
(1998) 08 P&H CK 0099
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12395 of 1998

Smt. Vidya Devi

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Finance Act, 1997 — Section 63, 64, 68, 69
Income Tax Act, 1961 — Section 139, 142, 143, 147, 148

Citation : (2001) 249 ITR 346 : (1998) 101 TAXMAN 363

Hon'ble Judges : Iqbal Singh, J;G.S. Sanghavi, J

Bench : Division Bench

Advocate : Sanjay Kaushal, for the Appellant;

Judgement

G.S. Singhvi, J.—Since a common point involving interpretation of ss. 62 to 68 of the Finance Act, 1997, and s. 297 r/w ss. 147 to 150 of the IT Act, 1961 (hereinafter referred to as the 1961 Act), arises for adjudication in these petitions, we are deciding them by one order.

Facts :

2. Civil Writ Petition No. 12395 of 1998 - The petitioner made declaration of 865 gold coins and 128 kilograms of silver utensils under the Voluntary Disclosure of Income Scheme, 1997 (for short, "the Scheme"). She deposited Rs. 30,000 as tax and Rs. 1,200 as interest chargeable under the Scheme. Simultaneously, she also made an application for issuance of certificate under s. 68(2) of the Finance Act, 1997 (for short, "the 1997 Act"). Vide Annexure P3, the respondent refused to issue certificate to the petitioner on the ground that the disclosure of income relating to the asst. yr. 1961-62 cannot be treated as valid under the Scheme. The petitioner represented against this decision but failed to convince the respondent to change his decision. Therefore, she has invoked writ jurisdiction of this Court for quashing Annexure P3 and P5 and also for directing the respondent to issue certificate to her under s. 68(2) of the 1997 Act.

3. Smt. Lajwanti who has filed civil writ petition No. 12396 of 1998 for grant of similar relief, made declaration of 962 gold coins priced at Rs. 1,01,010 and silver utensils weighing 126 kgs. valued Rs. 25,465. She paid Rs. 30,000 as tax and Rs. 1,200 as interest. Her request for issuance of certificate under s. 68(2) of the 1997 Act has also been declined.

Kundan Lal Bansal who is petitioner in the third petition made declaration of 532 gold coins and 23 kgs. silver utensils valued at about Rs. 62,500. He deposited tax amounting to Rs. 18,075. His request for issuance of certificate under s. 68(2) of the 1997 Act has been declined by the respondent on the ground that the provisions of the Scheme are not applicable to the declaration made in respect of the asst. yr. 1961-62.

4. Shri Sanjay Kaushal argued that the decision of the respondent not to issue certificates under s. 68(2) is based on a totally incorrect interpretation of the provisions of the 1997 Act and the 1961 Act. Learned counsel submitted that the income which can be subjected to penalty under the 1961 Act has to be treated as income of the purpose of the 1997 Act and the respondent has gravely erred in holding that the declaration of the income made in respect of the asst. yr, 1961-62 cannot be treated as valid under the Scheme.

5. Chapter IV of the 1997 Act contains detailed provisions relating to the Scheme. Sec. 63(b) contains definitions of various terms and expressions. Sec. 64 lays down the method of charging of tax on voluntarily disclosed income. Sec. 65 enumerates the particulars to be furnished in the declaration. Sec. 66 specifies the time for payment of tax and s. 67 requires the payment of interest. Sec. 68, which is declaratory in nature lays down that the amount of voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year subject to the fulfilment of the conditions specified in that section. Sec. 147 contains provisions to deal with income escaping assessment. Sec. 148 lays down the requirement of issuing notice before an order under s. 147 can be made. Secs. 149 and 150 specify time limit within which assessment or reassessment or recomputation can be made. Sec. 297 contains repealing and saving provisions.

6. For the purpose of deciding whether the decision of the respondent not to issue certificate to the petitioners under s. 68(2) of the 1997 Act is legally correct and justified, we deem it appropriate to analyse various provisions which are reproduced below :

"The 1997 Act

63. Definitions : In this Scheme, unless the context otherwise requires

(a) declarant means a person making the declaration under sub-s. (1) of s. 64;

(b) IT Act means the IT Act, 1961 (43 of 1961);

**** * (d) All other words and expressions used in this Scheme but not

defined and defined in the IT Act or the WT Act shall have the meanings respectively assigned to them in those Acts.

64. Charges of tax on voluntarily disclosed income : (1) Subject to the provisions of this Scheme, where any person makes, on or after the date of commencement of this Scheme but on or before the 31st day of December, 1997, a declaration in accordance with the provisions of s. 65 in respect of any income chargeable to tax under the IT Act for any assessment year :

(a) for which he has failed to furnish a return under s. 139 of the IT Act;

(b) which he has failed to disclose in a return of income furnished by him under the IT Act before the date of commencement of this Scheme;

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the IT Act or to disclose fully and truly all material facts necessary for his assessment or otherwise, then, notwithstanding anything contained in the IT Act or in any Finance Act, Income Tax shall be charged in respect of the income so declared (such income being hereinafter referred to as the voluntarily disclosed income) at the rates specified hereunder, namely :

(i) in the case of a declarant, being a company or a firm, at the rate of 35 per cent of the voluntarily disclosed income;

(ii) in the case of a declarant, being a person other than a company or a firm, at the rate of 30 per cent of the voluntarily disclosed income.

(2) ***** 68. Voluntarily disclosed income not to be included in the total income : (1) The amount of the voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year under the IT Act, if the following conditions are fulfilled, namely :

(i) the declarant credits such amount in the books of account, if any, maintained by him for any source of income or in any other record, and intimate the credit so made to the AO; and

(ii) the Income Tax in respect of the voluntarily disclosed income is paid by the declarant within the time specified in s. 66 or s. 67.

(2) The CIT shall, on an application made by the declarant, grant a certificate to him setting forth the particulars of the voluntarily disclosed income and the amount of Income Tax paid in respect of the same.

69. Voluntarily disclosed income not to affect finality of completed assessments etc. : The declarant shall not be entitled, in respect of the voluntarily disclosed income or any amount of tax paid thereon, to reopen any assessment or reassessment made under the IT Act or the WT Act or claim any set off or relief in any appeal, reference or other proceedings in relation to any such assessment or reassessment.

(IT Act, 1961)

147. Income escaping assessment : If the AO has reason to believe that 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.

Explanation 2. For the purpose of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income Tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the AO that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return

(c) where an assessment has been made, but -

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

148. Issue of notice where income has escaped assessment : (1) Before making

the assessment, reassessment or recomputation under s. 147, the AO shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such the : particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under s. 139.

(2) The AO shall, before issuing any notice under this section, record his reasons for doing so.

**** * 297. Repeals and savings : (1) The Indian IT Act, 1922 (11 of 1922), is hereby repealed.

(2) Notwithstanding the repeal of the Indian IT Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act) -

(a) where a return of income has been filed before the commencement of this Act by any person for an assessment year, proceedings for the assessment oil that person for that year may be taken and continued as if this Act had not been passed.

(b) where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice under s. 34 of the repealed Act by any reason for the assessment year ending on the 31st day of March, 1962, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Act;

(c) any proceedings pending on the commencement of this Act before any IT authority, the Tribunal or any Court, by way of appeal, reference or revision, shall be continued and disposed of as if this Act had not been passed;

(d) where in respect of any assessment year after the year ending on the 31st day of March, 1940, -

(i) a notice under s. 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in s. 147 and no proceedings under s. 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under s. 148 may, subject to the provisions contained in s. 149 or s. 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly;

(e) **** * (f) any proceeding for the imposition of a penalty in respect of any assessment completed before the 1st day of April, 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;

(g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act;

(h) to (m) *****

7. A careful analysis of the provisions extracted above shows that, for the purpose of the Scheme, IT Act means IT Act, 1961, Declaration under the Scheme can be made only in respect of any income chargeable to tax under the 1961 Act. This is clearly borne out from a plain reading Rs. 64 and 60 of the Act. These provisions do not refer to the income chargeable to tax under the IT Act, 1922. Under s. 297(2)(a), proceedings for assessment in respect of any income return filed before the 1961 Act were required to be continued under the old Act. Clause (b) of s. 297(2) deals with a situation where a return of income is filed after the commencement of the 1961 Act for the assessment year ending on 31st March, 1962 or any earlier year, otherwise than in pursuance of notice issued under s. 34 of the IT Act, 1922. In such a case, the assessment is required to be made in accordance with the provisions of the 1961 Act. Sec. 297(2)(d) deals with the assessment year after the year ending on 31st day of March, 1940. Sub-cl. (i) of it deals with a situation in which notice under s. 34 had been issued before the commencement of the 1961 Act. In such a case, proceedings were to be continued and disposed of under the old Act, i.e., the Act of 1922. Sub-cl. (ii) lays down that notice under s. 148 may be issued if any income chargeable to tax had escaped assessment within the meaning of s. 147 and no proceedings under s. 34 of the repealed Act were pending at the commencement of the 1961 Act. Proceedings initiated in pursuance of the notice under s. 148 are to be dealt with and decided in accordance with the provisions of the, 1961 Act. Clause (f) and (g) of s. 297(2) of the 1961 Act deal with penalty. These clauses lay down that in respect of the completed assessee held assessment done before 1st April, 1962, penalty proceedings are to be under the old Act and in other cases, provisions of the 1961 Act would apply

8. Admittedly, the 1961 Act was made effective from 1st April, 1962. Therefore, all proceedings, in respect of the assessment year ending on 31st March, 1962 had to be dealt with and decided in accordance with the provisions of the old Act except to the extent provided in the 1961 Act. In view of this, the meaning of the expression "in respect of all income chargeable to tax under the IT Act for any assessment year" used in the Scheme will have to be confined to the asst. yr. 1962-63 and onwards. The income chargeable to tax under the Act of 1922 will not fall within the scope of this expression merely because proceedings under s. 148 of the 1961 Act can be initiated in respect of certain income which was chargeable to tax under the old Act or merely because penalty proceedings can be held against the assessee under s. 297(2)(g) of the 1961 Act.

In view of the above conclusion, we do not find any error in the view taken by the respondent that the benefit of the Scheme cannot be availed of by the

petitioners and, therefore, the certificate in terms of s. 68(2) of the 1997 Act cannot be issued to them.

9. For the reasons mentioned above, the writ petitions are dismissed.