
(2005) 01 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Income-tax References No's. 44 and 45 of 1988

Vidya Sagar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Income Tax Act, 1961 — Section 139, 143(1), 144A, 144B, 147

Citation : (2005) 199 CTR 193 : (2005) 277 ITR 120

Hon'ble Judges : Viney Mittal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Akshay Bhan, for the Appellant; Rajesh Bindal, for the Respondent

Judgement

G.S. Singhvi, J.—The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, "the Tribunal"), has, in compliance with an order dated April 4, 1986, passed by this court in I. T. C. Nos. 61 and 64 of 1985, referred the following question of law for its opinion :

"Whether the Tribunal was correct in law in holding that the Income Tax Officer had rightly invoked the provisions of Section 147(a) of the Income Tax Act, 1961, so as to bring to tax the alleged unexplained investments of Rs. 7,500 and Rs. 26,500 in the assessment years 1969-70 and 1970-71, respectively ?"

2. The assessee along with his brother--the late Shri Siri Ram constructed commercial properties Nos. 49, 50 and 51 in Section 17, Chandigarh. They claim to have spent Rs. 3,10,398 on the construction between July 1968, and December 1970. The bifurcation of the expenditure involved in the construction of the properties is as under :

Financial year 1968-69, relevant to the assessment year 1969-70 = Rs. 44,210. Financial year 1969-70, relevant to the assessment year 1970-71 = Rs. 60,687. Financial year 1970-71, relevant to the assessment year 1971-72 = Rs. 1,05,500. 3. In the course of the assessment proceedings held for the assessment year 1971-72, the Assessing Officer, vide his letters dated March 25,

1974, and October 31, 1974, called upon the assessee to prove the cost of construction. Along with his reply, the assessee filed a valuation report dated January 21, 1972, prepared by Shri Matti Ram Sharma, valuer and consultant engineer. In that report, the cost of construction was shown as Rs. 3,18,300. The Assessing Officer finalised the assessment vide his order dated March 19, 1975, and assessed the income of the assessee at Rs. 5,660. After six months, he, on the basis of the valuation report prepared by the Departmental Valuation Officer (for short, "the DVO"), issued notice to the assessee u/s 148 of the Income Tax Act (for short, "the Act"), to show cause as to why an addition of Rs. 2,74,602 may not be made to his income as unexplained investment because as per the report of the DVO, the cost of construction was Rs. 5,85,000. Thereafter, the Assessing Officer sought instructions from the Inspecting Assistant Commissioner u/s 144A of the Act and also sent a draft order on September 13, 1976, to obtain his instructions in terms of Section 144B. The assessee objected to the draft order. The Inspecting Assistant Commissioner partially accepted his objection and reduced the addition by a sum of Rs. 55,100. Thereafter, the Assessing Officer completed the reassessment and made an addition of Rs. 1,09,751 to the income of the assessee. On appeal, the Commissioner of Income Tax (Appeals) (for short, "the CIT(A)"), determined the total cost of construction at Rs. 4,16,494 as against Rs. 3,10,398 shown by the assessee. He divided the addition of Rs. 1,07,097 in three assessment years and determined the half share of the assessee at Rs. 10,000 for the assessment year 1971-72. However, he annulled the assessment on the ground that the Assessing Officer had no jurisdiction to reopen the assessment by invoking Section 147 of the Act. The Revenue as well as the assessee challenged the order passed by the Commissioner of Income Tax (Appeals) by filing separate appeals before the Tribunal. By an order dated December 15, 1979, the Tribunal dismissed the appeals of the Revenue. The appeals filed by the assessee and his brother were dismissed as infructuous. The reference application filed by the Revenue u/s 256(1) was dismissed by the Tribunal and the one filed u/s 256(2) was dismissed by the High Court.

4. For the assessment years 1969-70 and 1970-71, the Assessing Officer finalised the assessment u/s 143(1) of the Act without making any addition. However, after the decision of the appeals filed in relation to the assessment year 1971-72, he issued notices u/s 147(a) and made additions to the tune of Rs. 7,500 and Rs. 26,500 for the assessment years 1969-70 and 1970-71, respectively, by treating the same as unexplained investment in the construction of the commercial properties. The appeals filed by the assessee were dismissed by the Commissioner of Income Tax (Appeals) and further appeals were dismissed by the Tribunal vide its order dated September 24, 1984. Both the Commissioner of Income Tax (Appeals) and the Tribunal held that the valuation report submitted by the DVO could be made the basis for initiation of action u/s 147(a) of the Act.

5. We have heard Shri Akshay Bhan, learned counsel for the assessee and Shri Rajesh Bindal, learned counsel for the Revenue, and carefully perused the record.

6. Section 147 of the Act (as it stood prior to April 1, 1989) which was invoked by the Assessing Officer for making reassessment, reads as under :

"147. If--

(a) the Assessing Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Assessing Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Assessing Officer has in consequence of information in his possession reason to believe that 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 or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year).

Explanation 1.--For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :--

(a) where income chargeable to tax has been underassessed ; or

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

(c) where such income has been made the subject of excessive relief under this Act or under the Indian Income Tax Act, 1922 (11 of 1922) ; or

(d) where excessive loss or depreciation allowance has been computed.

Explanation 2.--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 this section."

7. An analysis of the above reproduced provision shows that u/s 147(a), the Assessing Officer could reassess the income of the assessee if he had reason to believe that on account of the omission or failure on the part of the assessee to file a return u/s 139 or to disclose fully and truly all material facts necessary for his assessment in the particular year, the income chargeable to tax has escaped assessment in that year. Clause (b) of Section 147 which contains a non obstante clause provided that notwithstanding the facts that there had been no omission or failure on the part of the assessee to file return u/s 139 or to disclose fully and truly material facts necessary for assessment, the Assessing Officer could initiate action for assessment/reassessment if he, on the basis of the information in his possession had reason to believe that income chargeable to tax has escaped

assessment.

8. In the light of the above, we shall now consider whether the Assessing Officer was justified in reopening the assessment by invoking Section 147(a) solely on the basis of the report of the DVO. It is settled law that an Income Tax Officer acquires jurisdiction to reopen an assessment u/s 147(a) read with Section 148 of the Act only if, on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains, chargeable to Income Tax has escaped assessment. Mere change of opinion in regard to the particular state of facts cannot be made the basis for initiation of action u/s 147(a) of the Act.

9. In *Smt. Tarawati Debi Agarwal Vs. Income Tax Officer*, , a learned single judge of the Calcutta High Court quashed the notice u/s 147(a) of the Act by making the following observations (headnote) :

"...in assuming jurisdiction u/s 147(a), the Income Tax Officer did not have any prima facie ground for thinking that there had been any non-disclosure of material facts. The primary facts regarding the construction of the house had been disclosed by the assessee and it was for the Income Tax Officer to investigate into facts and find out whether the cost of construction as disclosed was correct or not. In any event, valuation was always a question of opinion and unless there was a clear finding on the basis of the material that the assessee had invested in the construction more than what had been shown by her in the course of assessment proceedings, the Income Tax Officer could not proceed merely on the basis of the valuation report of the departmental valuer."

10. A similar view has been expressed by the Madhya Pradesh High Court in *Abdul Majid Vs. Income Tax Officer and Others*, , by the Rajasthan High Court in *Sardar Kehar Singh Vs. Commissioner of Income Tax and Others*, .

11. In *Commissioner of Income Tax Vs. Usha Mathur*, a Division Bench of this court, while dismissing the appeal filed by the Revenue u/s 260A of the Act, approved the view taken by the Tribunal that the valuation report could not be made the basis for reopening the assessment which had already been finalised.

12. In *Smt. Amala Das Vs. Commissioner of Income Tax and Another*, a learned single judge of this court considered the question whether the valuation report alone could be made the basis for reopening the assessment. The facts of that case were that the assessee had constructed a building, the total cost of which, according to the valuation report, was Rs. 1,54,400 and, according to the assessee, Rs. 1,43,077. The Income Tax Officer accepted the cost of construction as per the valuation report and treated the difference of Rs. 11,312 as the undisclosed income of the assessee and distributed the same as income of the assessment years 1965-66 and 1966-67 and completed the assessments. Since

the assessment for the year 1965-66 had already been completed by the time the assessment for the year 1966-67 was finalised, the Income Tax Officer reopened the earlier assessment in order to distribute the undisclosed income for the two years. Later when the wealth-tax assessments of the assessee for the years 1966-67 to 1973-74 were taken up, the Income Tax Officer referred the question of valuation of the building to the Valuation Officer, who computed the valuation of the cost of construction of the building at Rs. 2,33,940 and its fair market value at Rs. 3,64,560 for the years 1966-67 to 1969-70, and, in the light of this report, he formed the opinion that the assessee had not fully and truly disclosed all material facts necessary for the assessment and, therefore, issued notices for reassessment u/s 147(a) of the Act. The assessee filed a writ petition for quashing the notices on the grounds that the Income Tax Officer had no jurisdiction to reopen the assessment because she had disclosed fully and truly all material facts at the time of the assessments and that it was only on the basis of the subsequent valuation report obtained by the Income Tax Officer from the valuation cell of the Department that he proceeded to initiate the reassessment proceedings. The learned single judge relied on the judgments of the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, and the Assam, Calcutta and Madhya Pradesh High Courts in *BAJRANGLAL BERIA Vs. Income Tax OFFICER, "B" WARD, COMPANIES CIRCLE, DIBRUGARH, AND OTHERS.*, ; *Rasiklal Jivanlal Shah and Others Vs. Income Tax Officer and Others*, and *Jawaharlal Daryavbuxmal Vs. Commissioner of Income Tax*, and held (headnote of *Smt. Amala Das Vs. Commissioner of Income Tax and Another*, :

"Mere change of opinion cannot be a ground for the Income Tax Officer to reopen an assessment which has already been finalised. A valuation report is nothing more than a mere opinion about the cost of construction or the fair market value of a building....

The Income Tax Officer could not, on the basis of a subsequent valuation report, come to the conclusion that the full cost of construction of the building was not disclosed at the time of the assessments and that the assessee was guilty of not disclosing fully and truly all material facts necessary for the assessments of the relevant years. Therefore, the notices issued for reopening the assessments were not valid."

13. In the present case, the assessment was finalised by the Assessing Officer without getting an investigation made into the value of the construction. Subsequently, he initiated proceedings u/s 147(a) on the basis of the report prepared by the DVO. The Assessing Officer did not have any other material on the basis of which he could have reason to believe that the income of the assessee had escaped assessment or that the assessee had deliberately did not disclose fully and truly his income. Therefore, we are inclined to agree with learned counsel for the assessee that the notice issued by the Assessing Officer u/s 147(a) of the Act was vitiated due to non-application of mind and the

Commissioner of Income Tax (Appeals) and the Tribunal did not commit any illegality by setting aside the order of reassessment (sic).

14. Shri Rajesh Bindal relied on Section 150 of the Act to justify the reassessment, but we have not felt persuaded to agree with him. That section lays down that notwithstanding anything contained in Section 149, the notice u/s 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in any order passed by any authority in any proceeding under the Act by way of appeal, reference or revision. The words "or by a court in any proceeding under any other law" were added to Section 150 by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. In our opinion, Section 150 cannot be invoked by the Revenue to justify the addition made by the Assessing Officer because the reassessment made for the year 1971-72 had been annulled by the Appellate Assistant Commissioner and his order was upheld by the Tribunal. Not only this, the reference applications filed by the Revenue were dismissed by the Tribunal and the High Court.

15. There is another reason for our disinclination to accept the contention of learned counsel for the Revenue. In I. T. R. No. 38 of 1991, decided on December 3, 2004 (CIT v. Suresh Kumar), a Division Bench of this court of which one of us (G.S. Singhvi J.) was a member upheld the orders passed by the Appellate Assistant Commissioner and the Tribunal annulling the reassessment proceedings in the case of Siri Ram (since deceased) who was represented in the reassessment proceedings by his son Suresh Kumar.

16. In the result, the reference made by the Tribunal is answered in favour of the assessee and against the Revenue.