
(1998) 08 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 12396 and 12405 of 1998 26 August 1998

SMT. VIDYA DEVI

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Estate Duty Act, 1953 — Section 34
Finance Act, 1997 — Section 62, 63, 64, 65, 66
Income Tax Act, 1961 — Section 139, 142, 143, 147, 148

Citation : (1998) 150 CTR 365

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

Bench : Full Bench

Judgement

Singhvi, J

Since a common point involving interpretation of sections 62 to 68 of the Finance Act, 1997 (hereinafter referred to as "the 1997 Act") and section 297, read with sections 147 to 150, of the Income Tax Act, 1961 (hereinafter referred to as "the 1961 Act") arises for adjudication in these petition, 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 ("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 u/s 68(2) of the Finance Act, 1997. Vide Annexure P3, the respondent refused to issue certificate to the petitioner on the ground that the disclosure of income relating to the assessment year 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 Annexures P3 and P5 and also for directing the respondent to issue certificate to her u/s

68(2).

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 kilograms valued at Rs. 25,465. She paid Rs. 30,000 as tax and Rs. 1,200 as interest. Her request for issuance of certificate u/s 68(2) has also been declined.

Kundan Lal Bansal who is the petitioner in the third petition made declaration of 532 gold coins and 23 kilograms silver utensils valued at about Rs. 62,500. He deposited tax amounting to Rs. 18,075. His request for issuance of certificate u/s 68(2) 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 assessment year 1961-62.

Shri Sanjay Kaushal argued that the decision of the respondent not to issue certificates u/s 68(2) is based on a totally incorrect interpretation of the provisions of the 1997 Act and the 1961 Act. The learned counsel submitted that the income can be subjected to penalty under the 1961 Act and has to be treated as income for 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 assessment year 1961-62 cannot be treated as valid under the Scheme.

3. Chapter IV of the 1997 Act contains detailed provisions relating to the Scheme. Section 63(b) contains definitions of various terms and expressions. Section 64 lays down the method of charging of tax on voluntarily disclosed income. Section 65 enumerates the particulars to be furnished in the declaration. Section 66 specifies the time for payment of tax and section 67 requires the payment of interest. Section 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. Section 147 contains provisions to deal with income escaping assessment. Section 148 lays down the requirement of issuing notice before an order u/s 147 can be made. Sections 149 and 150 specify the time-limit within which assessment or reassessment or recomputation can be made. Section 297 contains repealing and saving provisions.

4. For the purpose of deciding whether the decision of the respondent not to issue certificate to the petitioners u/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,-

"declarant" means a person making the declaration under subsection (1) of section 64;

"Income Tax Act" means the Income Tax Act, 1961 (43 of 1961);

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All other words and expressions used in this Scheme but not defined and defined in the Income Tax Act or the Wealth Tax 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 31-12-1997, a declaration in accordance with the provisions of section 65 in respect of any income chargeable to tax under the Income Tax Act for any assessment year-

for which he has failed to furnish a return u/s 139 of the Income Tax Act;

which he has failed to disclose in return of income furnished by him under the Income Tax Act before the date of commencement of this Scheme;

which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income Tax Act or to disclose fully and truly all material facts necessary for his assessment or otherwise,

then, notwithstanding anything contained in the Income Tax 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 :-

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

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 Income Tax Act, if the following conditions are fulfilled, namely:-

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 intimates the credit so made to the Assessing officer; and

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

2. The Commissioner 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 Income Tax Act or the Wealth Tax Act or claim any set off or relief in any appeal, reference or other proceedings in relation to any such assessment or reassessment.

The 1961 Act

147. 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):

Provided that where an assessment under sub-section (3) of section 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 u/s 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year.

Explanation 1.-Production before the Assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

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

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;

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

where an assessment has been made, but-

income chargeable to tax has been under-assessed; or
such income has been assessed at too low a rate; or
such income has been made the subject of excessive relief under this Act; or
excessive loss or depreciation allowance or any other allowance under this Act has been computed.

148. Issue of notice where income has escaped assessment.-(I) Before making the assessment, reassessment or recomputation u/s 147, the Assessing officer 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 other 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 u/s 139.

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

297. Repeal and savings.-(I) The Indian Income Tax Act, 1922 (11 of 1922), is hereby repealed.

(2) Notwithstanding the repeal of the Indian Income Tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Estate Duty Act)-

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

where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice u/s 34 of the repealed Estate Duty Act by any person for the assessment year ending on the 31-3-1962, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Act;

any proceedings pending on the commencement of this Act before any Income Tax authority, the Appellate 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;

where in respect of any assessment year after the year ending on the 31-3-1940

a notice u/s 34 of the repealed Estate Duty 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;

any income chargeable to tax had escaped assessment within the meaning of

that expression in section 147 and no proceedings u/s 34 of the repealed Estate Duty Act in respect of any such income are pending at the commencement of this Act, a notice u/s 148 may, subject to the provisions contained in section 149 or section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly;

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any proceeding for the imposition of a penalty in respect of any assessment completed before the 1-4-1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;

any proceedings for the imposition of a penalty in respect of any assessment for the year ending on the 31-3-1962, or any earlier year, which is completed on or after the 1-4-1962, may be initiated and any such penalty may be imposed under this Act;"

A careful analysis of the provisions extracted above shows that for the purpose of the Scheme, Income Tax Act means the Income Tax 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 of sections 64 and 68 of the Act. These provisions do not refer to the income chargeable to tax under the Indian Income Tax Act, 1922. u/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 1922 Act. Clause (b) of section 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 31-3-1962 or any earlier year, otherwise than in pursuance of notice issued u/s 34 of the 1922 Act. In such a case, the assessment is required to be made in accordance with the provisions of the 1961 Act. Section 297(2)(a) deals with the assessment year after the year ending on 31-3-1940. Sub-clause (t) of it deals with a situation in which notice u/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 1922 Act. Sub-clause (i) lays down that notice u/s 148 may be issued if any income chargeable to tax had escaped assessment within the meaning of section 147 and no proceedings u/s 34 of the repealed Estate Duty Act were pending at the commencement of the 1961 Act. Proceedings initiated in pursuance of the notice u/s 148 are to be dealt with and decided in accordance with the provisions of the 1961 Act. Clauses (j) and (g) of section 297(2) deal with penalty. These clauses lay down that in respect of the completed assessment done before 1-4-1962, penalty proceedings are to be held under the 1922 Act and in other cases, provisions of the 1961 Act would apply.

5. Admittedly, the 1961 Act was made effective from 1-4-1962. Therefore, all proceedings in respect of the assessment year ending on 31-3-1962 had to be dealt with and decided in accordance with the provisions of the 1922 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 1961 Act for any assessment year used in the Scheme will have to be confined to the assessment year 1962-63 and onwards. The income chargeable to tax under the 1922 Act will not fall within the scope of this expression merely because proceedings u/s 148 can be initiated in respect of certain income which was chargeable to tax under the 1922 Act or merely because penalty proceedings can be held against the assessee u/s 297(2)(g) of the 1961 Act.

6. 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 section 68(2) of the 1997 Act cannot be issued to them.

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