972, and the income assessed was "nil" for the first year and Rs. 6,493 for the second year. The wealth-tax assessments were completed on September 20, 1972. The wealth of the assessee consisted of deposits and one building at Maqbool Road, Amritsar, which was valued at Rs. 2,99,836, The assessee had purchased the plot of land for Rs. 71,516 for this building on January 21, 1969, started the construction on February 1, 1969, and completed the same on March 30, 1971.

3. On the basis of a complaint to the effect that the total cost of construction of

the said house was Rs. 15,00,000, the ITO requested the Government valuer on August 30, 1974, to determine the estimated cost of its construction. Consequently, Shri R. C. Kataria, Assistant Valuation Officer, accompanied by Inspector of Income Tax, Shri D.D. Sharma, inspected the building and submitted his report on September 14/15, 1974. As the cost of construction estimated by the Assistant Valuation Officer was found to be much in excess to the one declared and accepted in the course of the original assessment, the ITO initiated proceedings u/s 147(b) and served a notice on the assessee u/s 148 on September 18, 1974.

4. During the reassessment proceedings, the cost of construction was sought to be determined through the Executive Engineer of the Government valuation cell. As the assessee did not permit him to inspect the building, the ITO framed his own estimate of the cost of construction at Rs. 6,20,000 and brought to tax the unexplained investment as income of the assessee in the above two years. Aggrieved by this order, the assessee went in appeal and the AAC upheld the action of the ITO to reopen the assessment, but remanded the case for fresh order after getting the report of the Government valuer, vide order dated May 25, 1976. Still dissatisfied, the assessee went in second appeal.

5. The Tribunal found that the said complaint of Shri Girdhari Lal was already on the record when originally the assessment was made on September 19, 1972, and the same, therefore, could not furnish any fresh material for taking action u/s 147(b), nor could any reasonable belief be entertained by the ITO on its basis that the cost of construction had been suppressed. What was done thereafter by the ITO was that he embarked upon a fishing enquiry and chose to make a reference under the W.T. Act to the Executive Engineer (Valuation) although no wealth-tax proceedings were pending for the assessment year 1971-72. The Tribunal was, therefore, of the opinion that the notice issued was clearly unauthorised as it was based on the information gathered as a result of illegal exercise of authority. Consequently, the appeal of the assessee was allowed and the reassessment proceedings quashed.

6. Shri D. N. Awasthy, learned counsel for the revenue, has vehemently contended that the view of the Tribunal that the material collected by the ITO was the result of illegal exercise of authority, cannot be sustained, because for the purposes of the Act, the authorities have been invested with very wide powers u/s 133 to ask any person to make available any information required by them. The argument of the learned counsel appears to be unexceptionable, but in this case, it is not necessary for us to express our considered opinion, because the order of the Tribunal has to be sustained on another finding of fact recorded in the statement of the case. After observing that the ITO had no authority to refer the matter to the Executive Engineer (Valuation), the Tribunal further found that what was enquired into was the fair market value though all the time what the ITO wanted to know was the cost of construction. If what was reported was the fair market value of the building in dispute and not its cost of construction,

then there was no material with the ITO on the basis of which he could have reason to believe that income of the said assessee had escaped assessment. As is evident from the facts noticed above, at the time when the ITO formed his opinion and took the decision to issue a notice, the only material available with him was the complaint of Shri Girdhari Lal and the report of the Valuation Officer. The complaint did not contain any facts and could hardly furnish any ground for forming the opinion that the cost of construction had been, underestimated. Moreover, this complaint was already there when originally the assessment was completed and, therefore, it could not be said to be a material which came to the knowledge of the ITO after the said assessment. The only other material was the report of the Valuation Officer and if that report related to the fair market value of the building in dispute, as found by the Tribunal, and not the cost of construction of the building, it could also furnish no ground to form an opinion that the cost of construction of the said building had been underestimated. Thus, there was no information with the ITO from which he could have reason to believe that income of the assessee had escaped assessment in the said years and consequently, the reopening of the assessment and issuance of the notice u/s 148 were without the authority of law. In the result, both the questions referred to above are answered in the affirmative, in favour of the assessee and against the revenue. No costs.

B.S. Dhillon, J.

7. I agree.