

(1996) 05 DEL CK 0067

In the Delhi High Court

Case No : Civil Writ Petition No. 1152 of 1996

K.M. Sharma

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 142, 147, 148, 149, 150
Land Acquisition Act, 1894 — Section 18, 6

Citation : (1996) 89 TAXMAN 230

Hon'ble Judges : M. Jagannadha Rao, C.J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : B.B. Ahuja, K.M. Sharma and Sanjay Abott, for the Appellant; R.D. Jolly and Ms. Prem Lata Bansal, for the Respondent

Judgement

M.K. Sharma, J.—This writ petition is directed against the notices under sections 148 and 142 of the income tax Act, 1961 ("the Act") issued to the petitioner relevant to the assessment years 1968-69 to 1971-72, 1981-82 and 1982-83." Lands measuring about 4200 bighas was acquired by the then Chief Commissioner of Delhi by notification dated 6-3-1966 and 6-9-1966 issued u/s 6 of the Land Acquisition Act, 1894. By judgment dated 20- 5-1980 the then Additional District Judge held the petitioner to be entitled 1/32nd share of the compensation awarded under the awards. As a consequence thereof the petitioner received a compensation of Rs. 1,33,810. On a reference application filed by the petitioner u/s 18 of the Land Acquisition Act the Additional District Judge, Delhi by his judgment dated 31-7-1991 passed his award. Consequently, the petitioner was paid a sum of Rs. 1,10,20,624 which amount represented towards principal amount at Rs. 41,96,496 and interest at Rs. 76,84,829 up to 18-5-1992. According to the petitioner no tax is leviable on interest accruing up to 31-3-1982 as it had become time barred. However, on 31-3-1993 the petitioner was served with notices u/s 148 of the Act, for 16 assessment years, i.e., for the assessment years 1968-69 to 1971-72 and assessment years

1981-82 to 1992-93 asking the petitioner to file return of income for these years.

2. By this writ petition, the petitioner has challenged the aforesaid notices issued u/s 148 for the assessment years 1968-69 to 1971-72 and for the assessment years 1981-82 and 1982-83 and also the reassessment proceedings. In pursuance of the aforesaid notices the petitioner filed revised returns for the assessment years 1983-84 to 1992-93 paying additional tax amounting to Rs. 32,22,828. For the assessment years 1961-62 to 1981-82 and 1982-83, the petitioner informed the ITO that the notices for these years were time barred u/s 149 of the Act and that the provisions of section 151 are not attracted to the facts of the case because there was no finding or directions of any Court to assess or recompute his income for the said years. By letter dated 7-2-1996 the respondent No. 2 informed the petitioner that his case was covered by section 150(1) of the Act and that the impugned notices were within jurisdiction.

3. The learned counsel appearing for the petitioner submitted before us that the provisions of section 150(1) are not applicable to the facts and circumstances of the present case inasmuch as the said provision does not confer any fresh power on the ITO to make assessment in respect of the escaped income without any time limit and particularly in respect of those assessment years which had become time barred. The learned counsel relied upon the provisions of sub-section (2) of section 150 and submitted that in view of the said provisions, the provisions of sub section (1) of section 150 shall not apply where by virtue of any other provision limiting the time within which the action for assessment, re-assessment or re-computation might be taken, such assessment, re-assessment or re-computation was barred on the date of the order which is the subject-matter of appeal, reference or revision. In support of his submissions the learned counsel relied upon the decision of the Supreme Court in S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, and S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, . The learned counsel further relied upon the department's Circular No. 549 dated 31-10-1989 and submitted that the amendments which came into force on 1-4-1989 including the amendments in section 151 would apply to all matters which were pending on 1-4-1989 and had not become closed or dead on that date. According to him in view of the clauses of the said circular as on 31-3-1994 no notices could have been issued by the respondents for the years prior to the assessment year 1983-84.

4. We also heard Mr. Jolly, the learned counsel appearing for the respondents, who submitted before us that the impugned notices were issued as far back as 29-3-1994 and, therefore, there is unexplained delay in preferring the present writ petition. He further submitted before us that in the meantime the assessment orders in respect of the aforesaid assessment years have also been passed as against which statutory effective remedies are available to the petitioner and, therefore, the writ petition is not maintainable. He also submitted

before us that the provisions of section 150(1) which are in the nature of an exception to section 149 is fully applicable to the facts and circumstances of the case and, therefore, the respondents are within their jurisdiction in issuing the notices u/s 148 of the Act to the petitioner and also in continuing with the re-assessment proceedings and making an order of re-assessment in respect of the relevant assessment years.

5. It is true that a plea of limitation in respect of initiation of proceedings u/s 147 of the Act may and should be taken before the Assessing Officer and the Appellate or Revisional authorities constituted under the Act. It is held by the Supreme Court in the case of Lalji Haridas Vs. Income Tax Officer and Another, , Lalji Haridas Vs. R.H. Bhatt and Another, that the jurisdiction conferred on the High Court under article 226 of the Constitution is not intended to supersede the jurisdiction and authority of the Assessing Officer to deal with the merits of the contentions that the assessee may raise before them including that of limitation.

6. The petitioner has also approached this Court belatedly inasmuch as the impugned notices were issued on 29-3-1994 whereas the writ petition was filed in this Court in the month of March 1996 challenging the validity of the said impugned notices on the ground of being barred on limitation. In the meantime as stated at the bar the re-assessment proceedings have also been completed and, therefore, the petitioner has effective alternative remedy provided under the Statute to challenge the validity of the said re-assessment proceedings before the statutory authorities as well. On the aforesaid grounds this writ petition appears to us to be not maintainable.

7. However, since the counsel for the petitioner had made elaborate arguments with regard to the validity of the aforesaid notices on the ground that they are time barred, we feel inclined to look into the aforesaid issues raised before us as well.

8. Section 147 provides for assessment and reassessment of income which has escaped assessment. However, such reassessment is always subject to the provisions contained in sections 148 to 153. Section 149 provides the time limit for issue of notices, i.e., for the initiation of proceedings u/s 147. Section 150 appears to be in the nature of a proviso to section 149 whereas sub-section (2) of section 150 again appears to be a proviso to the provisions of sub-section (1) of section 150. Sub-section (1) of section 150 provides that where the reassessment proceedings are initiated in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceedings under the income tax Act by way of appeal, reference or revision or by a Court in any proceeding under any other law, the time limits prescribed in section 149 shall not apply and that notice u/s 148 could be issued at any time. Accordingly, by virtue of the aforesaid provision the bar of limitation for reopening of assessment to which certain periods of limitation are prescribed u/s 149 gets lifted, as if no period of limitation shall apply for initiation of such proceedings for assessment, reassessment or re-computation. However, sub-

section (2) of section 150 provides a rider to the aforesaid provision as if in the nature of a proviso to sub-section (1) providing that the provisions of sub-section (1) shall not apply whether by virtue of any other provision limiting the time within which action for assessment, reassessment or re-computation may be taken such assessment, re-assessment or re-computation is barred on the date of the order which is the subject-matter of the appeal, reference or revision in which the finding or direction is contained.

9. For easy reference the aforesaid provisions of section 150 are required to be extracted:

Provision for cases where assessment is in pursuance of an order on appeal, etc.

--(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 or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or re-computation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or re-computation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or re-computation may be taken.

10. On a closer reading of the aforesaid provisions the only interpretation that could be given to the aforesaid section is that the bar of limitation as provided for in section 149 shall not apply for reopening of assessments to certain periods of limitation, i.e., in case when initiation of re-assessment proceedings is in consequence of or to give effect to any finding or direction contained in the appellate order such initiation of re-assessment proceedings would be bad if the said proceedings are barred by any other provision of the Act on the date of the order which was the subject-matter of the appeal. It is however, pertinent to note that the aforesaid provision u/s 150(2) of the Act which is in the nature of a proviso to section 150(1) does not include within its ambit the expression any finding or direction contained in an order passed by a Court in any proceedings under any other law appearing in section 150(1) which was added to the Statute with effect from 1-4-1989 and only relates to subject-matter of the appeal, reference or revision alone. The aforesaid expression "any finding or direction contained in an order passed by a Court in any proceeding under any other law" was not added to by the Legislature to the provisions of section 150(2).

11. An order passed in a land acquisition proceeding would definitely be included within the ambit of the expression used "any finding or direction contained in an order passed by a Court in any proceedings under any other law". In the present

case the initiation of the reassessment proceedings is based on the findings or directions contained in the order passed by the reference Court in a land acquisition proceeding which, as is held hereinabove is included within the aforesaid expression used in subsection (1) of section 150. In view of our aforesaid understanding of the provisions of section 150 the interpretation that could be given thereto is that if there be an order of a Court including an order by a reference Court in a land acquisition proceedings then the bar of limitation is automatically lifted and accordingly, for the years in question for which interest was paid to the petitioner, although initiation of reassessment proceedings could be barred under the provisions of section 149 the same would stand as not barred under the provisions of section 150(1) of the Act and consequently the question of limitation would not arise for consideration. The provisions of section 150(2) are not applicable to the facts and circumstances of the present case as it does not envisage within its ambit any finding or direction contained in an order passed by a Court in any proceedings under any other law, which in the instant case is the finding or direction contained in the order of award passed by the reference Court in the land acquisition proceedings under the Land Acquisition Act. The decisions of the Supreme Court relied upon by the learned counsel for the petitioner are distinguishable as those decisions were rendered prior to the amendment of section 150 effective from 1-4-1989 and do not notice the aforesaid amendments in section 150(1). For the foregoing reasons, we are of the opinion that the impugned notices issued u/s 148 are held to be legal and valid and consequently, this writ petition is liable to be dismissed, which we accordingly do. No costs.