
(2012) 01 P&H CK 0343
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7474 of 1990

H.S. Bawa

APPELLANT

Vs

CIT

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Income Tax Act, 1961 — Section 139, 142, 143, 143(1), 147

Citation : (2012) 01 P&H CK 0343

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Ravish Sood, for the Appellant;

Judgement

1. This order shall dispose of Civil Writ Petition Nos. 7474 and 7488 of 1990 as both the writ petitions filed by the petitioner involve identical facts and questions. However, facts are being extracted from CWP No. 7474 of 1990, as narrated in the petition. The petitioner was a doctor practicing at Jalandhar. He filed his return for the assessment year 1984-85 alongwith balance sheet and profit and loss account. He had later filed a revised computation chart showing investment allowance claim of Rs. 23,111. Assessment was completed by the Income Tax Officer u/s 143(1) of the Income Tax Act, 1961 (in short, "the Act") on 25.7.1986, Annexure P.2. Similar investment allowance claim was made by the petitioner for the earlier assessment year i.e. 1983-84 on the same terms as in the assessment year 1985-86. This claim was disallowed by the Income Tax Officer. On appeal by the petitioner in the assessment year 1983-84, the Appellate Assistant Commissioner allowed the claim of the petitioner for investment allowance u/s 32A of the Act. On appeal by the department to the Tribunal, the finding of the Appellate Assistant Commissioner was reversed and investment allowance was disallowed, vide order dated 28.1.1988, Annexure P-5. On September 26, 1986, a raid was conducted at the house and hospital of the petitioner for investigating the alleged concealment of income. According to the petitioner, this raid was conducted with malafide intention at the instance of

respondent No. 2. Thereafter, the said respondent got started scrutiny proceedings for the assessment year 1986-87 against the petitioner. Vide order dated March 17, 1989, the Assistant Commissioner of Income Tax assessed the return of the petitioner for the assessment year 1986-87 after clubbing the income of the petitioner with that of Bawa Nursing Home, the lessee firm. The petitioner filed an appeal against the said order which was dismissed vide order dated 28.2.1990. Thereafter, respondent No. 2 issued notice u/s 148 of the Act dated 15.11.1988, Annexure P.3 for re-opening the assessment already done in the case of the petitioner for the assessment year 1984-85. Similar notices had been issued in respect of assessment years 1980-81 to 1985-86.

2. Learned counsel for the assessee submitted that the assessee had fully and truly disclosed the facts at the time of original assessment relating to claim of investment allowance and on that basis, assessment order u/s 143(1) of the Act was passed on 25.7.1986. It was submitted that in such a situation, the case relating to the assessment years 1984-85 and 1985-86 could be re-opened u/s 147 of the Act within four years as laid down u/s 149(1)(b) of the Act. Reliance was placed on judgments of the Apex Court in Commissioner of Income Tax Vs. Corporation Bank Ltd., Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited, Commissioner of Income Tax, Madras (Central) Madras Vs. Thanthi Trust, Madras, and Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, On merits, learned counsel placed reliance upon judgment of this Court in Commissioner of Income Tax Vs. Dr. S.K. Ohri, Prop. Ohri Maternity Hospital, to submit that the investment allowance was admissible to the petitioner.

3. After hearing learned counsel for the petitioner, we do not find any merit in the contentions.

4. Explanation 2 to Section 147(a) of the Act which was existing at the relevant time reads as under:-

147. Income escaping assessment-If

(a) the Assessing Officer has reasons to believe that, by reasons of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Assessing Officer or 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.

Explanation 2 - Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing officer will not necessarily amount to disclosure within the meaning of this section.

However, by Direct Tax Laws (Amendment) Act, 1987 which was effective from 1.4.1989, Explanation 2 was transposed as Explanation I without any material change.

5. Further, it would be advantageous to refer to Section 149(1)(a) and (b) of the Act, which reads thus:-

149. Time limit for notice -

(1) No notice u/s 148 shall be issued, a) in cases falling under clause (a) of section 147 -

(i) for the relevant assessment year, if eight years have elapsed from the end of that year, unless the case falls under sub-clause (ii);

(ii) for the relevant assessment year, where eight years but not more than sixteen years, have elapsed from the end of that year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year.

(b) in cases falling under clause (b) of Section 147, at any time after the expiry of four years from the end of the relevant assessment year.

6. A bare reading of the aforesaid provisions clearly spells out that mere production of books of account or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer would not amount to full and true disclosure within the meaning of Section 147 of the Act. It was not disputed that the assessment in the present case was framed u/s 143(1) of the Act. In such a situation, the Assessing Officer had not discussed the issue while allowing investment allowance. This Court in *R.N. Gupta and Company Limited v. ACIT* (CWP No. 13806 of 2010 decided on 30.11.2010), after discussing the scope of Explanation I and Section 147 of the Act under similar circumstances had held as under:-

8. The question that arises for determination in this petition is whether the assessee is entitled to challenge validity of initiation of reassessment proceedings u/s 147 of the Act after expiry of four years on the ground of lack of jurisdiction with the Assessing Officer even where the assessee had produced the entire material during assessment proceedings though there was no specific reference to that material during original assessment proceedings.

9. In our opinion, the answer to the said question is in the negative. The legislature by Direct Tax Laws (Amendment) Act, 1987 effective from 1.4.1989 had substituted Section 147 of the Act. The provisions contained in Explanation I now were earlier under Explanation 2. There has been transposition without any

material change.

10. It would be appropriate to reproduce Section 147 along with Explanation I which reads thus:-

147. Income escaping assessment.-If the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of ss. 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereinafter in this section and in ss. 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-s. (3) of s. 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under s. 139 or in response to a notice issued under sub-s. (1) of s. 142 or s. 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

Explanation 1- Production before the AO of account books or other evidence from which material evidence could with due diligence have been discovered by the AO will not necessarily amount to disclosure within the meaning of the foregoing proviso.

11. Section 147 of the Act empowers the Assessing Officer to assess or reassess income chargeable to tax where he has reason to believe that income for any assessment year has escaped assessment. However, the said provision does not authorize the Assessing Officer to take recourse to reassessment proceedings where after having adopted a particular opinion during original assessment proceedings, on second thought, he wishes to conclude otherwise. In other words, change of opinion is no ground for initiating reassessment proceedings. According to the explanation, the duty cast upon assessee to disclose truly and fully all material facts does not get discharged by mere production of the account books or other documents. Even where, the Assessing Officer could have with due diligence deduced the truth if he had been circumspect, still it will amount to nondisclosure of material facts within the meaning of Section 147 of the Act. The fiction created by the said explanation is to ensure that the Assessing Officer who is to act fairly and reasonably for the public exchequer as well as the tax payers cannot be imputed knowledge and consciousness to the entire bulky record produced by the assessee during assessment proceedings unless there has been conscious deliberations with regard to such an issue in the assessment order.

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15. Answering identical question, the Allahabad High Court in EMA India Ltd.s case (supra) observed:-

3.2. Explanation 1 to proviso to s. 147 is explicit and clear on the point. The Explanation gives a quietus to contention that where account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence could be discovered by the AO. Nor will the assessee be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The position remains that so far as the primary facts are concerned, it is the assessee's duty to disclose all of them including particular entries in account books, particular portions of documents, and documents, and other evidence which could have been discovered by the assessing authority, from the document and other evidence disclosed.

3.3 In other words, the mere production of evidence before the AO is not enough and there may be an omission or failure to make a full and true disclosure if some material for the assessment lies embedded in that evidence which the assessee can uncover but does not. However, if it be merely a question of interpretation of evidence, the assessee cannot be subjected to s. 147, merely because the AO miscarried in his interpretation of evidence.

3.4 To put it differently, if material evidence is not writ large on the document but is embedded in some voluminous records/books of account requiring a careful scrutiny and delving deep into it to notice the necessary material, it is quite possible that having regard to the nature of the documents, material evidence cannot be discovered from such records despite due diligence and the case would attract application of the said Explan. 1 to hold that mere production of the books of account or the documents, etc. without pointing out the relevant entries therein, does not amount to disclosure within the meaning of s. 147(a) of the Act (See Rakesh Agarwal (Legal Heir of Late R.S. Agarwal) Vs. Assistant Commissioner of Income Tax,

3.5 The assessee does not discharge his duty by merely producing the books of account or other evidence. He has to further bring to the notice of the AO particular items in the books of account or portions of document which are relevant. Even if it is assumed that, from the books produced, the AO could have found out the truth, he is not on that account precluded from exercising the power to reassess the escaped income (see, Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, Sowdagar Ahmed Khan (Deceased) (By his Legal representatives) Vs. Income Tax Officer, Nellore, Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das,

3.6. The fact that the AO could have found out the correct position by further probing the matter does not exonerate the assessee from the duty to make a full and true disclosure of the material facts.

16. Applying the aforesaid principles to the facts of the present case, it cannot be held that there was true and full disclosure made by the assessee. A perusal of the assessment order, nowhere suggests that the Assessing Officer had dealt with the issues on which reassessment is sought to be made while determining the taxable income of the assessee. Once it is held that mere production of account books and the documents wherefrom the Assessing Officer could have gathered the details of escaped income, would not amount to true and full disclosure within the meaning of Section 147 of the Act, necessarily, it is to be held that the action taken by the Assessing Officer beyond 4 years shall be within limitation.

17. Learned counsel for the assessee was unable to demonstrate that in the light of Explanation I to Section 147 of the Act, the record produced by the assessee during the original assessment proceedings would amount to full and true disclosure under the said Act. Nothing could be pointed out with reference to the original assessment order that the assessing authority had specifically dealt with these issues at the time of framing original assessment. The plethora of judgments on which reliance has been placed by learned counsel for the assessee do not come to the rescue of the assessee as none of them was dealing with interpretation of Explanation 1 to Section 147 of the Act. Therefore, none of the grounds of challenge relating to initiation of reassessment proceedings raised on behalf of the assessee carry any material substance and advance the case of the petitioner any further. However, the merits of the controversy relating to additions to be made shall be gone into by the Assessing Officer at the time of finalisation of reassessment proceedings.

7. Once it is held that the disclosure was not full and true in terms of section 147(a) of the Act, the case would be governed by Section 149(1)(a)(i) and not Section 149(1)(b) of the Act. The issuance of notice for reassessment is, thus, within limitation as the same could be issued within eight years as was prevalent at the relevant time.

7.1 In view of above, the judgments relied upon by learned counsel for the petitioner do not advance the case of the petitioner. In those cases, Explanation I was not under consideration. However, referring to the merits of the case, since we have held that the notice issued was within the jurisdiction of the Assessing Officer and within limitation, it shall be open to the writ petitioner to take all such pleas before the assessing officer and the petitioner is relegated to his remedies before the Assessing Officer in accordance with law.

Both the writ petitions are disposed of accordingly.