

(1997) 05 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4033 of 1997

Gauri Shankar Choudhary

APPELLANT

Vs

Additional Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 09-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 147, 148, 149, 150, 150(1)

Citation : (1999) 154 CTR 264 : (1998) 234 ITR 865 : (1998) 1 PLJR 298

Hon'ble Judges : Naresh Kumar Sinha, J; Bisheshwar Prasad Singh, J

Bench : Division Bench

Advocate : N.K. Jain, Vikas Jain and R. Usha, for the Appellant; S.K. Sharan, for the Respondent

Judgement

1. The petitioner herein has filed the instant writ petition for quashing of the notice issued to him u/s 148 of the Income Tax Act for the assessment year 1981-82 calling upon the petitioner to file a return of income to assess the escaped income of the person named in the notice. He has also prayed for quashing of the assessment order passed on March 13, 1997 (annexure-3), as also notice of demand raised in pursuance thereof. He has further prayed for a declaration that no interest under Sections 139(8) and 217 of the Income Tax Act is leviable in the course of proceedings u/s 147 of the Act. The impugned notice (annexure-1) was issued on January 22, 1996. On receipt of the said notice, the petitioner, by his letter dated September 26, 1996, objected before the Income Tax Officer and stated that the notice issued was prima facie barred by limitation, and further that no basis or reasons have been stated in the notice for initiation of the proceedings in question. He also denied that he had received any income whatsoever in his name, or that his income whatsoever had escaped assessment for the aforesaid years. Without disposing of the objection of the petitioner, the Income Tax Officer proceeded to make assessment and passed an assessment order on March 13, 1997. The order appears to have been passed ex parte u/s 144 of the Income Tax Act. The Assessing Officer assessed the income of the

assessee at Rs. 3,46,585 for the assessment year 1981-82.

2. Mr. Jain, appearing on behalf of the petitioner, has urged before us that the notice issued to the petitioner u/s 148 of the Income Tax Act, 1961, was barred by limitation in view of the limitation prescribed by Section 147 read with Section 149 of the Income Tax Act. The relevant assessment year being assessment year 1981-82, the same was barred by limitation on March 31, 1992, and, therefore, no notice u/s 148 could be issued.

3. His second submission is that the notice (annexure-1) does not disclose any reason whatsoever and, therefore, the notice has been issued in breach of the provisions of Sub-section (2) of Section 148, because the said Sub-section requires that the Assessing Officer shall, before issuing any notice under this Section, record his reasons for doing so.

4. On behalf of the Revenue it has been contended that there was a case before the Settlement Commission in which the assessee concerned was Sri Suraj Choudhary, a Hindu undivided family. In the said proceeding, the Settlement Commission had found that there was a complete partition in the Hindu undivided family of Sri Suraj Choudhary as between him and his sons on November 9, 1977, and business carried on thereafter belonged to the association of persons of the Hindu undivided families of three separated sons of Sri Suraj Choudhary including the petitioner herein. Since the association of persons was not before the Settlement Commission, but had earned substantial income during six years from 1981-82 to 1986-87, the Assessing Officer having jurisdiction was directed to take action as per law to bring this income to tax in the relevant assessment years. The submission urged on behalf of the Department is that it was pursuant to such direction that a notice was issued u/s 148 of the Income Tax Act. We have perused the order of the Settlement Commission, and counsel for the Revenue made much of the concession said to have been made by counsel for the assessee in that case, that during the relevant assessment years 1981-82 to 1986-87 the combined capital of the three Hindu undivided families increased from Rs. 6 lakhs to Rs. 16.24 lakhs, and the difference was taxable as income of the association of persons consisting of three sons of Sri Suraj Choudhary represented through their respective Hindu undivided families. In our view, the concession made on behalf of an assessee in such a proceeding cannot be held to be binding upon any other assessee, who is not a party in that proceeding. In fact, in the proceeding before the Settlement Commission, the concession was offered on behalf of counsel for the assessee with a view to save his client from the liability. We, therefore, do not attach much importance to the concession made by counsel appearing for the assessee in that case, who was different from the assessee in the instant case.

5. A question still arises as to whether the notice issued u/s 148 can be justified on the basis of the directions of the Settlement Commission in its order dated October 8, 1993.

6. It may be observed that the Settlement Commission directed the Assessing Officer having jurisdiction in the matter to take action in accordance with law. Even if the direction issued by the Settlement Commission was the reason which impelled the Assessing Officer to issue notice u/s 148 of the Income Tax Act, he could have recorded that reason either in the notice issued to the assessee, or even in the file maintained by him in his office. Though a counter-affidavit has been filed on behalf of the Revenue, counsel for the Revenue conceded that there is no averment in the counter-affidavit that reasons have been separately recorded in the file. On this short ground alone the notice issued u/s 148, which is annexure-1 to the writ petition, must be quashed,

7. There is yet another reason why the notice (annexure-1) and the order passed consequent thereto, cannot be upheld. It was not disputed before us that so far as the assessment year 1981-82 is concerned, the period of limitation prescribed is ten years for the issuance of notice u/s 148 of the Income Tax Act. The said period, therefore, expired on March 31, 1992. The notice is, therefore, ex facie barred by limitation. Counsel for the Revenue, however, relied upon Section 150 of the Act, and submitted that in view of the direction issued by the Settlement Commission, the question of limitation could not stand in the way of the Assessing Officer issuing a notice u/s 148 of the Income Tax Act. We have no doubt that the submission is misconceived. Section 150 of the Act provides that 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 or by a court in any proceeding under any other law. We have no doubt in our mind that resort to Sub-section (1) of Section 150 of the Act can be taken only in cases where it becomes necessary to make assessment or reassessment or recomputation in consequence of, or to give effect to, any finding or direction pursuant to an appellate order passed by the appellate authority or pursuant to any order in reference or revision or by a court in any proceeding under any other law. Obviously, the appeal, reference or revision or any other proceeding before a court must relate to the assessee in question, and not any direction or assessment made in appeal, reference or revision in the case of any other assessee, or in a proceeding in which the assessee in question is not a party. It was submitted by counsel for the petitioner that the order passed by the Settlement Commission u/s 245D of the Act is not within the contemplation of Sub-section (1) of Section 150 of the Act because it is not a proceeding by way of appeal, reference or revision nor is it a proceeding under any other law before a court. We need not go into this question because it is not necessary so to do. The assessee before the Settlement Commission was different and distinct from the assessee with which we are concerned in this case. Certain findings were arrived at by the Settlement Commission and that gave rise to a belief in the mind of the Settlement Commission that the petitioner and others may have earned income which has escaped assessment. It was,

therefore, observed that necessary action be taken in accordance with law. Such an order cannot be construed to be an order passed under this Act by way of appeal, reference or revision so as to necessitate reassessment for the assessment year 1981-82. Sub-section (2) of Section 150 of the Act makes it quite clear that the provisions of Sub-section (1) shall not apply in any case if the order which was the subject-matter of the appeal, reference or revision, could not have been made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken. It, therefore, follows that if the original order which was the subject-matter of the appeal, reference or revision could not have been passed, when it was purported to have been passed by reason of its being barred by limitation, the same cannot be revived under Sub-section (1) of Section 150. In the instant case, that question does not arise, because there was no assessment order for the assessment year 1981-82, which had been taken in appeal, reference or revision before any authority under the Act. As we have observed earlier, the order of the Settlement Commission may have only justified issuance of the notice, if that was the reason for issuance of the notice, but beyond that it could not operate to revive a proceeding which was barred by limitation.

8. In these circumstances, we find that the notice issued u/s 148 of the Income Tax Act, and the assessment made pursuant thereto is wholly without jurisdiction being barred by limitation. We also hold that the notice issued u/s 148 of the Act was bad for non-compliance with the provisions of Sub-section (2) of Section 148, as the Assessing Officer failed to record his reasons while issuing the said notice.

9. This writ petition is, accordingly, allowed and the impugned annexures, namely, notice u/s 148 of the Act (annexure-1), and the assessment order pursuant thereto (annexure-3) as also demand notice (annexure-4) are quashed.