(1996) 07 DEL CK 0090

In the Delhi High Court

Case No : CWP No''s. 3796, 3797, 4092, 4093 of 1992

Rakesh Aggarwal APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:
Income Tax Act, 1961 — Section 139, 143(1), 143(1)(a), 143(1)(a)(i), 143(2)

Citation : (1996) 87 TAXMAN 306

Hon'ble Judges : Y.K. Sabharwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : P.V. Kapur and Anurag Chawla, for the Appellant; Rejendra and R.N. Verma, for the Respondent

Judgement

D.K. Jain, J.—Two of the writ petitions, taken up herein, involve the provisions of the income tax Act, 1961 (''the Act''), and the other two involve the provisions of the Wealth-tax Act, 1957 (the W.T. Act). All the four writ petitions raise common questions of law and even the relief sought in all, in substance being the same, these are dealt with under a common judgment. To appreciate the controversy, we shall treat the facts in CWP No. 3796 of 1992 as illustrative. The petitions pertain to the assessment years 1989-90 and 1990-91. The petitioner, who was assessed to income tax and wealth-tax in his capacity as the legal heir of late Shri R.S. Aggarwal, submitted the return of income for the assessment year 1989-90 on 30-10-1989, which was accompanied by a statement of taxable income, showing income from various sources including income from house property. The return was accepted and an intimation u/s 143(1) (a) of the Act was sent. Subsequently on 2-8-1991, the Assessing Officer issued a notice u/s 148 of the Act, requiring the petitioner to file the return as he had reason to believe that certain income chargeable to tax had escaped assessment within the meaning of section 147 of the Act, inasmuch as : (a) the rent from the property owned by the assessee, R.S. Agrarwal was kept low and for the difference in rent he was compensated by giving interest-free securities of Rs. 8 lakhs and Rs. 5,50,500 by the two companies, which fact came to light during the course of assessment proceedings for the assessment year 1988-89, wherein the assessee had himself admitted that the correct rental income could be determined by adding 15 per cent interest on the interest free securities received by him and (b) the value of the perquisites provided by Hotel Banjara Ltd., one of the tenants, in the form of residential accommodation had not been correctly shown in the return of income In response to the notice is sued, the assessee filed the return of income on 21-10-1991. In order to get information on certain points, the Assessing Officer issued a letter to the petitioner on 25-10-1991 calling upon him to appear before him and produce any document, accounts or any other evidence which the petitioner may like to, in support of the return filed on 21-10-1991. It appears that no proceedings took place before the Assessing Officer on the appointed date or thereafter. Again on 30-10-1991, an intimation u/s 143(1) (a) was sent to the petitioner, accepting the return filed on 21-10-1991. Thereafter on 1-5-1992 the Assessing Officer issued a fresh notice u/s 143(2) calling upon the petitioner to appear before him and furnish documents/clarifications on certain points. The petitioner furnished information in respect of certain points but thereafter objected to the continuation of the proceedings on the plea that the Assessing Officer having made the assessment on 30-10-1991, when an intimation u/s 143(1) (a) was sent after issuing a notice u/s 143(2), he could not make another assessment u/s 143(3). The officer was told that the proceedings initiated on 1-5-1992, by issuing notice u/s 143(2) were without jurisdiction and was requested to drop the same. The officer declined to accede to the petitioner''s request. Hence the present writ petition in which the petitioner now seeks to challenge even the validity of notice u/s 148 issued on 2-8-1991 and further proceedings taken thereafter on the basis of return filed pursuant to the said notice.

2. The action of the Assessing Officer in issuing notice u/s 148 is challenged on the ground that the petitioner having furnished to the Assessing Officer all the details regarding the tenanted premises, including the amount of deposits received from the tenants, the Assessing Officer could possibly have no ''reason to believe'' that any income chargeable to tax for the relevant assessment year had escaped assessment due to failure of the petitioner to disclose fully and truly all material facts necessary for his assessment and, therefore, in. the absence of this vital ingredient, a condition precedent for exercising jurisdiction u/s 147(a), notice u/s 148 was illegal and without jurisdiction. The re-initiation of assessment proceedings by issuing notice u/s 143(2) on 1-5-1992 after issue of an intimation u/s 143(1) (a), is assailed on the ground that on submission of the return u/s 148, a notice u/s 143(2) was issued on 25-10-1991 before the intimation u/s 143(1) (a) was sent on 30-10-1991 and, therefore, the said order though termed as intimation, in fact was tantamount to a regular assessment u/s 143(3). That being so, it is pleaded that power of the Assessing Officer to issue a notice u/s 143(2), with reference to the return filed on 21-10-1991 stood exhausted and, therefore, there was no question of fresh assessment proceedings being commenced by issuing a notice u/s 143(2).

3. On merits, it is claimed that the information furnished during the course of assessment proceedings for the assessment year 1988-89 has been misconstrued by the Assessing Officer inasmuch as no interest income was in fact earned by the petitioner on the said security deposits and the interest which the petitioner could possibly earn on the said deposits was mentioned as an opportunity cost to justify the rateable value of the property in question.

4. We have heard Mr. P.V. Kapur, learned Senior Advocate for the petitioner and Mr. Rajendra, Sr. Standing Counsel for the respondent- Assessing Office) ".

5. Indisputably, section 147 as it existed after its amendment by Direct Tax Laws (Amendment) Act. 1987 with effect from 1-4-1989 would apply to the facts in hand. Section 147, material for our purpose, reads as follows :

Income escaping assessment. --If the Assessing Officer has reason to believe that any 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 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 sections 148 to 153 referred to as the relevant assessment year).

6. The section provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153 of the Act, assess or reassess such income and also any other income chargeable to tax which has escaped assessment. The new section not only merges clauses (a) and (b) of the pre-amended section 147 but also brings about a significant change in the preliminary requirement of certain mandatory conditions before reassessment proceedings could be initiated under the old section. Under the old section 147(a), the Assessing Officer could initiate re-assessment proceedings if he had reason to believe that income chargeable to tax had escaped assessment by reason of: (a) omission or failure on the part of an assessee to make a return u/s 139 of the Act for any assessment year or (b) to disclose fully and truly all material facts necessary for his assessment for that year. As is evident from the amended section, in contradistinction to the original unamended section, requiring fulfilment of twin conditions spelt out in clause (a) of section 147 or in clause (b) of the said section, as conditions precedent for issuing notice u/s 148, it is not so in the amended section and the only condition for action now is that the Assessing Officer should have reason to believe that income has escaped assessment which belief can be reached in any manner, and is not qualified by the pre condition of full and true disclosure of material facts by an assessee, as contemplated under old section 147(a). An Assessing Officer can now legitimately re-open the assessment in respect of an income which has escaped assessment. Undoubtedly under the new section, power to re open assessment is

much wider and can be exercised even if an assessee had disclosed fully and truly all material facts.

7. This position in law is not disputed by the learned counsel for the petitioner. However, laying emphasis on the last para of the reasons recorded by the Assessing Officer ''that income chargeable to tax has escaped assessment due to failure of assessee to disclose fully and truly all material facts necessary for his assessment'', it is sought to be urged that the he Assessing Officer having himself formed the belief that escapement of income is on account of failure the part of the petitioner to disclose fully and truly material facts, his satisfaction must be tested on the anvil whether there was any failure on the part of the petitioner in that behalf. It is asserted that the reasons have to be seen in totality and no part of it can be ignored.

8. In our view the contention is stated to be rejected. Once it is conceded that it is the amended section 147 which has to apply for initiating proceedings for fresh assessment in respect of assessment years 1989-90 and 1990-91, we fail to appreciate how the words which do not find mention in the section could be read into it. In a taxing statute one has to look squarely at the words of the statute and interpret them. The statute must be construed according to the plain language used by the Legislature. In our view, therefore, the last lines of the note dated 2-8-1991, recorded by the Assessing Officer, before issuing notice u/s 148, namely, ''due to failure of assessee to disclose fully and truly all material facts necessary for his assessment'', are redundant, meaningless and are of no consequence insofar as the amended section 147 is concerned.

9. The next question which arises for determination is whether on the basis of information coming on record during the course of assessment proceedings for the assessment year 1988-89, could the Assessing Officer entertain a reasonable belief about any income chargeable to tax having escaped assessment.

10. In the earlier part of the judgment, we have noted the reasons recorded by the Assessing Officer for initiating proceedings u/s 147, viz., firstly, the annual value of the property u/s 22 of the Act was kept low and the assessee was compensated for it by advancing interest free loan and secondly, the value of perquisite had not been included in the total income. Having regard to the said reasons, we have no hesitation in coming to the conclusion that those reasons by them selves constitute relevant and sufficient material to provide a foundation to the Assessing Officer to form the belief that income chargeable to tax has escaped assessment for the relevant assessment years.

11. The contention, strenuously urged by Mr. Kapur, the learned counsel for the petitioner, is that if ultimately after investigating the matter the Assessing Officer comes to the conclusion that there was no under statement of rental income and the assessee did not earn any income or interest from the security deposits given by the tenants, and petitioner''s stand that what was stated in Chartered Accountant''s letter dated 20-2-1991 in respect of assessment year 1988-89,

was only an indication of opportunity cost, is accepted, it would knock off the bottom of the Assessing Officer''s stated belief and the petitioner would unnecessarily be subjected to unwarranted drill of reassessment proceedings. We are afraid there is no merit in this contention as well.

12. As noted above, the main stand of the Assessing Officer is that the facts regarding furnishing of interest free securities by the said two companies to the assessee to compensate him for the difference in the market rent of the property and the actual rent paid to him, came into light only during the course of assessment proceedings for the assessment year 1988-89, when the assessee had sought to justify the actual receipt of rent at much lesser rate, viz., Rs. 78,000 (declared for the assessment year 1988-89) as against actual rateable value of Rs. 1,62,400 determined by the Municipal Corporation for the purpose of property tax. The relevant part of letter of the Chartered Accountant dated 20-2-1991 filed during the course of assessment proceedings for the year 1988-89, relied upon by the Assessing Officer has been placed on the record and it reads as follows :

"2.

Rent received from :

Rs.

Rs.

Gulmohar Estate :

12,000

Banjara Hotels Ltd.:

66,000

78,000

3.

Security received :

Gulmohar Estate :

8,00,000

Banjara Hotels Ltd. :

6,82,500

Intt. @ 15% p.a. on 14,82,5000

14,82,500

(Opportunity cost of Security received)

2,22,375

Actual rental value

3,00,375

Hence, the actual rent received including interest is more than the municipal valuation, because on the amount of securities received the assessee has earned something which is taxable in the hand of assessee. We hope you would find the above in order and will complete the assessment."

13. From the above note it is evident that the question whether, the assessee has earned any income on the deposits received by him or has derived any other benefit from these deposits, capable of being evaluated in terms of money has necessarily to be gone into and this aspect having not been considered earlier, the Assessing Officer had perforce to initiate assessment proceedings under the Act. For a moment we are not suggesting that there is no merit in the contention of the petitioner that the amount of interest indicated in the above note was only an opportunity cost simplicitor, having no element of income earned, which could be subjected to tax. But at this stage it is difficult for us to hold that on the basis of material on record, in particular the afore-quoted letter, the Assessing Officer could not entertain the belief, he did. In our view, the belief entertained by the Assessing Officer cannot be said to be a mere pretence to reopen the concluded assessment for some ulterior purpose. We are, therefore, of the opinion that the issue of notice u/s 148 is not vitiated on the ground that no income chargeable to tax has escaped assessment.

14. The only other issue which survives for consideration is about the legality and validity of the notice issued u/s 143(2) after an intimation u/s 143(1) (a) had been sent to the petitioner. The question is whether the said intimation sent to the petitioner after issuing notice u/s 143(2) tantamounts to regular assessment u/s 143(3), exhausting the power of the Assessing Officer to issue a fresh notice u/s 143(2) for the purpose of making another assessment u/s 143(3). We feel that the controversy may not detain us for long because we have already dealt with the issue in detail in Apogee International Ltd. v. Union of India [1996] 87 Tax 198 (Delhi). After analysing the provisions of section 143(1), (2) and (3), we have held that an intimation to the assessee u/s 143(1) (a) (i) even after issue of notice u/s 143(2), does not oust the jurisdiction of the Assessing Officer to issue a fresh notice u/s 143(2), where he considers it to be necessary or expedient to ensure that the assessee has declared his income correctly. Following the said judgment, we reject the contention.

15. For the foregoing reasons, we are of the opinion that in the facts and circumstances of the instant case, the impugned notices issued under sections 148 and 143(2) and sections 17 and 16(2) of the W.T. Act (subject- matter of the petitions under the W.T. Act) are valid.

16. There is no merit in the writ petitions and the same are accordingly

dismissed. The rule is discharged in all the petitions, leaving the parties to bear their own costs. Before parting we may clarify that any observations made on the merits of the additions sought to be made to the income already assessed are only for a limited purpose to determine whether or not the Assessing Officer was justified in initiating proceedings by issuing the aforenoted impugned notices and the dismissal of these writ petitions will not preclude the petitioner from urging any question of fact or law before the appropriate forum.

