

(2000) 11 DEL CK 0089

Delhi High Court

Case No: Income Tax R. No's. 104 and 105 of 1979

R.L. Narang and M.L. Narang

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Nov. 21, 2000**Acts Referred:**

- Income Tax Act, 1961 - Section 142, 142(1), 142(2), 144, 256(1)

Citation: (2001) 171 CTR 162 : (2001) 249 ITR 68 : (2001) 116 TAXMAN 384**Hon'ble Judges:** Dr. Arijit Pasayat, C.J; D.K. Jain, J**Bench:** Division Bench**Advocate:** Non, for the Appellant; Prem Lata Bansal and Ajay Jha, for the Respondent

Judgement

Arijit Pasayat, C.J.

Since the questions referred in both references are identical, this common order will dispose of both of them.

2. At the instance of the assesses, the following questions have been referred for the opinion of this court by the Income Tax Appellate Tribunal, Delhi Bench-D (in short "the Tribunal"), u/s 256(1) of the Income tax Act, 1961 (in short "the Act") :

"1. Whether, on the facts and in the circumstances of the case, a notice requiring the statement of assets and liabilities as on March 31, 1962, March 31, 1970, and March 31, 1971, is a valid notice u/s 142(1) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, in the absence of fresh notice under Sections 142(1) and 142(1)(ii) after the assessee had filed revised return on March 22, 1973, the Income Tax Officer was competent to make assessment u/s 144 on the ground that the notices issued under Sections 142(1) and 142(1)(ii) issued earlier were not complied with ?"

3. The dispute relates to the assessment year 1970-71. As the answers to the questions would involve interpretation of Sections 142(1), 142(2) and 144 of the Act,

detailed reference to the factual position is not necessary.

4. The statement of assets and liabilities as on March 31, 1962, March 31, 1970, and March 31, 1971, were directed to be submitted by the assessed, by the Income Tax Officer (in short "the ITO"), pursuant to notice u/s 142(1)(ii) of the Act dated August 9, 1971. Notice was duly served upon the assessed on August 12, 1971. As the notice was not complied with for a long period a reminder was issued on October 21, 1972. Despite service of the said letter, the requisite documents were not furnished. Another reminder was issued on December 16, 1972, requiring compliance on or before December 31, 1972. In response, a letter was filed on January 10, 1973, raising the objection that by asking for statement of assets and liabilities as on March 31, 1962, materials which have no relevance in the assessment years 1970-71, 1971-72 were being called for. It was further submitted that on the aforesaid account, the notice was vitiated. In reply, the Income Tax Officer stated that by calling for statement of the assessed's assets and liabilities as on March 31, 1962, there was no contravention of any provision and on the contrary provisions of Section 142(1) and (2) were applicable to the facts of the case. Reliance was placed on a decision of the Andhra Pradesh High Court in [SMT. KANTAMANI VENKATASATYAVATHI Vs. Income Tax OFFICER, B-WARD, RAJAHMUNDRY.,](#) . Again, the assessed was requested to furnish the statements called for as they were not submitted. The Income Tax Officer was of the view that the assessed had failed to furnish statements deliberately and intentionally without reasonable cause. It was further noted that even if it was accepted for the sake of argument that the information could not have been asked for in relation to the position standing as on March 31, 1962, the informations required were clearly applicable to the assessment years 1970-71 and 1971-72 as the Income Tax Officer had asked for furnishing the statement of assets and liabilities as on March 31, 1970, to March 31, 1971. Accordingly, ex parte assessment u/s 144 of the Act was made. The matter was challenged in appeal before the Appellate Assistant Commissioner (in short "the AAC"). Before the Appellate Assistant Commissioner, the stand was taken that a fishing and roving inquiry was sought to be made unconnected with the assessment for the relevant assessment years. The Appellate Assistant Commissioner did not accept the plea and held that the Income Tax Officer's conclusions were in order. The matter was carried in further appeal before the Tribunal. The stand taken before the Income Tax Officer and the Appellate Assistant Commissioner were reiterated. The Tribunal upheld the conclusions of the Income Tax Officer and the Appellate Assistant Commissioner and held that the ex parte assessment was in order. On being moved for a reference, the questions as stated above have been referred for the opinion of this court.

5. There is no appearance on behalf of the assesses in spite of service of notice. We have heard learned counsel for the Revenue. It has to be noted that one of the stands which was pressed into service by the assessed before the authorities was that after the revised return has been filed, notice, if any, issued u/s 142(1) becomes

inoperative. The said stand did not find acceptance by the Tribunal, As has been rightly observed by the Tribunal, the decision of the Andhra Pradesh High Court in Kantamani Venkatasatyavathi v. ITO [1968] 67 ITR 271 is clearly applicable to the facts of the case. Even otherwise a combined reading of Sections 142(1) and 144 makes the position clear that the authorities were justified in proceeding to make ex parte assessment when there was no response to the notice u/s 142(1) of the Act. That being the position, we answer the questions referred in the affirmative, i.e., in favor of the Revenue and against the assessed.

6. The references are disposed of accordingly.