K.M. Sharma Vs Income Tax Officer and Others[OVERRULED]

Court: Delhi High Court

Date of Decision: May 24, 1996

Citation: (1996) 221 ITR 202

Hon'ble Judges: M. Jagannadha Rao, J; Dr. M.K. Sharma, J

Bench: Division Bench

Advocate: B.B. Ahuja, K.M. Sharma and Sanjay Abott, for the Appellant; R.D. Jolly and Ms. Prem Lata Bansal, for the Respondent

Judgement

This Judgment has been overruled by : K.M. Sharma Vs. Income Tax Officer, Ward 13(7), New Delhi, AIR 2002 SC 1715 : (2002)

174 CTR 210 : (2002) 254 ITR 772 : (2002) 4 JT 10 : (2002) 3 SCALE 383 : (2002) 4 SCC 339 : (2002) 2 SCR 1047 : (2002) 122

TAXMAN 426

DR. M.K. Sharma, J.
This writ petition is directed against the notices under ss. 148 and 142 of the IT Act issued to the petitioner relevant

to the asst. yrs. 1968-69 to 1971-72, 1981-82 and 1982-83.

2. Lands measuring about 4,200 bighas was acquired by the then Chief Commr. of Delhi by notification dt. 6th March, 1966 and 6th Sept., 1966,

issued under s. 6 of the Land Acquisition Act. By judgment dt. 20th May, 1980, the then Addl. District Judge held the petitioner to be entitled

1/32nd share of the compensation awarded under the awards. As a consequence thereof the petitioner received a compensation of Rs. 1,33,810.

On a reference application filed by the petitioner under s. 18 of the Land Acquisition Act the Addl. District Judge, Delhi, by his judgment dt. 31st

July, 1991, passed his award. Consequently, the petitioner was paid a sum of Rs. 1,10,20,624 which amount represented towards principal

amount at Rs. 41,96,496 and interest at Rs. 76,84,829 up to 18th May, 1992. According to the petitioner no tax is livable on interest accruing up

to 31st March, 1982, as it had become time barred. However, on 31st March, 1993, the petitioner was served with notices under s. 148 of the IT

Act, 1961 for 16 assessment years i.e., for the asst. yrs. 1968-69 to 1971-72 and asst. yrs. 1981-82 to 1992-93 asking the petitioner to file

return of income for these years.

3. By this writ petition the petitioner has challenged the aforesaid notices issued under s. 148 for the asst. yrs. 1968-69 to 1971-72 and for the

asst. yrs. 1981-82 and 1982-83 and also the reassessment proceedings. In pursuance of the aforesaid notices the petitioner filed revised returns

for the asst. yrs. 1983-84 to 1992-93 paying additional tax amounting to Rs. 32,22,828. For the asst. yrs. 1961-62 to 1981-82 and 1982-83, the

petitioner informed the ITO that the notices for these years were time barred under s. 149 of the Act and that the provisions of s. 150 are not

attracted to the facts of the case because there was no finding or directions of any Court to assess or recompute his income for the said years. By

letter dt. 7th Feb., 1996, the respondent No. 2 informed the petitioner that his case was covered by s. 150(1) and that the impugned notices were

within jurisdiction.

4. The learned counsel appearing for the petitioner submitted before us that the provisions of s. 150(1) of the Act are not applicable to the facts

and circumstances of the present case inasmuch as the said provision does not confer any fresh power on the ITO to make assessment in respect

of the escaped income without any time limit and particularly in respect of those assessment years which had become time barred. The learned

counsel relied upon the provisions of sub-s. (2) of s. 150 and submitted that in view of the said provisions, the provisions of sub-s. (1) of s. 150

shall not apply where by virtue of any other provision limiting the time within which the action for assessment, reassessment or recomputation might

be taken, such assessment, reassessment or recomputation was barred on the date of the order which is the subject matter of appeal, reference or

revision. In support of his submissions the learned counsel relied upon the decision of the Supreme Court in S. S. Gadgil vs. Lal & Co. (1965) 53

ITR 231 , J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, and S.C. Prashar,

Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, . The learned counsel further relied upon the

Department"s Circular No. 549, dt. 31st Oct., 1989 and submitted that the amendments which came into force on 1st April, 1989, including the

amendments in s. 150 would apply to all matters which were pending on 1st April, 1989, and had not become closed or dead on that date.

According to him in view of the clauses of the said circular on 31st March, 1994, no notices could have been issued by the respondents for the

years prior to the asst. yr. 1983-84.

5. We also heard Mr. Jolly, the learned counsel appearing for the respondents, who submitted before us that the impugned notices were issued as

far back as 29th March, 1994, and, Therefore, there is unexplained delay in preferring the present writ petition. He further submitted before us that

in the meantime the assessment orders in respect of the aforesaid assessment years have also been passed as against which statutory effective

remedies are available to the petitioner and, Therefore, the writ petition is not maintainable. He also submitted before us that the provisions of s.

150(1) which are in the nature of an exception to s. 149 is fully applicable to the facts and circumstances of the case and Therefore, the

respondents are within their jurisdiction in issuing the notices under s. 148 of the IT Act to the petitioner and also in continuing with the

reassessment proceedings and making an order of reassessment in respect of the relevant assessment years.

6. It is true that a plea of limitation in respect of initiation of proceedings under s. 147 of the IT Act may and should be taken before the Assessing

Officer (AO) and the appellate or revisional authorities constituted under the Act. It is held by the Supreme Court in the cases of Lalji Haridas Vs.

Income Tax Officer and Another, and Lalji Haridas Vs. R.H. Bhatt and Another, that the jurisdiction conferred on the High Court under Art. 226

is not intended to supersede the jurisdiction and authority of the AO to deal with the merits of the contentions that the assessed may raise before

them including that of limitation.

7. The petitioner has also approached this Court belatedly inasmuch as the impugned notices were issued on 29th March, 1994, whereas the writ

petition was filed in this Court in the month of March, 1996, challenging the validity of the said impugned notices on the ground of being barred by

limitation. In the meantime as stated at the Bar the reassessment proceedings have also been completed and, Therefore, the petitioner has effective

alternative remedy provided under the statute to challenge the validity of the said reassessment proceedings before the statutory authorities as well.

On the aforesaid grounds this writ petition appears to us to be not maintainable.

8. However, since the counsel for the petitioner had made elaborate arguments with regard to the validity of the aforesaid notices on the ground

that they are time barred, we feel inclined to look into the aforesaid issues raised before us as well.

9. Sec. 147 of the IT Act provides for assessment and reassessment of income which has escaped assessment. However, such reassessment is

always subject to the provisions contained in ss. 148 and 153. Sec. 149 provides the time limit for issue of notices, i.e., for the initiation of

proceedings under s. 147. Sec. 150 appears to be in the nature of a proviso to s. 149 whereas sub-s. (2) of s. 150 again appears to be a proviso

to the provisions of sub-s. (1) of s. 150 sub-s. (1) of s. 150 provides that where the reassessment proceedings are initiated in consequence of or to

give effect to any finding or direction contained in an order passed by any authority in any proceedings under the IT Act by way of appeal,

reference or revision or by a Court in any proceeding under any other law, the time limits prescribed in s. 149 shall not apply and that notice under

s. 148 could be issued at any time. Accordingly, by virtue of the aforestated provision the bar of limitation for reopening of assessment to which

certain periods of limitation are prescribed under s. 149 gets lifted, as if no period of limitation shall apply for initiation of such proceedings for

assessment, reassessment or recomputation. However, sub-s. (2) of s. 150 provides a rider to the aforesaid provision as if in the nature of a

proviso to sub-s. (1) providing that the provisions of sub-s. (1) shall not apply where by virtue of any other provision limiting the time within which

action for assessment, reassessment or recomputation may be taken such assessment, reassessment or recomputation is barred on the date of the

order which is the subject matter of the appeal, reference or revision in which the finding or direction is contained.

10. For easy reference the aforesaid provisions of s. 150 are required to be extracted :

Sec. 150. - Provision for cases where assessment is in pursuance of an order on appeal, etc., - (1) Notwithstanding anything contained in s. 149,

the notice under 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 an order passed by any authority in any proceeding under this Act by way of appeal,

reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-s. (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-

section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the

order which was the subject matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the

time within which any action for assessment, reassessment or recomputation may be taken.

11. On a closer reading of the aforesaid provisions the only interpretation that could be given to the aforesaid section is that the Bar of limitation as

provided for in s. 149 shall not apply for reopening of assessments to certain periods of limitation, i.e., in case when initiation of reassessment

proceedings is in consequence of or to give effect to any finding or direction contained in the appellate order such initiation of reassessment

proceedings would be bad if the said proceedings are barred by any other provision of the Act on the date of the order which was the subject

matter of the appeal. It is, however, pertinent to note that the aforesaid provision under s. 150(2) which is in the nature of a proviso to s. 150(1)

does not include within its ambit the expression "any finding or direction contained in an order passed by a Court in any proceedings under any

other law" appearing in s. 150(1) which was added to the statute w.e.f. 1st April, 1989, and only relates to subject matter of the appeal, reference

or revision alone. The aforesaid expression "any finding or direction contained in an order passed by a Court in any proceeding under any other

law" was not added to by the legislature to the provisions of s. 150(2) of the IT Act.

12. An order passed in a land acquisition proceeding would definitely be included within the ambit of the expression used ""any finding or direction

contained in an order passed by a Court in any proceedings under any other law"". In the present case the initiation of the reassessment proceedings

is based on the findings or directions contained in the order passed by the Reference Court in a land acquisition proceeding which as is held

hereinabove is included within the aforesaid expression used in sub-s. (2) of s. 150 of the IT Act. In view of our aforesaid understanding of the

provisions of s. 150 the interpretation that could be given thereto is that if there be an order of a Court including an order by a Reference Court in

a land acquisition proceedings then the bar of limitation is automatically lifted and accordingly, for the years in question for which interest was paid

to the petitioner, although initiation of reassessment proceedings could be barred under the provisions of s. 149 the same would stand as not

barred under the provisions of s. 150 of the Act and consequently the question of limitation would not arise for consideration. The provisions of s.

150(2) are not applicable to the facts and circumstances of the present case as it does not envisage within its ambit any finding or direction

contained in an order passed by a Court in any proceedings under any other law, which in the instant case is the finding or direction contained in

the order of award passed by the Reference Court in the land acquisition proceedings under the Land Acquisition Act. The decisions of the

Supreme Court relied upon by the learned counsel for the petitioner are distinguishable as those decisions were rendered prior to the amendment

of s. 150 of the IT Act effective from 1st April, 1989 and do not notice the aforesaid amendments in s. 150(1).

13. For the foregoing reasons we are of the opinion that the impugned notices issued under s. 148 of the IT Act are held to be legal and valid and

consequently, this writ petition is liable to be dismissed, which we accordingly do. No costs.