(2002) 03 DEL CK 0137

Delhi High Court

Case No: Income-tax Reference No''s. 102 to 110 of 1983

Commissioner of Income Tax		APPELLANT
	Vs	
Banwari Lal and Sons (P.) Ltd.		RESPONDENT

Date of Decision: March 22, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 147, 150, 153, 153(3)

Citation: (2002) 257 ITR 518 : (2002) 123 TAXMAN 500

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: R.D. Jolly and Premlata Bansal, for the Appellant; None, for the Respondent

Judgement

S.B. Sinha, C.J.
The question, which has been referred for the opinion of this court in these references at the instance of the Revenue u/s 256(1) of the Income Tax Act, 1961 (in short, "the Act"), by the Income Tax Appellate Tribunal, Delhi Bench "D", Delhi (in short "the Tribunal"), is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the order of the Commissioner of Income Tax (Appeals) in annulling the reassessment for the assessment years 1961-62 to 1969-70 framed by the Income Tax Officer u/s 147(a) of the Income Tax Act, 1961, for bringing to tax as income of the assessed-company under the head ''Income from house property'', in terms of the enhanced compensation in pursuance of the order of the Appellate Assistant Commissioner for the assessment year 1974-75 ?"

2. The relevant assessment years are 1961-62 to 1969-70. The assessed is a private limited company. Its main source of income was letting out of immovable properties including one situated at 6, Ansari Road, Daryaganj, Delhi.

3. The said property was requisitioned for public purposes by the Delhi Administration on March 13, 1959. A compensation of Rs. 3,212.50 per month was offered to the assessed, whereas the claim of the assessed Therefore was Rs. 10,000 per month.

4. The matter was referred to an arbitrator appointed u/s 8(b) of the Requisitioning and Acquisition of Immovable Property Act, 1952. A monthly compensation of Rs. 4,618.50 was fixed by the arbitrator with effect from March 30, 1959, by reason of his award.

5. The additional amount of Rs. 1,406 per month was thus taken into consideration for computing the total income by the Income Tax Officer (in short "the ITO"), for completing the assessments for the assessment years 1960-61 to ''1965-66.

6. The assessed, however, being not satisfied with the award of the arbitrator, preferred an appeal there against before this court, wherein by a judgment dated December 8, 1971, the amount of compensation was enhanced to Rs. 6,423 per month.

7. Pursuant to and in furtherance of the said judgment, the assessed during the assessment year 1973-74 received a sum of Rs. 2,88,776 for the period from March 13, 1959, to October 31, 1972.

8. For the assessment year 1973-74, the Income Tax Officer took into account the sum of Rs. 21,180 being the excess amount at the rate of Rs. 1,805 per month for the period November 1, 1971 to October 31, 1972. The balance amount of Rs. 2,67,596 was taxed by the Income Tax Officer in the assessment year 1974-75 under the head "Income from other sources".

9. An appeal there against was filed by the assessed before the Appellate Assistant Commissioner (in short, "the AAC"). The Appellate Assistant Commissioner in his order dated March 15, 1979, made the observations to the effect that the Income Tax Officer was not right in assessing the amount of Rs. 2,67,596 as "Income from other sources". He purported to have directed the Income Tax Officer by reason of the said order that the assessed be assessed under the head "Income from house property" in the respective assessment years.

10. The Revenue took two different proceedings in relation to the said order. On the one hand, the said decision was questioned in appeal before the Tribunal and, on the other hand, a proceeding u/s 147(a) of the Act for reopening the assessment proceedings had also been started.

11. Section 147(a) of the Act as it stood on May 1, 1973, is as follows : "147. Income escaping assessment. -- If-

(a) the Assessing Officer has reason to believe that, by reason of the omission or failure on the part of an assessed 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."

12. Section 149 of the Act as it stood on May 1, 1973, is as follows :

"149. Time limit for notice.--(1) No notice u/s 148 shall be issued for the relevant assessment year,

(a) in a case where an assessment under Sub-section (3) of Section 143 or Section 147 has been made for such assessment year, --

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii) ;

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty-thousand or more for that year ;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to more than rupees one lakh or more for that year ;

(b) in any other case,--

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii) ;

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees twenty-five thousand or more for that year ;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year.

Explanation.--In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of Section 147 shall apply as they apply for the purposes of that section, (with effect from 1-6-2001).

(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 has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

(2) The provisions of Sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.

(3) If the person on whom a notice u/s 148 is to be served is a person treated as the agent of a non-resident u/s 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year."

13. Time limit for issue of notice u/s 148 :

Up to four years from the end of the relevant assessment year	Beyond four years, but up to seven years from the end of the relevant assessment year	Beyond seven years but up to ten years from the end of the relevant assessment year

In cases subjected to scrutiny by way of assessment u/s 143(3) or 147s	If the escaped income is less than Rs. 50,000	If the escaped income is Rs, 50,000 or more, but less than Rs. 1 lakh	If the escaped income is Rs. 1,00,000 or more
In other cases	If the escaped income is less than Rs. 25,000	If the escaped income is Rs. 25,000 or more, but less than Rs. 50,000	If the escaped income is Rs. 50,000 or more."

14. However, the provisions contained in Section 150 of the Act, which contains a non obstinate clause, deal with the situation apart from that provided for in Section 149 of the Act. In terms of Sub-section (2) of Section 150 of the Act, the provisions as regards limitation would not apply in a case where a direction had been issued. However, it is not in dispute that if there was no such direction, Section 150(2) of the Act will have no application.

15. As noticed hereinbefore, the Revenue had preferred an appeal against the order of the Appellate Assistant Commissioner. The assessed had also filed a cross appeal against the said decision. By an order dated April 22, 1981, the learned Tribunal dealt with the directions purported to have been issued by the Appellate Assistant

Commissioner as regards the said sum of Rs. 2,67,596 by treating the same as "income from house property" and held :

"12. Before closing, we would like to say a word about the direction of the learned Appellate Assistant Commissioner to the Income Tax Officer to bring the amount in question to tax under the head ''Income from house property'' in the respective assessment years to which the income relates. This direction of the learned Appellate Assistant Commissioner has to be construed in the light of the decision of the Supreme Court in the case of Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi, . It was not at all necessary for the disposal of the assessed''s appeal for this year to give such a direction and, Therefore, the same could not be treated as a direction given by the learned Appellate Assistant Commissioner as contemplated in Section 153(3)(ii). It should be taken to mean that the learned Appellate Assistant Commissioner directed the Income Tax Officer to take proper action according to law to consider the amount in question in the respective assessment years in the computation of income from house property."

16. In view of the aforementioned finding of the Tribunal to the effect that as there was no direction by the appellate authority, the reassessment proceedings could not have been initiated having regard to the provisions of Section 153(2)(ii) of the Act.

17. However, against the order of the Commissioner of Income Tax (Appeals) (in short, "the CIT(A)"), the Department filed a second appeal before the Tribunal. The Tribunal upheld the findings of the Commissioner of Income Tax (Appeals) to the effect that the reassessment proceedings for the assessment years 1961-62 to 1969-70 were not initiated validly and hence they had rightly been cancelled by the Commissioner of Income Tax (Appeals).

18. We, Therefore, are of the opinion that the premise whereupon the Income Tax Officer had assumed jurisdiction in initiating the reassessment proceedings for the relevant years was erroneous.

19. In view, of the directions of the Tribunal that it was not necessary for the Appellate Assistant Commissioner to issue the impugned direction, it must be held that the Commissioner of Income Tax (Appeals) proceeded on a wrong assumption that the direction issued by the Appellate Assistant Commissioner was valid.

20. In that view of the matter, it was not a case where the provisions of Section 150 of the Act were applicable.

21. We, Therefore, are of the opinion that the learned Tribunal was correct in passing the impugned order dated April 22, 1981.

22. Thus, the answer to the question referred must, Therefore, be answered in the affirmative, in favor of the assessed and against the Revenue.

23. These references are accordingly disposed of.