

(1983) 05 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 13166 of 1978

Consolidated Coffee Ltd.

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 30-05-1983

Acts Referred:

Income Tax Act, 1961 — Section 147 (b), 148, 150 (1)

Citation : (1985) 155 ITR 729 : (1987) 30 TAXMAN 620

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Puttaswamy, J.—Among others, the petitioner - a public limited company incorporated under the Companies Act, owing several coffee estates in the District of Coorg - is an assessee under the I.T. Act, 1961 (hereinafter referred to as "the Act") on the file of the ITO, Company Circle-IV, Bangalore (hereinafter referred to as "the ITO"). For the assessment year 1963-64 relevant to the accounting year ending on June 30, 1962, the petitioner filed its return disclosing a total world income of Rs. 5,13,375, inter alia, disclosing that it had received certain amounts by sale of timber extracted in its coffee estates and claimed that as an agricultural income not chargeable to tax under the Act. But, the ITO by his order dated February 3, 1964, (exhibit "A"), rejecting the claim of the petitioner on timber sales, held that a sum of Rs. 11,91,508 representing the sale of timber was a "revenue receipt" and was chargeable to Income Tax under the Act. On that basis, he completed the assessment for the year 1963-64.

2. Against that part of the order of the ITO that represented the sale of timber, the petitioner filed an appeal before the AAC, Mysore Range, Mysore (hereinafter referred to as "the AAC"), who by his order dated March 11, 1966, (exhibit "B"), dismissed the same and affirmed the order of the ITO.

3. Against the said orders of the AAC and the ITO, the petitioner filed a second

appeal before the ITAT, Bangalore Bench (hereinafter referred to as "the Tribunal"), inter alia, contending that the aforesaid sum of Rs. 11,91,508 was a capital receipt and was, therefore, not chargeable to Income Tax under the Act. In the said appeal before the Tribunal, the Revenue alternatively urged that the said amount was a capital gain and should be so assessed under the Act. On an examination of these and other contentions urged before it, the Tribunal by its order dated March 20, 1971, (exhibit "C"), allowed the appeal filed by the petitioner, inter alia, holding that the receipt was a capital receipt and was not chargeable to Income Tax under the Act. But on the alternative plea urged for the Revenue, the Tribunal held that in the assessee's appeal, it was not open to it to examine the same and grant any relief.

4. On an application made by the Revenue, the Tribunal made a reference to this court in ITR C. No. 64 of 1972 seeking its opinion on the following two questions, viz. :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the net sale proceeds of timber amounting to Rs. 11,91,508 constituted capital receipts and not revenue receipts ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in refusing to entertain the alternative plea of the Department that the sum of Rs. 11,91,508 or any part thereof represents capital gains on the ground that its appellate powers were restricted only to matters or issues arising out of the order of the AAC ?"

5. But, this court on reframing those questions as hereunder :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in refusing to entertain the alternative plea of the Department that capital gains were attracted to the transactions of sale of timber on the ground that it is beyond the subject-matter of the appeal before ?"

6. answered the said reference on June 25, 1974, (exhibit "E"), expressing its concurrence with the order made by the Tribunal. The opinion expressed by this court on the reframed question reads thus :

"The appeal to the Tribunal, as stated earlier, was by the assessee and the contest was in regard to the question whether the receipts were capital in nature or revenue and thus taxable. The transactions resulting in capital gains was not before the ITO or the AAC. In the appeal, obviously the question whether any capital gains resulted would not arise for consideration before the Tribunal. The view the Tribunal has taken that its powers are confined to the subject-matter in the appeal before it, finds support from the ruling of the Supreme Court reported in *Hukumchand Mills Ltd. Vs. Commissioner of Income Tax, Central Bombay and Others*, .

Shri Rajasekhara Murthy, learned counsel for the Department, contended that

although there was no material before the Tribunal to hold that the transaction attracted capital gains, its powers are very wide and it should have entertained the plea and remanded the matter for investigation afresh. There is no presumption that every transaction of sale results in capital gains. In the instant case, the sale of timber was mostly from coffee estates owned by the assessee and whether such sales would attract capital gains under the Act is also a debatable question. In order that the Tribunal may remand a matter, there must be some material to prima facie hold that the contention put forth is part of the subject-matter of appeal and requires further investigation in regard to details or otherwise. On the material on record, it is clear that the Tribunal has exercised its discretion in accordance with the principles laid down by the Supreme Court and it cannot be said that the discretion has been improperly exercised.

Accordingly, we answer the question as reframed in the affirmative and against the Department."

7. The order made by this court in the reference has become final as the Supreme Court has declined to grant special leave to appeal to the Revenue.

8. For the subsequent assessment years 1964-65, 1965-66 and 1966-67, the ITO took the same view he had taken on the sale of timber for the year 1963-64. On appeals filed by the petitioner, the AAC took the view that the receipts were capital receipts. But in the second appeals filed by the Revenue against the orders of the AAC, the Tribunal, on January 1, 1973, held that the receipts for the said years was a capital gain and was chargeable to tax under the Act. On receipt of the said order of the Tribunal, the ITO examined the liability of the petitioner on the sale of timber for Rs. 11,91,508 for the assessment year 1963-64 that had not suffered any tax under the Act. On such examination, the ITO took the view that it was a case of escaped assessment to be reopened under the Act, recorded his reasons and sought the approval of the CIT, Karnataka Circle (hereinafter referred to as "the Commissioner"), and the CBDT, New Delhi (hereinafter referred to as "the Board"), before issuing a notice u/s 148 of the Act, who, on being satisfied with the reasons recorded, have accorded their approval. With the approval so obtained, the ITO has issued notice No. CX-0100 dated March 23, 1978, to the petitioner under s. 148 of the Act calling upon it to file its return for the year 1963-64 stating that the income for that year had escaped assessment. In this petition under article 226 of the Constitution, he petitioner has challenged the said notice and has obtained stay of further proceedings before the ITO.

9. At the hearing of the case, Sri K. Srinivasan, learned senior standing counsel appearing for the Revenue, produced the records and supplied a copy of the reasons recorded by the ITO, on the basis of which the notice had been issued to the petitioner. Sri G. Sarangan, learned counsel for the petitioner, on perusal of the reasons recorded by the ITO, has made his submissions.

10. Sri Sarangan has urged that the orders made by the Tribunal for the

assessment years 1964-65, 1965-66 and 1966-67 could not be made the basis for the ITO to reopen the earlier concluded assessment against the petitioner for the assessment year 1963-64. In support of his contention, Sri Sarangan has strongly relied on the rulings of the Supreme Court in *Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi*, and in *Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri*, .

11. Sri Srinivasan, in justifying the impugned notice, has urged that the finding recorded by the Tribunal for the subsequent years was a finding, direction or order to justify reopening of the escaped assessment under s. 150(1) of the Act and the ratio of the rulings of the Supreme Court in *Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi*, and *Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri*, , that had not interpreted the said section does not bear on the point.

12. Under the earlier I.T. Act of 1922 (hereinafter referred to as "the 1922 Act"), as also under the present Act, every assessment year is treated as a separate and distinct period or unit. In *CIT v. Chitnavis* [1932] LR 59 IA 290 : 2 Com 464 Cas 464, the Judicial Committee of the Privy Council expressed on that question in these words (at p. 470 of 2 Comp Cas) :

"For the purpose of computing yearly profits and gains, each year is a separate self-contained period of time, in regard to which profits earned or losses sustained before its commencement are irrelevant."

13. In *Commissioner of Income Tax Vs. Kikabhai Premchand*, , our Supreme Court, expressing its concurrence with the above statement of law enunciated by the Privy Council, has expressed thus (p. 508) :

".....for Income Tax purposes, each year is a self-contained accounting period and we can only take into consideration income, profits and gains made in that year and are not concerned with potential profits which may be made in another year any more than we are with losses which may occur in the future."

14. In *Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri*, , the majority, speaking through Subba Rao J., as he then was, with which exposition, the other two learned judges did not express dissent, followed the above rulings and expressed thus (p. 342) :

"Indeed, the decision of an Income Tax Officer given in a particular year does not operate as *res judicata* in the matter of assessment of the subsequent years."

15. Bearing these principles in mind, it is now necessary to read the reasons recorded by the ITO and the same reads thus :

"11. Reasons for the belief that income has escaped assessment. - The assessment was originally concluded in this case on 3-2-1964 and a sum of Rs. 11,91,505 representing sale proceeds of timber was treated as trading receipt.

On assessee's appeal, the ITAT, Bangalore Bench, held by its order dated

20-3-1971, that the trees had been uprooted and sold with roots, the receipts of which would be capital in nature. Accordingly, it was directed that these receipts should be deleted from the total income.

2. The assessments for the three succeeding years, viz., asst. years 1964-65, 1965-66 and 1966-67, were concluded on 30-1-1965, 17-3-1966 and 30-11-1966, respectively, taking the view that similar receipts from sale of timber would constitute trading receipts. The AAC by his consolidated order dated 6-10-1971 held that the receipts would be capital in nature. In the departmental appeal against the AAC's orders, an alternative ground had been pressed before the ITAT, that the AAC should have given a finding that capital gains arose out of the sale proceeds of timber for those years. The ITAT disposed of the departmental appeal on 1-1-73. In para. 12 of the order, it has been observed : ".....We are accordingly of the opinion that the department's alternative contention that the amounts should be subjected to capital gains tax is well foundedWe set aside the orders of the AAC and direct them to determine the amount of capital gains....." Also in para. 10 of the order, it was observed that the facts of the case for asst. years 1964-65 to 1966-67 were similar to those of the year 1963-64.

3. On an appraisal of the above circumstances, it is clear that there is a finding of the Tribunal that the sale proceeds of timber would attract capital gains. Though the finding is given in the course of proceedings for the asst. years 1964-65 to 1966-67 and not for the year 1963-64, the provisions of s. 150(1) would nevertheless be attracted as the wordings of s. 150(1) are "to give effect to any finding or direction contained in an order passed by any authority in any proceedings under this Act by way of appeal, reference or revision." This test is satisfied as the order of the Tribunal in ITA Nos. 668, 669 and 670 (Bang)/1971-72 dated 1-1-1973 for the asst. years 1964-65 to 1966-67 is an order passed under the I.T. Act, 1961, and it is by way of appeal and there is a finding that the sale proceeds of timber are not liable to tax as revenue receipt but capital gains will arise on the sale of timber.

4. As regards the time-limit mentioned in s. 150(2), it is seen that the Asst. orders for 1964-65 to 1966-67 were passed on 30-1-1965, 17-3-1966 and 30-11-1966 respectively, well before 31-3-1968, by which date action under s. 147(b) for the asst. year 1963-64 could have been initiated.

5. Hence, as a consequence of information in my possession, viz., the finding given by the ITAT, Bangalore Bench, in orders in ITA Nos. 668, 669 and 670 (Bang)/1971-72 dated 1-1-1973, and on the basis of facts discussed above in detail, I have reason to believe that income chargeable to tax, viz., capital gains arising out of sale proceeds of Rs. 11,91,505 for the asst. year 1963-64 had escaped assessment within the meaning of s. 147(b) read with s. 150(1).

6. Board's sanction under s. 151(1) is hereby solicited for the issue of notice under s. 148 read with section 150(1).

(Sd.) B. Muthuramakrishnan, income tax Officer, Company Circle IV, Bangalore.

12. Whether the Commissioner/Board is satisfied on the reasons recorded by the ITO that this is a fit case for the issue of notice under s. 148.

Yes, the Board is satisfied. Yes, this is a fit case. (Sd.) (Sd.) Under Secretary, Commissioner of Income Tax, Central Board of Karnataka II, Direct Taxes, Bangalore."

17. The one and the only reason stated by the ITO is that the Tribunal in its order dated January 1, 1973, for the assessment years 1964-65, 1965-66 and 1966-67 on the very question had expressed that the receipt was a capital gain and was accordingly chargeable to tax under the Act. Let me assume that these statements are correct and the order of the Tribunal for the years 1964-65, 1965-66 and 1966-67 has become final and examine the case on that basis.

18. Section 150(1) of the Act, on the true construction of which the case turns, reads thus :

"150. (1) Notwithstanding anything contained in section 149 , the notice u/s 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision."

19. This section provides for the issue of notice under s. 148 of the Act at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision.

20. The Act provides for appeals, revisions and references to the High Court and the Supreme Court. Apart from the remedies provided by the Act, the Constitution also confers powers on the High Courts and the Supreme Court to interfere with the orders of the authorities made under the Act.

21. The object of enacting s. 150(1) of the Act is to really give effect to the orders made by the superior authorities/courts under the Act or the Constitution and thus bring the assessments for the year or years, as the case may be, in conformity with those orders without any time-limit. In a case covered by s. 150(1) of the Act, the question of limitation applicable to reopening of assessment or escaped assessment does not apply. The words "in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision" must necessarily relate to an order made with reference to a particular assessment year or years and that must necessarily be by a superior authority or court competent to make the same. The words "any proceeding under this Act by way of appeal, reference or revision" cannot be read as to give effect to an order made in any case and for any period and of any person. In the scheme and

context, these words should be so construed as referable to an order made for a particular year or years of that particular assessee and not of others. The construction suggested by Sri Srinivasan on s. 150(1) as referring to any order on appeal, revision or reference under the Act is too literal, too wide and will even defeat the scheme and object of the Act.

22. In *Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri*, the facts in brief were these :

(i) Murlidhar Bhagwan Das was a firm carrying on business in different lines and was an assessee under the 1922 Act. For the assessment year 1949-50, the assessee had received a sum of Rs. 88,737 as interest income which was brought to tax by the ITO for that assessment year. But, on an appeal filed by the assessee, the AAC by his order dated December 4, 1957, held that that amount had been received by the assessee for the previous year 1948-49 and directed the ITO to include the same for that year. On the basis of the said order of the AAC, the ITO issued a notice on December 5, 1957, to the assessee under s. 34(1) of the 1922 Act calling upon it to file its return, the validity of which was challenged by him before the Allahabad High Court in a petition under article 226 of the Constitution, which allowed the same on the ground that the said notice was barred by time. The Supreme Court by majority, speaking through Subba Rao J., as he then was, affirmed the decision of the High Court.

(ii) Among others, the court had to consider the true scope and ambit of the second proviso to s. 34(3) of the 1922 Act which then read thus :

"Provided further that nothing contained in this section limiting the time within which any action may be taken, or any order, assessment or reassessment may be made, shall apply to a reassessment made u/s 27 or to an assessment or reassessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 31, section 33, section 33A, section 33B, section 66 or section 66A."

23. On the construction of that proviso, the majority expressed thus (p. 343) :

"It is, therefore, manifest that assessment or reassessment made under the said sections or pursuant to the orders or directions made there-under must necessarily relate to the assessment of the year under review, revision or appeal, as the case may be. It is important to remember that the proviso does not confer any fresh power upon the Income Tax Officer to make assessments in respect of escaped incomes without any time-limit- It only lifts the ban of limitation in respect of certain assessments made under certain provisions of the Act and the lifting of the ban cannot be so construed as to increase the jurisdiction of the Tribunals under the relevant section. The lifting of the ban was only to give effect to the orders that may be made by the appellate, revisional or reviewing Tribunal within the scope of its jurisdiction."

24. On the meaning of the term "finding", "direction" or "order", the majority

expressed thus (p. 345) :

"A "finding", therefore, can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The AAC may hold, on the evidence, that the income shown by the assessee is not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context is that that income does not belong to the relevant year. He may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the year of assessment in question. The expression "direction" cannot be construed in vacuum, but must be collated to the directions which the Appellate Assistant Commissioner can give u/s 31. Under that section, he can give directions, inter alia, u/s 31(3)(b), (c) or (e) or section 31(4). The expression "direction" in the proviso could only refer to the directions which the AAC or other Tribunals can issue under the powers conferred on him or them under the respective sections. Therefore, the expression "finding" as well as the expression "direction" can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the sections mentioned therein. The words "in consequence of or to give effect to" do not create any difficulty, for they have to be collated with, and cannot enlarge, the scope of the finding or direction under the proviso. If the scope is limited as aforesaid, the said words also must be related to the scope of the findings and directions."

25. In *Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi* , the Supreme Court examining a case arising under the present Act dealing with the terms "finding", "direction" or "order" has taken the same view as expressed by the majority in *Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri* ,

26. In my view, the principles enunciated by the Supreme Court in *Murlidhar Bhagwan Das*" case, though dealing with the unhappily worded second proviso of s. 34(3) of the 1922 Act, is equally applicable in construing s. 150(1) of the Act which is somewhat analogous and corresponds to that provision. From this, it follows that the impugned notice issued under s. 148 of the Act on the assumption that s. 150(1) of the Act was applicable is without jurisdiction and illegal.

27. Even otherwise, on the facts of the case, it is difficult to hold that there was escaped assessment justifying its reopening.

28. On any view of the matter, the impugned notice is liable to be quashed. I, therefore, quash the impugned notice.

29. Rule issued is made absolute. But, in the circumstances of the case. I direct the parties to bear their own costs.