
(2002) 10 KL CK 0002
In the High Court Of Kerala
Case No : W.A. No. 2259 of 1998 (A)

Income Tax Officer

APPELLANT

Vs

Smt. Nilofer Hameed and Another

RESPONDENT

Date of Decision : 24-10-2002

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 147, 148, 149(1)

Citation : (2003) 184 CTR 247 : (2003) 262 ITR 281

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nayar, for the Appellant;
P.G.K. Warriar, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—This writ appeal is filed by the Income Tax Officer, Ward-I, Ernakulam, against the judgment of a learned single judge of this court in O. P. No. 17555 of 1997 Smt. Nilofer Hameed and Another Vs. Income Tax Officer, . The petitioners in the original petition are the respondents. The facts of the case are as follows :

The petitioners are partners of a firm under the name and style "Kerala Hides and Skins". It is engaged in the business of purchase and sale of hides and skins. The only source of income of the petitioners is the share income from the firm. While the assessment for the assessment year 1987-88 was completed by the Assessing Officer, the assessment for the assessment years 1986-87 and 1988-89 were pending. Against the completed assessment relating to the assessment year 1987-88 there was an appeal pending before the Commissioner of Income Tax (Appeals). At the above stage, the firm had moved a settlement petition on September 25, 1991, before the Settlement Commission, Madras, for settling the case of the firm by determining its income on an estimated basis. The Assessing Officer passed the assessment orders in respect of the firm on December 7, 1993, relating to the assessment years 1986-87, 1987-88 and

1988-89 in compliance with the directions of the Settlement Commission.

2. As per the return, there was no taxable income for the years 1986-87 and 1988-89. Therefore, the petitioners did not file the returns for these years. However, returns were filed for the assessment year 1987-88 declaring the share income of Rs. 16,530. Proceedings were initiated against the petitioners and the petitioners were served with notices u/s 148 of the Income Tax Act (hereinafter referred to as "the Act") for the assessment years 1986-87 and 1988-89, on March 29, 1994. No further notice u/s 142(1) of the Act or any proposal to complete the assessments of the petitioners were issued by the respondent. So by virtue of the provisions of Section 153(2) of the Act, the proceedings initiated by notice dated March 21, 1994, got barred by limitation on March 31, 1996. It appears, subsequently, another set of notices dated March 25, 1997 u/s 148 of the Act were served on the petitioners on March 27, 1997, copies of which are produced as exhibits P-9 to P-12. Subsequently, the petitioners were served with notices dated August 6, 1997, and September 22, 1997, u/s 142(1) of the Act. Copies of the abovesaid notices are marked as exhibits P-13 and P-14. The petitioners were informed subsequently by letters dated August 27, 1997, and September 19, 1997, that in case of non-compliance with the notices issued u/s 148 of the Act ex parte assessments will be made in the case of the petitioners on the basis of the materials available. Copies of the letters are marked as exhibits P-15 and P-16. The original petition was filed for a declaration that reassessment proceedings initiated as per exhibits P-9 to P-12 are illegal and without jurisdiction and to quash exhibits P-9 to P-14 and for other reliefs.

3. The main ground taken is that the notices, exhibits P-9 to P-14 are against the provisions of the Act and beyond the jurisdiction of the officer. The notices issued earlier already got barred by time. According to the petitioners, notice of reassessment can be issued only once and having issued notices on March 21, 1994, and served them on the petitioners on March 29, 1994, the proceedings as per exhibits P-5 to P-8 were barred by limitation.

4. The Income Tax Department filed two statements before the learned single judge. In the statement dated October 18, 1997, the Department submitted that the notices exhibits P-5 to P-8 were not responded by the assessee. The Revenue also did not and could not make any assessments in pursuance of the above notices dated March 21, 1994. Subsequently, fresh notices u/s 148 have been issued for a second time on March 25, 1997, after obtaining due sanction from the Additional Commissioner of Income Tax as per Section 151 of the Act. Since these notices also remained unresponded by the assessee, follow up action was taken by the issue of notices u/s 142(1) dated August 6, 1997, and September 22, 1997, as per exhibits P-13 to P-16. The assessee continued their non-compliance and non-co-operation till the final hearing fixed on October 7, 1997. There was no response by the assessee. Therefore orders u/s 144 of the Act have been passed in respect of the assessee for the assessment years 1986-87 and 1988-89 on October 7, 1997. In paragraph 2 of the additional statement

filed, it is stated as follows : "The main contention of the assessee is with regard to the issue of notices u/s 148 on March 25, 1997, on a second time. According to the petitioners, the Revenue could not complete the assessments of the petitioners on the basis of the notices u/s 148 issued for a second time since, by virtue of the provisions of Section 153(2), the proceedings initiated as per notices u/s 148 issued on March 21, 1994, as per exhibits P-5 to P-8, already got time barred on March 31, 1996". The Department contended that the issue of notices u/s 148 of the Act and its follow up action at each time, have to be treated as a separate compartment. The fact that no assessment could be made by the Department on the basis of the notices u/s 148 dated March 21, 1994, does not debar the Department from issuing notices u/s 148 a second time. The time limit for issuing of notices u/s 148 is dealt with in Section 149 of the Act. In the instant case, Sub-clause (iii) of Clause (b) of Sub-section (1) of Section 149 will apply. Accordingly, there is no bar or restriction on the number of proceedings that can be initiated u/s 147 by issue of notices u/s 148 of the Act. When a return is filed in pursuance of a valid notice and proceedings are pending, the Revenue cannot initiate fresh proceedings by issuing notices u/s 148 of the Act a second time. But here, the petitioners neither filed the return of income nor any proceedings initiated by issue of notices u/s 148 of the Act are pending. Therefore, the notices issued by the Revenue u/s 148 on March 25, 1997, a second time as per exhibits P-9 to P-12 are valid and as such, the Revenue can rightly issue notices for the follow up action by issuing notices u/s 142(1) and letters as per exhibits P-13 to P-16. The non-completion of the assessments in pursuance of notices u/s 148 of the Act issued on March 21, 1994, will not stand in the way of the Revenue in issuing fresh notices u/s 148 of the Act a second time.

5. The learned judge discussed the points from paragraph 14 onwards. In paragraph 14, the learned judge stated as follows (page 168) : "As already stated, no assessments were made. The respondent issued fresh notices u/s 148 of the Act on March 25, 1997 (exhibits P-9 to P-12). Since the petitioners did not respond to the said notices also the respondent issued notices dated August 6, 1997, and September 22, 1997, exhibits P-13 and P-14, respectively, asking the petitioners to file returns and documents. Two other notices dated August 27, 1997, and September 19, 1997 (exhibits P-15 and P-16), were also issued to the petitioners posting the assessments for final hearing: The question to be decided is as to whether the second notice u/s 148 issued on March 25, 1997, is legal and valid". The learned single judge decided to consider the question whether the notices, exhibits P-9 to P-12, issued were hit by the provisions of Section 149(1) of the Act. Under the provisions of Section 149(1), no notice u/s 148 shall be issued in cases falling under Clause (a) of Section 147 for the relevant assessment year if eight years have elapsed from the end of that year, unless the income chargeable to tax which has escaped assessment amounts or is likely to amount of Rs. 50,000 or more for that year. But this is subject to the rider in Section 151 of the Act which says that if notice u/s 148 is to be issued beyond

eight years from the end of the relevant assessment year, the sanction from the Board is required and for issuing notice u/s 148 beyond four years from the end of the assessment year, the sanction of the Commissioner is required. Notice dated March 25, 1997, is beyond four years from the end of the assessment years 1986-87 and 1988-89. It is stated in the counter affidavit that sanction from the Additional Commissioner of Income Tax was obtained as provided u/s 151 of the Act. In view of the said sanction, notice u/s 148 of the Act can be issued for the year 1986-87 till March 31, 1995, and for the assessment year 1988-89 till March 31, 1997. It is clear that the second notice u/s 148 of the Act issued by the respondent on March 25, 1997, and served on the petitioners on March 27, 1997, in so far as it relates to the year 1986-87 is beyond the time provided u/s 149(1) of the Act. But the said notices are well within the time in so far as it relates to the assessment year 1988-89. The learned judge took the view that the Assessing Officer can issue any number of notices u/s 148 of the Act provided the conditions stipulated in Section 147 are satisfied. The learned judge also took the view that if an assessment is pending either by way of original assessment or by way of reassessment proceedings, the Assessing Officer cannot issue a notice u/s 148 of the Act, but if no proceedings are pending either by way of original assessment or by way of reassessment, he can issue a notice u/s 148 within the time limit. Thus, the learned judge came to the conclusion that the reassessment proceedings for the year 1988-89 was valid and for the year 1986-87 was quashed. It is against that this writ appeal is filed.

5. Learned counsel for the appellant, Sri Raveendranatha Menon, contended that the learned single judge was correct in holding that there is no bar in issuing a second notice u/s 148 of the Act, if no assessment proceedings are pending. In this case, for the first time when notice was issued for the reassessment, there was no response and hence, it died a natural death. It is against that the proceedings were initiated on March 25, 1997. The learned single judge held that there was no bar in issuing a notice on second time.

6. The next question is whether the second notice is barred by time. The learned single judge took the view that there is no bar, if notice is issued within eight years from the end of the assessment year. The learned single judge found that so far as the year 1986-87 is concerned, it is more than eight years. But so far as the year 1988-89 is concerned, the bar is not over and hence, notices for the year 1988-89 were valid. The only question is whether the learned judge was correct in holding that the notices for the year 1986-87 were invalid. Learned counsel submitted that the learned judge made an error in applying the law at the time of assessment. At the time of assessment, the law was that the reassessment proceedings should be completed within eight years from the end of the assessment year. But at the time when the reassessment proceedings were initiated, the statute was amended to bring it as ten years. If ten years is taken into consideration, then both the notices will be valid. Learned counsel submitted to the effect that so far as Section 148 of the Act is concerned, it is only a procedural provision. An amendment to the procedure has to be applied

for all proceedings, which are pending. We agree with learned counsel that it is the period at the time of reassessment that will be looked into, if by the time of reassessment the entire assessment is not barred as per the provisions. Here, we find that at the time the second notice was issued, it was not barred by the earlier law and before the assessment, the ten year period has come. We are of the view that there is no time bar.

7. In the result, the original petition is dismissed and the writ appeal is allowed.