
(1986) 01 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1845 of 1985

Mukhtiar Singh Sandhu

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 31-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 147, 148
Land Acquisition Act, 1894 — Section 18

Citation : (1986) 160 ITR 526

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : B.K. Jhingan, for the Appellant; Ashok Bhan and Ajai Mittal, for the Respondent

Judgement

I.S. Tiwana, J.—In these two Civil Writ Petitions Nos. 1845 and 1642 of 1985 by the same petitioner, different notices pertaining to different assessment years issued to him u/s 147/148 of the Income Tax Act, 1961 (for short " the Act "), by the Income Tax Officer, Faridkot, are impugned on similar grounds ; and these are being disposed of through this common order. The first petition relates to the assessment year 1975-76 and the latter one, to the years 1976-77 to 1979-80.

2. Briefly the background of the case is that certain lands of the petitioner situated in village Quilla Nau, Tehsil Faridkot, were acquired by the Government for the extension of Faridkot Cantonment and as a result thereof, he was paid certain amount of compensation in the year 1974. Later, he sought a reference u/ s 18 of the Land Acquisition Act and still not feeling satisfied with the enhancement ordered by the district judge, he preferred an appeal to this court. This court again enhanced the amount of compensation, vide its judgment dated November 19, 1981. It is the undisputed position that on this amount of compensation, the total interest actually paid to the petitioner as per the requirements of the Act was Rs. 2,22,173 and it was so paid on June 15, 1982. It is again not in dispute that the respective assessment orders were passed prior

to June 15, 1982.

3. Now, the impugned notices have been issued concededly after obtaining the sanction of the Commissioner u/s 151(2) of the Act, on the grounds that, firstly, the petitioner had not filed any return for the years in question resulting in escapement of tax and, secondly, that the amount of interest referred to above, which was paid to the petitioner for the period October 5, 1974, to May 6, 1982, had in any case to be spread over different assessment years. Since the Commissioner felt satisfied that the income of the petitioner had escaped assessment on account of the above-noted two reasons, he granted the requisite sanction for the issuance of the impugned notices.

4. Mr. Jhingan, learned counsel for the petitioner forcefully contends that these notices are totally without jurisdiction. Firstly, as a matter of fact, the petitioner had filed the returns in time except for the year 1975-76 and he had even been assessed to different amounts of tax, vide different orders prior to the receipt of the amount of interest by him on June 15, 1982; secondly, for the reason that no income had accrued to him prior to June 15, 1982, or in any case, prior to November 19, 1981, the day this court pronounced the final order determining the amount of compensation along with interest payable to him. Thus the departmental authorities cannot maintain that any income had escaped assessment as a result of the failure of the petitioner to disclose fully and truly the material facts pertaining to his income. Mr. Jhingan supports this submission of his from certain observations made in *T.M. Kousali Vs. Sixth Income Tax Officer*, wherein it has been said that " the Act nowhere provides that the assessee should disclose the fact that legal proceedings had been initiated and were pending before the civil court or High Court when he files his returns or assessment is completed. Hence, the failure to disclose that the assessee's claim for higher compensation under the Land Acquisition Act in the civil court was pending when returns were filed, would not amount to failure to disclose material facts necessary for assessment and would not justify action u/s 147(a). " Besides this, I have also held in *Civil Writ Petition No. 1183 of 1985--Mukhtiar Singh Sandhu v. WTO* (supra p. 521) decided today in somewhat similar circumstances that an assessee is not obliged to disclose about the pendency of his claim for enhanced compensation under the Land Acquisition Act while filing the returns for purposes of tax. In order to refute this stand of the petitioner, what is highlighted by Mr. Ashok Bhan, senior advocate for the respondent authorities, is that the returns the petitioner claims to have filed and on which the assessment orders had been passed prior to the receipt of the amount in question on June 15, 1982, were filed by him in the capacity of a Hindu undivided family and not in his individual capacity. According to the learned counsel, the said assessment orders cannot, therefore, be now taken notice of. Besides this, he also says that this court should decline to exercise its jurisdiction under Article 226 of the Constitution and should relegate the petitioner to his alternative remedies under the Act. Having heard the learned counsel for the parties at some length, I find no merit in the stand taken by respondents' counsel.

5. So far as the question of relegating the petitioner to his remedies under the Act is concerned, even the learned counsel for the respondent authorities concedes that in case this court comes to the conclusion that the impugned notices have been issued without jurisdiction or without application of mind, the same in normal course should be quashed by this court and the petitioner cannot be made to avail of the long-drawn and tardy remedies under the Act by way of appeal and revision. So it is the admitted position that the fate of the second argument of the learned counsel for the respondent authorities is dependent on the conclusion of this court on the first argument.

6. So far as the first contention of the learned counsel referred to above is concerned, it is no doubt true that the earlier returns were filed by the petitioner except for the year 1975-76 for which no return, as already pointed out, had been filed on behalf of the Hindu undivided family but even after the issuance of the impugned notices, the Income Tax Officer, Faridkot, has assessed the above-noted income of interest amounting to Rs. 2,22,173 as the income of the Hindu undivided family during the assessment year 1982-83, vide his order dated March 22, 1985 (annexure P-4). Though this order has admittedly been set aside by the Commissioner (Appeals), vide his order dated September 27, 1985, whereby he has directed that income by way of interest has to be spread over different assessment years, i.e., assessment year 1975-76 and onwards and not for the year 1982-83 alone, yet the fact remains that the Department has all through taken this income by way of interest to be the income of the Hindu undivided family. As a matter of fact, no plea has been taken in so many words either in the written statement or in the reasons stated for obtaining the sanction of the Commissioner that this income by way of interest was the personal income of the petitioner and he had failed to file his returns in that capacity. I am, therefore, satisfied that the above-noted contention now raised by the learned counsel for the respondents is the result of his own ingenuity. So it is patent that till the amount of interest referred to above had become due to the petitioner as per the judgment of this court dated November 19, 1981, or was actually paid to him on June 15, 1982, he could not possibly be held guilty of not disclosing truly and correctly the material facts for the assessment years referred to above.

7. It is next contended by Mr. Ashok Bhan that even if these notices are held to be bad for having been issued u/s 147(a) of the Act, yet these may be sustained in the light of Section 147(b) read with Section 153(3)(ii) of the Act. For this stand of his, he seeks support from T.M. Kousali Vs. Sixth Income Tax Officer, and Addl. Commissioner of Income Tax, Gujarat Vs. New Jehangir Vakil Mills Co. Ltd., . Mr. Jhingan joins issue even on this aspect of the matter. His submissions briefly are :

(i) What is sought to be urged by Mr, Ashok Bhan now is neither pleaded in the written statement nor was it the case of the Department while moving the Commissioner u/s 151(2) of the Act;

(ii) Section 153 (1) and (2) only deals with the limitation for passing of an

assessment or reassessment order. Sub-section (3) creates an exception to these sub-sections alone. It is made clear by a reading of Sections 149 150, 151 and 153 that separate periods of limitation have been provided for (i) initiation of action u/s 147, and (ii) completion of assessments ;

(iii) In view of (ii) above,"the judgment in T.M. Kousali Vs. Sixth Income Tax Officer, suffers from a patent mistake wherein it has been so observed that " Section 153(3) in clear terms lifts the bar of limitation for reopening of assessments to which certain periods of limitation are prescribed u/s 153 (1) and (2) of the Act." (Emphasis* added).

(iv) If the interpretation placed on Section 153(3)(ii) as was done in T.M. Kousali Vs. Sixth Income Tax Officer, is to be accepted as correct, then Section 150 of the Act becomes redundant;

(v) In any case, the ratio in T.M. Kousali Vs. Sixth Income Tax Officer, so far as this aspect of the matter is concerned, is contrary to the judgment of their Lordships of the Supreme Court in Rajinder Nath v. CIT [1919] 120 ITR 14.

8. I, however, feel that I need not go into this aspect of the matter at this stage as it is conceded before me by the learned counsel for the parties that the Income Tax Officer's order assessing the entire amount of Rs. 2,22,173 as income of the petitioner for the assessment year 1982-83 has already been set aside by the Appellate Assistant Commissioner, vide his order dated September 27, 1985, wherein he has directed as follows :

" It is further held that only that much amount of interest which is relatable to a particular account year is assessable as income of the relevant assessment year."

9. According to Mr. Jhingan, the authorities are well entitled to comply with this direction u/s 148 read with Section 150 of the Act. He, however, maintains that this can be done by issuing fresh notices to him but not under the impugned notices. In the light of this position conceded by Mr. Jhingan, I hardly feel called upon to express my opinion on the latter-mentioned aspect of the matter.

10. In the light of the above discussion, I allow these petitions and quash the impugned notices but with no order as to costs.