

(2006) 11 KAR CK 0117

Karnataka High Court

Case No: Writ Appeal No. 5507 of 2003 in Writ Petition 9193 of 2000

Deputy Commissioner  
of Income Tax

APPELLANT

Vs

Spences Hotel Pvt.  
Ltd.

RESPONDENT

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Date of Decision: Nov. 21, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 139, 142, 143 (3), 147, 148

Citation: (2007) 2 KCCR 77 SN

Hon'ble Judges: V. Gopala Gowda, J; C.R. Kumara Swamy, J

Bench: Division Bench

Advocate: M.V. Seshachala, for the Appellant; Ashok A. Kulkarni, for the Respondent

Final Decision: Allowed

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### Judgement

Gopala Gowda, J.

This appeal is filed by the Deputy Commissioner of Income Tax against the order dated 4-6-2003 passed by the learned single Judge in W.P. Nos. 9193-9194/2000 allowing the writ petitions. The notice dated 17-11-1998 issued u/s 148 of the Income Tax Act (hereinafter referred to as "the Act") for assessing the escaped tax of the respondent is quashed with a direction not to proceed further in the matter.

2. The issue involved in the case pertains to income tax liability arising out of an agreement between respondent and another. The dispute between them was resolved through arbitration. The amount payable to the respondent herein in terms of the award was sought to be taxed towards capital gains in the assessment year 1980-81. The matter reached the Income Tax Appellate Tribunal. The Tribunal noticed that amount sought to be assessed was offered to tax for the assessment year 1976-77 and it was within the knowledge of the assessing officer while concluding the assessment during the said assessment year and therefore issuance

of the impugned notice is barred by limitation under the provisions of the Act. Based on the said observation of the Tribunal, the notice u/s 148 of the Act was issued by the appellant to the respondent stating that the tax is escaped, which notice was quashed by the learned single Judge in the Writ Petition by recording his reasons.

3. The main objection urged in the Writ Petition to quash the notice was on the ground of limitation. The learned Single Judge held that the notice issued to re-open the assessment against the respondent is barred by limitation. Mr. M.V. Seshachala, learned standing counsel for the Income Tax Department submitted that notice was issued well within the time for re-opening the assessment from the date of knowledge of escaped income for payment of Income Tax by the respondent. He has further submitted that on the impugned notice issued to the respondent, the assessee should have filed returns and the assessing officer should have passed order thereon. The learned Counsel on behalf of the revenue has relied upon the decision *G.K.N. Driveshafts (India) LRD v. Income Tax Officer 2003 ITR 259* page 19 in support of his submissions that notice issued to respondent is in conformity with provision of Section 150(1) of the Act and in accordance with law.

4. Per contra, Mr. Ashok A. Kulkarni, learned Counsel for the respondent/assessee justified the impugned order passed by the learned Single Judge by placing reliance upon the following decisions:

[Commissioner of Income Tax Vs. G. Viswanatham,](#)

[Parveen Kumari Vs. Commissioner of Income Tax and Another,](#)

[Smt. Savitri Rani Malik \(Legal representative of late S.P. Malik\) Vs. Commissioner of Income Tax,](#)

The learned Counsel submitted that the learned single Judge has rightly quashed the notice as the same is barred by limitation and therefore no interference is warranted and prayed for dismissal of the appeal.

5. We have examined the order under appeal with reference to the submissions made and the decisions relied upon. It is not in dispute that the income realised by the respondent under the agreement is not taxable or not assessable. It is also not the case of the assessee that it is not an escaped assessment. Section 147 of the Act provides for reopening of escaped assessment and it reads as under:

147. 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 allowances, 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 (l) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

The tax Appellate Tribunal in its order dated 26-6-1998 held that the escaped tax shall be assessed for the year 1976-77. That order has become final and the same was within the knowledge of the appellant. On the basis of this finding of the Tribunal in its order regarding escaped income of the assessee, notice u/s 148 of the Act was issued on 17.11.1998, which is quashed by the learned single Judge. Section 149 of the Act prescribes the period of limitation within which notice u/s 148 shall be issued to the assessee and it reads as under:

149.(1) No notice u/s 148 shall be issued for the relevant assessment year:

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Clause (b)

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which was escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

It is pertinent to note that the time limit prescribed in Section 149 of the Act is not applicable to the case on hand in view of Sub-section (2) which states that:

(2). The provisions of Sub-section(l) as to the issue of notice shall be subject to the provisions of Section 150(1)

Section 150(1) of the Act is as under:

150. (1) 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 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-section(l) 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.

The above provision begins with the words "notwithstanding anything contained in Section 149" and it states that "notice may be issued at any time" to give effect to any finding contained in any order passed by any authority in any proceeding under the Act. The notice issued to the assessee was pursuant to the finding of the Tribunal referred to supra regarding the escaped income for assessment of income Tax. Therefore, the learned single Judge committed an error in law by quashing the same, as the same is contrary to the finding recorded by the Tax Appellate Tribunal with regard to the escaped Taxable income derived by the assessee, in respect of such cases Section 150(1) of the Act is applicable which relevant provision of the Act has not been properly considered by the learned Single Judge by quashing the notice impugned in the Writ Petition, the legal submission made by the learned Counsel Mr. Ashok Kulkarni placing reliance upon Section 150(2) of the Act in justification of the order of the learned Single Judge is misplaced for the reason that the above provision is not applicable to the case on hand as the case sought to be established by the revenue, by refusal of the impugned notice prima facie at this stage the submissions of the learned Counsel for revenue is tenable and the same shall be accepted by us.

6. In the decision GKN DRIVESHAFTS(Supra) case upon which learned Standing Counsel for the Revenue has placed reliance, the Apex Court has clarified as to what should follow if a notice u/s 148 of the Act is issued, as under:

...However, we clarify that when a notice u/s 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years. XXXX.

In view of the above clarification made by the Apex Court, the quashing of the notice impugned in the Writ Petition by the learned Single Judge is not justified. In view of the foregoing reasons the decisions relied upon by the learned Counsel for the assessee are of no assistance and in view of what has been stated above, they are not applicable to the facts of the case.

7. In the result, the writ appeal is allowed. The order of the learned single Judge is set aside. The assessee is at liberty to file revised return. The assessing officer shall consider the same and pass appropriate order.