

(1979) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : .OIncome Tax Reference No. 28 of 1970 & IT Reference No. 28 of 1970

Hiralal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-09-1979

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1980) 121 ITR 89

Hon'ble Judges : C.M. Lodha, C.J.;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : S.K. Kakkar, for the Appellant; Lekh Raj Mehta and Rajendra Mehta, for the Respondent

Judgement

Lodha, C.J.—This is a reference u/s 256(1) of the I.T. Act, 1961 (hereinafter to be referred to as "the Act"), by the Income Tax Appellate Tribunal, Delhi Bench-B, at the request of the assessee, Messrs. Hiralal Maliram, a joint Hindu family firm (which will hereinafter be referred to as "the assessee").

2. The relevant assessment year is 1956-57. The assessee derived income from mica mines. The karta of the HUF, Shri Hiralal, died on September 4, 1968, and his son, Maniram, has been substituted in his place.

3. On account of non-compliance of notices under Sections 22(2), 22(4) and 23(2) of the Indian I.T. Act, 1922 (hereinafter referred to as "the Act of 1922"), the assessee was assessed ex parte u/s 23(4) on January 28, 1958, and his total income was assessed at Rs. 2,50,000. He filed an application u/s 27 for reopening the assessment but the same was dismissed by the ITO on August 1, 1958. The assessee preferred appeals against the orders of the ITO dated January 28, 1958, and August 12, 1958. The AAC rejected the appeal arising out of the ITO's order u/s 27 of the Act of 1922, but allowed the appeal arising out of the order u/s 23(4) in part, and reduced the total income from Rs. 2,50,000 to Rs. 1,50,000 and also allowed loss of earlier years amounting to Rs. 23,207. Dissatisfied with the orders of the AAC, the assessee preferred second appeals

before the Tribunal, which dismissed the appeal arising out of the order u/s 27 of the Act of 1922, but reduced the quantum of total income in the other appeal from Rs. 1,50,000 to Rs. 1,25,000 subject to allowance of loss of Rs. 23,207 by its order dated March 9, 1961.

4. Subsequently, the ITO initiated proceedings u/s 147(a) of the Act of 1961 on the ground that the assessee had purchased a house in the name of his wife, Smt. Rukmani Devi, and the amount invested in the property as also the rental income therefrom, had escaped assessment. In response to the notice issued by the ITO in this respect, the assessee submitted a return of his income of Rs. 41,572 subject to depreciation. Later on, he submitted a revised return showing income of Rs. 30,640. The ITO, after examining the account books and the relevant material, assessed the total income at Rs. 1,35,510. It will be noticed that he had added Rs. 10,510 to the business income finally determined by the Income Tax Appellate Tribunal by its order dated March 9, 1961. The assessee preferred an appeal against the order of the ITO and contended that the addition of Rs. 10,000 as income from other sources was not justified. This contention was rejected by the AAC. The assessee then preferred an appeal to the Tribunal from the order of the AAC. The Tribunal held that where a reassessment is made in respect of an income which had escaped assessment, the jurisdiction of the ITO u/s 147 was confined to such income which had escaped assessment and did not extend to revising or reopening the whole assessment. However, it further held that, after considering the facts of the case in regard to the addition of Rs. 10,000 particularly the fact that the property did not belong to the assessee's HUF, there was no justification for treating the amount invested in purchasing the house for the assessee's wife as income of the HUF and, as a necessary consequence, the rental income therefrom should also be excluded from the assessment. In this view of the matter, the Tribunal deleted the addition of Rs. 10,510 by its order dated August 13, 1969, thereby restoring the total income determined by it in its order dated March 9, 1961. The assessee then made an application requiring the Tribunal to refer certain questions of law to this court arising out of the Tribunal's order dated August 13, 1969. That application was allowed and the following question of law has been referred to us :

"Whether, on the facts and circumstances of this case, the Tribunal was right in holding that the Income Tax Officer's jurisdiction u/s 147 of the Income Tax Act, 1961, was confined to the assessment of such income as had escaped assessment and did not extend to revising or re-opening the whole original assessment ?"

5. We may observe straightaway that so far as the facts and circumstances of the present case are concerned, the question is purely academic. The alleged escaped income has not been brought to charge by the order of the Tribunal, but since the question has been referred to us and is likely to arise quite often, we deem it proper to return our answer to it.

6. In our opinion, the language of Section 147 itself furnishes an answer. We may

read the relevant portion of Section 147, here, for ready reference :

"147. Income escaping assessment.--If-

(a) the Income tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year)...." (The underlining is ours).

7. The words "such income" clearly refer to the income which is chargeable to tax but has escaped assessment. Thus, it is clear that where a reassessment is made under this section in respect of income which has escaped tax, the ITO's jurisdiction under this section is confined to such income which has escaped tax and does not extend to revising, re-opening or reconsidering the whole assessment.

8. In *Kevaldas Ranchhodddas Vs. Commissioner of Income Tax*, it was held that in reassessment proceedings initiated u/s 34(1)(a) of the Indian I.T. Act, 1922, on the ground that loss had been over-estimated in the original assessment, the ITO has no jurisdiction to reopen the entire assessment originally made, and determine afresh the assessable profits or to correct errors and omissions made by the assessee in the matter of computation of total income. The power conferred upon the ITO in respect of loss is to "recompute the loss" and when the legislation speaks of recomputing the loss, it means only the loss and not the income, profits or gains ; Section 34(1)(a) does not empower a general recomputation of the income, profits or gains. It was further held that recomputation u/s 34(1)(a) can only take place with a view to garnering in the income escaping assessment under the first clause. It is clear from the provisions of Section 34 itself that it was not intended for the benefit of the assessee but only for .the benefit of the revenue.

9. In *Sir Shadi Lal and Sons Vs. Commissioner of Income Tax*, it was held that on reassessment, the entire assessment is not opened. A claim for expenditure which, has been disallowed during the original assessment cannot be reagitated on the assessment being reopened for bringing to tax income which has escaped assessment. The controversy on reassessment is confined to matters which are relevant in respect of the income which had not been brought to tax during the

course of the original assessment.

10. The question came up for consideration, though in somewhat different circumstances, before their Lordships of the Supreme "Court in V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh, . Their Lordships observed as follows (p. 380):

"Section 34 in terms states that once the Income Tax Officer decides to reopen the assessment, he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements, which may be included in a notice u/s 22(2) and may proceed to assess or reassess such income, profits or gains. It is, therefore, manifest that once assessment is reopened by issuing a notice under Sub-section (2) of Section 22, the previous under-assessment is set aside and the whole assessment proceedings start afresh. When once valid proceedings are started u/s 34(1)(b), the Income Tax Officer had not only the jurisdiction but it was his duty to levy tax on the entire income that had escaped assessment during that year."

11. We may, here, clarify that in that case, the contention raised on behalf of the assessee was that in any case the ITO could have legitimately assessed one-third share of the income which was due to the assessee according to the judgment of the Madras High Court and there was escapement only to the extent of two-thirds share of the income. This argument was repelled by the court with the observation that once proceedings u/s 34 are taken up validly or initiated with regard to two-thirds share of the income, the jurisdiction of the ITO cannot be confined only to that portion of the income. In other words, what their Lordships meant to lay down was that the power of the ITO to assess is not limited to items which escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year, but extends to taxing all amounts that had escaped assessment. In other words, where the ITO validly initiates reassessment proceedings u/s 147(a) in respect of a particular item, he can, during the reassessment proceedings, deal with all items falling under Clause (a) or Clause (b) though they may not have been dealt with specifically in the notice, that is to say, his jurisdiction is not limited only to the items in respect of which the notice was issued. As we have already observed above, the term "such income" in Section 147 refers only to the entire escaped income.

12. We are, therefore, of opinion that in the facts and circumstances of this case, the Tribunal was right in holding that the jurisdiction of the ITO u/s 147 of the I.T. Act, 1961, was confined to the assessment of such income as had escaped assessment and did not extend to revising or reopening the whole assessment.

13. Accordingly, we answer the question referred to us in the affirmative, but there will be no order as to costs.