

(1984) 03 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No's. 4950 to 4953 of 1978

T.M. Kousali

APPELLANT

Vs

Sixth Income Tax Officer

RESPONDENT

Date of Decision : 14-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 153 (1), 153 (2), 250

Citation : (1985) 155 ITR 739 : (1987) 30 TAXMAN 642

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : K.S. Ramachandran, for the Appellant; H. Ragverndra Rao, for the Respondent

Judgement

Puttaswamy, J.—Among others, the petitioner, who is an assessee on the file of the Sixth ITO, Hubli Circle, Hubli, respondent (hereinafter referred to as "the ITO"), under the I.T. Act, 1961 (hereinafter referred to as "the Act"), owned certain lands in the City of Hubli, which were acquired by the Govt. on October 4, 1957, for a public purpose. On March 29, 1965, the petitioner received certain amounts as compensation from the Land Acquisition Officer, with which the civil court on a reference did not interfere.

2. But, on an appeal filed by the petitioner in M.F.A. No. 279 of 1972, this court by its judgment and decree dated March 12, 1974 (exhibit F), considerably enhanced the compensation, in terms of which he received the difference of enhanced compensation and interest on January 27, 1975.

3. For the assessment years 1969-70 to 1972-73 relevant to accounting years ending with the relevant calendar years, the petitioner filed his returns before the ITO, who by his orders dated December 8, 1969, December 9, 1970, and March 24, 1973 (exhibits A to D), concluded the assessments for the said years. But in the four notices bearing No. PN 4461 dated March 18, 1978, (exhibits M to P), issued under s. 148 of the Act, the ITO has called upon the petitioner to file his returns for the aforesaid assessment years, the validity of which are

challenged by him in these petitions under article 226 of the Constitution.

4. The petitioner has asserted that he had made a full and true disclosure of all material facts for the relevant assessment years and accepting the same, the ITO had completed the assessments under the Act and there was no justification to reopen those concluded assessments under s. 147 of the Act. On this premise, the petitioner has urged that the notices issued on March 18, 1978, were also barred by time.

5. In his return, the respondent has asserted that the order made by this court in M.F.A. No. 279 of 1972 (exhibit F) and the amounts received thereto have necessarily to be brought to tax for the relevant assessment years and for such cases, the bar of limitation stipulated in s. 153(1) and (2) of the Act has no application.

6. At the hearing, Sri H. Raghavendra Rao, learned standing counsel appearing for the respondent, had placed before the court the proceedings drawn up by the ITO, on the basis of which he had issued the impugned notices to the petitioner, which have been perused by Sri K. S. Ramabhadran, learned counsel for the petitioner.

7. Sri Ramabhadran contends that on the very reasons recorded by the ITO in his proceedings, it was not open to him to reopen the concluded assessments for the relevant assessment years. Elaborating his contention, Sri Ramabhadran maintained that for the relevant assessment years, the petitioner had made a full and true disclosure of all the material facts and accepting them, the ITO had concluded his assessment and the modification of the award made by this court in M.F.A. 279 of 1972, and the amounts received thereto on January 27, 1975, did not constitute a failure to fully and truly disclose the material facts for the relevant assessment years to justify their reopening. In support of his contention, Sri Ramabhadran strongly relies on the ruling of the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, .

8. Sri Raghavendra Rao sought to justify the impugned notices on the basis of the reasons recorded by the ITO and also on other grounds that will be noticed by me and dealt with in due course.

9. When the petitioner filed his returns for the relevant assessment years, a claim made by the petitioner before the civil court or this court was pending. But, that claim had neither fructified into a favourable decree nor had the petitioner received any amounts in pursuance of that decree. The pendency of legal proceedings or a claim made under the Acquisition Act cannot be characterised as a material fact that should have been disclosed in the returns for the relevant periods. The Act nowhere provides for an assessee to disclose the legal proceedings he had initiated and pending before a civil court or this court when he filed his returns or the assessments were concluded against him. From this, it follows that this is not one of those cases in which it was open to the ITO to hold

that the petitioner had not made a full and true disclosure of all the material facts for the relevant assessment years and that were concluded against him under the Act and, therefore, s. 147(a) of the Act was attracted. In this view, the primary reason recorded by the ITO to reopen the concluded assessments cannot be sustained.

10. Even the petitioner does not dispute the legal proceedings he had initiated for enhancement of compensation, the order made by this court in M.F.A. No.279 of 1972 (exhibit F) and the receipt of enhanced compensation on January 27, 1975, to which the ITO has alluded in his proceedings to reopen the concluded assessments. On these facts that are not in dispute, the notices were legally sustainable under s. 147(b) and s. 153(3)(ii) of the Act, though the ITO had sought to reopen them only under s. 147(a) of the Act, which is now found to be erroneous by this court. In support of his contention, Sri Raghavendra Rao strongly relies on the Division Bench rulings of the Punjab and Haryana, Gujarat and Delhi High Courts in Commissioner of Income Tax Vs. Ess Ess Kay Engineering Co. Pvt. Ltd., Jose T. Mooken Vs. Commissioner of Income Tax, and Ganga Saran and Sons (Huf) Vs. Income Tax Officer, Company Circle-IV, New Delhi and another, .

11. In answer to this contention urged by Sri Raghavendra Rao, Sri Ramabhadran contends that the Revenue should not be permitted to urge an entirely different ground to sustain the impugned notices. Alternatively, Sri Ramabhadran contends that the language of s. 153(3)(ii) of the Act should be given a restricted meaning as was done by me in Consolidated Coffee Ltd. Vs. Income Tax Officer, , affirmed by a Division Bench of this court in W.A. No. 1358 of 1983.

12. Without any doubt, the alternative ground urged for the Revenue is undoubtedly a new ground. But, this does not necessarily mean that the petitioner has been taken by surprise. All the facts on which the impugned notices are sought to be sustained were within the knowledge of the petitioner and have been disclosed in the return filed before this court. In these circumstances, it would not be proper for this court to shut out the Revenue from sustaining the impugned notices on a different ground.

13. Even otherwise, in the cases relied on by Sri Raghavendra Rao, the High Courts of Punjab and Haryana, Gujarat and Delhi have uniformly taken the view that the Revenue can sustain a notice issued under s. 148 of the Act on a ground different from the one on which proceedings have been initiated and reopened. In RAGHUBAR DAYAL RAM KISHAN Vs. COMMISSIONER OF Income Tax, U. P., , Pathak J. (as he then was), had taken a different view. But, dissenting from this view, the Punjab and Haryana High Court in Commissioner of Income Tax Vs. Ess Ess Kay Engineering Co. Pvt. Ltd., has expressed thus :

"In RAGHUBAR DAYAL RAM KISHAN Vs. COMMISSIONER OF Income Tax, U. P., , Pathak J., as he then was, gave three reasons for holding that if the action

purports to have been taken by the ITO under s. 34(1)(a), it would not be open to the Tribunal to sustain the same under s. 34(1)(b). The first reason given was that the provocation for invoking the jurisdiction is distinct in each case and it is the ITO in whose judgment the Legislature has reposed confidence for the purpose of deciding whether the proceedings for assessing and reassessing the escaped income should be taken under clause (a) or clause (b) that the notice issued by the ITO has to specify as to under which clause it is being issued and that the limitation for the notice under the two clauses is different. With due respect to the learned judge, none of these reasons, in our view, has any substance. As already noticed above, on the given set of facts constituting the opinion, it may not be reasonably possible to hold that the income chargeable to tax has escaped assessment because of the failure on the part of the assessee to disclose fully and truly all material facts but still, on those very facts, an opinion may be reasonably formed that income chargeable to tax has escaped assessment. The second reason given, even according to the learned counsel for the parties, has no significance because in the notice issued, it is not necessary to specify the particular clause of s. 147 under which it is issued. The third reason has hardly any bearing on the disputed problem on the disputed problem. If the notice is issued within the period of four years, resort can be had to either of the two clauses by the ITO and if it is issued beyond that period, clause (b) cannot be invoked under any circumstance and proceedings can be taken only under clause (a). None of the reasons given in this decision, therefore, can justify the view that if the proceedings are purported to have been taken by the ITO under clause (a) of s. 147, the same cannot be sustained by invoking clause (b) if the proceedings had been initiated within a period of four years. On the other hand, in *Mriganka Mohan Sur Vs. Commissioner of Income Tax*, a Division Bench of the Calcutta High Court, after noticing the said two decisions relied upon by the learned counsel for the assessee went on to say that where the reassessment made under s. 34(1)(a) is set aside by the Tribunal, it is open to the Tribunal to treat the reassessment as one properly made under s. 34(1)(b) provided that all the necessary conditions under s. 34(1)(b) are satisfied. The reasons given for this view would be discernible from the following passage (p.508)

"Section 34, as mentioned hereinbefore, is a machinery section and it deals with the power of the ITO to reopen and reassess certain income and the situations in which such power of reopening and reassessment can be used have been prescribed in the two different clauses of sub-section (1) of section 34. It appears to us that these two clauses deal with the power of reopening and of making reassessment and it covers different contingencies and situations. Clauses (a) and (b) do not deal with separate jurisdictions; both deal with cases of income escaping assessment. It is also necessary to examine whether clause (a) and clause (b) are mutually exclusive. It is true that these two clauses are mutually exclusive from one point of view, that is to say, where information of such nature as to lead to the formation of the belief that there was failure or

omission on the part of the assessee to disclose fully and truly all material facts, that information must come always within clause (a) of sub-section (1) of section 34. Action in such cases must be taken within the condition prescribed under clause (a) of sub-section (1) of section 34. But, if the information is not sufficient to lead to the formation of the belief or if there was no such information at all, that there was failure or omission on the part of the assessee to disclose fully and truly all material facts but there was information that there was escapement of income or under assessment of the income provided it is within four years of the completion of the original assessment and the belief to that extent is reasonably formed, then action under clause (b) of sub-section (1) of section 34 can be taken."

14. While differing from the view of Pathak J. in RAGHUBAR DAYAL RAM KISHAN Vs. COMMISSIONER OF Income Tax, U. P., , the Bench further observed (p. 509 of 95 ITR) :

"With respect it may be pointed out that the separate proviso limiting the conditions under which notices under clause (a) or clause (b) can be issued and assessment has to be completed do not indicate that clause (a) are separate limitations prescribed for different contingencies but some common are all fulfilled and the other limitation of the other clause is also fulfilled, then action taken in respect of one might be justified with reference to the powers under the other clause. In the aforesaid decision, Manchanda J. observed that even though the ITO might have chosen to make the assessment under the more stringent and onerous provisions of section 34(1)(a), there was nothing to prevent the appellate court from invoking section 34(1)(b) provided the pre-requisite conditions were satisfied and these were found on record. The learned judge further observed that section 34 was not a charging section. It merely provided a machinery whereby an income which had escaped assessment or had been under-assessed in the relevant assessment years could be brought into the net work of taxation. With respect, we are in agreement with the aforesaid view expressed by Manchanda J."

Similar view was taken by two other Benches of the same court in Income Tax Officer, "A" Ward and Others Vs. Eastern Coal Co. Ltd. (In Liquidation), and Bhupatrai Hirachand Vs. Commissioner of Income Tax, . We fully agree with the reasons given in Mriganka Mohan Sur's case [1974] 96 ITR 503 and, respectfully following the same, hold that the Tribunal erred in not allowing the revenue to support the reassessment by invoking the provisions of section 147(b). The first question is accordingly answered in the negative, against the assessee and in favour of the Revenue."

15. With respect, I am in complete agreement with these views that have found favour by the High Courts of Gujarat and Delhi. From this also, it follows that it is necessary to examine the alternative ground urged for the Revenue to sustain the impugned notices as falling u/s 147(b) of the Act and not u/s 147(a) of the Act.

16. Both sides do not dispute that if s. 153(3)(ii) of the Act does not apply, the impugned notices are barred by time and, therefore, the only question that calls for a critical examination is the true scope and ambit of s. 153(3)(ii) of the Act. That section that is material as amended by the Direct Taxes (Amendment) Act of 1964, which came into force on October 6, 1964, reads thus :

"153. (3) The provisions of sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A), be completed at any time -...

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act."

17. Section 153(3) in clear terms lifts the bar of limitation for reopening of assessments to which certain periods of limitation are prescribed under s. 153(1) and (2) of the Act. Sri Ramabhadran also does not dispute this position also. But, he contends that the words "or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act" should be given a restricted meaning and should be read as referable to proceedings of the very assessee for the very assessment period either before a High Court or the Supreme Court that can deal with an assessment under the Constitution and not to every order of every court in other legal proceedings like the land acquisition proceedings.

18. Maxwell on the Interpretation of Statutes (eleventh edition) states the very first principle of construction of statutes in these words :

"A statute is the will of the legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded "according to the intent of them that made it". If the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound these words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature."

19. Bearing this very first principle, it is necessary to ascertain the true scope and ambit of s. 153(3)(ii) of the Act.

20. The language of ss. 150 and 153(3)(ii) of the Act, which are not also similar, govern two entirely different situations. The two provisions do not govern one and the same situation. While s. 150 of the Act, as explained by me in Consolidated Coffee Ltd. Vs. Income Tax Officer, , is intended to give effect to the orders made by the superior authorities and superior courts without any period of limitation, section 153(3) of the Act has not been enacted to achieve that very purpose. In this view, the very construction placed on s. 150 of the Act cannot legitimately be placed on s. 153(3) of the Act.

21. The first part of s. 153(3)(ii) deals with a finding or direction contained in an order made under ss. 250, 254, 260, 262, 263 and 264 of the Act. When there is an order made under any of these sections then and then only the first part of clause (ii) of sub-s. (3) of s. 153 operates. That there is no order made under any of these sections to invoke s. 153(3) of the Act, is not in dispute also.

22. But, in the second part of clause (ii) of sub-s. (3) of s. 153 of the Act, the words used are "an order of any court in a proceeding otherwise than by way of appeal or reference under this Act". "An order of any court" means an order of any and every court in the country. The hierarchy and status of the court in the country is not decisive. All that this provision provides is that it must be a court and there must be an order of a court. The nature of the court and the nature of the order made by the court have no relevance. If there is an order of a court, whatever be its status, then the bar of limitation is automatically lifted. Acceptance of any other construction, and more so the construction suggested by Sri Ramabhadran on these words, would really result in legislation in the guise of interpretation, which is impermissible.

23. Section 153(3) is not a charging section but is only a machinery provision. It is well settled that machinery provisions should be construed liberally. Applying this principle, as also the first principle of construction of statutes, namely, that the statute has to be expounded according to the intent of them who made it, it is not possible to accede to the construction suggested by Sri Ramabhadran.

24. In Addl. Commissioner of Income Tax, Gujarat Vs. New Jehangir Vakil Mills Co. Ltd., , the Gujarat High Court, examining a similar question, has expressed thus (p. 857) :

"It is clear that once the amount of compensation is finally determined in judicial proceedings, effect to that finding will have to be given with reference to the year in which possession was taken and since that is so, by virtue of s. 153(3) (ii), the question of limitation would not arise for consideration. That is the prima facie view which appears to us at the present stage."

25. Sri Ramabhadran contends that this enunciation made by their Lordships of the Gujarat High Court, without any discussion and reasons, was not necessary for deciding the case that arose before this court. Even assuming that Sri Ramabhadran is right in his submission, in that event also, the above conclusion accords with the view expressed by me. With respect, I am in complete agreement with the view expressed by their Lordships in Addl. Commissioner of Income Tax, Gujarat Vs. New Jehangir Vakil Mills Co. Ltd., .

26. On the above discussion, it follows that the impugned notices have to be upheld as validly issued u/s 147(b) and s. 153(3)(ii) of the Act.

27. In the light of my above discussion, I hold that these writ petitions are liable to be dismissed. I, therefore, dismiss these writ petitions and discharge the rule issued in all these cases. But, in the circumstances of the cases, I direct the

parties to bear their own costs. I grant 60 days" time from this day to the petitioner to file his return before the ITO in pursuance of the impugned notices that are upheld.

28. Let this order be communicated to the respondent within 15 days from this day.