(1996) 03 DEL CK 0077

Delhi High Court

Case No: CWP No''s. 3796, 3797, 4092 and 4093 of 1992

Rakesh Aggarwal		APPELLANT
	Vs	
Assistant Commissioner of Income Tax		RESPONDENT

Date of Decision: March 18, 1996

Citation: (1997) 142 CTR 272 : (1997) 225 ITR 496

Hon'ble Judges: Y.K. Sabharwal, J; D.K. Jain, J

Bench: Division Bench

Advocate: P.V. Kapur and Anurag Chawla, for the Appellant; Rajendra and R.N. Verma, for the Respondent

Judgement

D.K. Jain, J.

Two of the writ petitions, taken up herein, involve the provisions of the IT Act, 1961, and the other two involve the provisions of the Wealth-tax Act, 1957 (for short, "the WT Act"). All the four writ petitions raise common questions of law and even the relief sought in all, in substance being the same, these are dealt with under a common judgment. To appreciate the controversy, we shall treat the facts in CWP No. 3796 of 1992 as illustrative. The petitions pertain to the asst. yrs. 1989-90 and 1990-91.

2. The petitioner, who was assessed to Income Tax and wealth-tax in his capacity as the legal heir of the late Shri R. S. Agarwal, submitted the return of income for the asst. yr. 1989-90 on 30th October, 1989, which was accompanied by a statement of taxable income, showing income from various sources including income from house property. The return was accepted and an intimation under s. 143(1)(a) of the IT Act was sent. Subsequently, on 2nd August, 1991, the AO issued a notice under s. 148 of the IT Act, requiring the petitioner to file the return as he had reason to believe that certain income chargeable to tax had escaped assessment within the meaning of s. 147 of the IT Act, inasmuch as : (a) the rent from the property owned by the assessee, R. S. Aggarwal, was kept low and for the difference in rent he was

compensated by giving interest-free securities of Rs. 8 lakhs and Rs. 5,50,500 by the two companies, which fact came to light during the course of the assessment proceedings for the asst. yr. 1988-89, wherein the assessed had himself admitted that the correct rental income could be determined by adding 15 per cent. interest on the interest-free securities received by him, and (b) the value of the perquisites provided by Hotel Banjara Ltd., one of the tenants, in the form of residential accommodation had not been correctly shown in the return of income. In response to the notice issued, the assessed filed the return of income on 21st October, 1991. In order to get information on certain points, the AO issued a letter to the petitioner on 25th October, 1991, calling upon him to appear before him and produce any document, accounts or any other evidence which the petitioner may like to, in support of the return filed on 21st October, 1991. It appears that no proceedings took place before the AO on the appointed date or thereafter. Again on 30th October, 1991, an intimation under s. 143(1)(a) of the IT Act was sent to the petitioner, accepting the return filed on 21st October, 1991. Thereafter, on 1st May, 1992, the AO issued a fresh notice under s. 143(2) calling upon the petitioner to appear before him and furnish documents/clarifications on certain points. The petitioner furnished information in respect of certain points but thereafter objected to the continuation of the proceedings on the plea that the AO having made the assessment on 30th October, 1991, when an intimation under s. 143(1)(a) of the IT Act was sent after issuing a notice under s. 143(2) of the IT Act, he could not make another assessment under s. 143(3) of the IT Act. The officer was told that the proceedings initiated on 1st May, 1992, by issuing notice under s. 143(2) of the IT Act were without jurisdiction and was requested to drop the same. The officer declined to accede to the petitioner''s request. Hence, the present writ petition in which the petitioner now seeks to challenge even the validity of notice under s. 148 of the IT Act issued on 2nd August, 1991, and further proceedings taken thereafter on the basis of the return filed pursuant to the said notice.

The action of the AO in issuing notice under s. 148 is challenged on the ground that the petitioner having furnished to the AO all the details regarding the tenanted premises, including the amount of deposits received from the tenants, the AO could possibly have no "reason to believe" that any income chargeable to tax for the relevant assessment year had escaped assessment due to failure of the petitioner to disclose fully and truly all material facts necessary for his assessment and, Therefore, in the absence of this vital ingredient, a condition precedent for exercising jurisdiction under s. 147(a) of the IT Act, the notice under s. 148 was illegal and without jurisdiction. The re-initiation of assessment proceedings by issuing notice under s. 143(2) on 1st May, 1992, after issue of an intimation under s. 143(1)(a) of the IT Act, is assailed on the ground that on submission of the return under s. 148, a notice under s. 143(2) was issued on 25th October, 1991, before the intimation under s. 143(1)(a) was sent on 30th October, 1991, and, Therefore, the said order, though termed as intimation, in fact was tantamount to a regular

assessment under s. 143(3) of the IT Act. That being so, it is pleaded that the power of the AO to issue a notice under s. 143(2), with reference to the return filed on 21st October, 1991, stood exhausted and, Therefore, there was no question of fresh assessment proceedings being commenced by issuing a notice under s. 143(2) of the IT Act.

On the merits, it is claimed that the information furnished during the course of assessment proceedings for the asst. yr. 1988-89 has been misconstrued by the AO inasmuch as no interest income was in fact earned by the petitioner on the said security deposits and the interest which the petitioner could possibly earn on the said deposits was mentioned as an opportunity cost to justify the rateable value of the property in question.

3. We have heard Mr. P. V. Kapur, learned senior advocate, for the petitioner, and Mr. Rajendra, senior standing counsel for the respondent-AO.

4. Indisputably, s. 147 as it existed after its amendment by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1st April, 1989, would apply to the facts in hand. Sec. 147, material for our purpose, reads as follows :

"Sec. 147, Income escaping assessment-If the AO, has reason to believe that any income chargeable to tax has escaped-assessment for any assessment year, he may, subject to the provisions of s. 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 allowance, as the case may be, for the assessment year concerned (hereafter in this section and in ss. 148 to 153 referred to as the relevant assessment year) ..."

The section provides that if the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of ss. 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment. The new section not only merges cls. (a) and (b) of the pre-amended s. 147 but also brings about a significant change in the preliminary requirement of certain mandatory conditions before reassessment proceedings could be initiated under the old section. Under the old s. 147(a), the AO could initiate reassessment proceedings if he had reason to believe that income chargeable to tax had escaped assessment by reason of : (a) omission or failure on the part of an assessed to make a return under s. 139 for any assessment year; or (b) to disclose fully and truly all material facts necessary for his assessment for that year. As is evident from the amended section, in contradistinction to the original unamended section, requiring fulfillment of twin conditions spelt out in cl. (a) of s. 147 or in cl. (b) of the said section, as conditions precedent for issuing notice under s. 148 of the IT Act, it is not so in the amended section and the only condition for action now is that the AO should have reason to

believe that income has escaped assessment which belief can be reached in any manner, and is not qualified by the pre-condition of full and true disclosure of material facts by an assessee, as contemplated under the old s. 147(a) of the IT Act. An AO can now legitimately reopen the assessment in respect of an income which has escaped assessment. Undoubtedly, under the new section, power to reopen assessment is much wider and can be exercised even if an assessed had disclosed fully and truly all material facts.

This position in law is not disputed by learned counsel for the petitioner. However, laying emphasis on the last paragraph of the reasons recorded by the AO "that income chargeable to tax has escaped assessment due to failure of the assessed to disclose fully and truly all material facts necessary for his assessment", it is sought to be urged that the AO having himself formed the belief that escapement of income is on account of failure on the part of the petitioner to disclose fully and truly all material facts, his satisfaction must be tested on the anvil whether there was any failure on the part of the petitioner in that behalf. It is asserted that the reasons have to be seen in totality and no part of it can be ignored.

In our view, the contention is stated to be rejected. Once it is conceded that it is the amended s. 147 which has to apply for initiating proceedings for fresh assessment in respect of the asst. yr. 1989-90 and 1990-91, we fail to appreciate how the words, which do not find mention in the section, could be read into it. In a taxing statute one has to look squarely at the words of the statute and interpret them. The statute must be construed according to the plain language used by the legislature. In our view, Therefore, the last lines of the note dt. 2nd August, 1991, recorded by the AO, before issuing notice under s. 148 of the IT Act, namely, "due to failure of assessed to disclose fully and truly all material facts necessary for his assessment", are redundant, meaningless and are of no consequence in so far as the amended s. 147 is concerned.

5. The next question which arises for determination is whether on the basis of information coming on record during the course of assessment proceedings for the asst. yrs. 1988-89, the AO could entertain a reasonable belief about any income chargeable to tax having escaped assessment.

In the earlier part of the judgment, we have noted the reasons recorded by the AO for initiating proceedings under s. 147, viz., firstly, that the annual value of the property under s. 22 of the IT Act was kept low and the assessed was compensated for it by advancing interest-free loan and, secondly, that the value of perquisite had not been included in the total income. Having regard to the said reasons we have no hesitation in coming to the conclusion that those reasons by themselves constitute relevant and sufficient material to provide a foundation to the AO to form the belief that income chargeable to tax has escaped assessment for the relevant assessment years.

The contention, strenuously urged by Mr. Kapur, learned counsel for the petitioner, is that if ultimately after investigating the matter the AO comes to the conclusion that there was no understatement of rental income and the assessed did not earn any income or interest from the security deposits given by the tenants, and the petitioner''s stand that what was stated in the chartered accountant''s letter dt. 20th February, 1991, in respect of the asst. yr. 1988-89, was only an indication of opportunity cost, is accepted, it would knock the bottom off the AO''s stated belief and the petitioner would unnecessarily be subjected to the unwarranted drill of reassessment proceedings. We are afraid there is no merit in this contention as well.

As noted above, the main stand of the AO is that the facts regarding the furnishing of interest-free securities by the said two companies to the assessed to compensate him for the difference between the market rent of the property and the actual rent paid to him, came to light only during the course of assessment proceedings for the asst. yr. 1988-89, when the assessed had sought to justify the actual receipt of rent at much lesser rate, viz., Rs. 78,000 (declared for the asst. yr. 1988-89) as against the actual rateable value of Rs. 1,62,400 determined by the Municipal Corporation for the purpose of property tax. The relevant part of the letter of the chartered accountant dt. 20th February, 1991, filed during the course of assessment proceedings for the year 1988-89, relied upon by the AO, has been placed on the record and it reads as follows :

	Rs.	Rs.
"2. Rent received from :		
Gulmohar Estate	12,000	
Banjara Hotels Ltd.	66,000	78,000
3. Security received :		
Gulmohar Estate	8,00,000	
Banjara Hotels Ltd.	6,82,500	
	14,82,500	
Interest at 15 per cent. per annum on Rs. 14,82,500 (opportunity cost of security received)		2,22,375
Actual rental value		3,00,375

Hence, the actual rent received including interest is more than the municipal valuation, because on the amount of securities received the assessed has earned something which is taxable in the hands of the assessee. We hope you would find

the above in order and will complete the assessment".

From the above note it is evident that the question whether the assessed has earned any income on the deposits received by him or has derived any other benefit from these deposits, capable of being evaluated in terms of money has necessarily to be gone into and this aspect having not been considered earlier, the AO had perforce to initiate reassessment proceedings under the IT Act. For a moment we are not suggesting that there is no merit in the contention of the petitioner that the amount of interest indicated in the above note was only an opportunity cost simpliciter, having no element of income earned, which could be subject to tax. But, at this stage, it is difficult for us to hold that on the basis of material on record, in particular the aforequoted letter, the AO could not entertain the belief he did. In our view, the belief entertained by the AO cannot be said to be a mere pretence to reopen the concluded assessment for some ulterior purpose. We are, Therefore, of the opinion that the issue of notice under s. 148 of the IT Act is not vitiated on the ground that no income chargeable to tax has escaped assessment.

6. The only other issue which survives for consideration is about the legality and validity of the notice issued under s. 143(2) of the IT Act after an intimation under s. 143(1)(a) had been sent to the petitioner. The question is whether the said intimation sent to the petitioner after issuing notice under s. 143(2) tantamounts to regular assessment under s. 143(3), exhausting the power of the AO to issue a fresh notice under s. 143(2) for the purpose of making another assessment under s. 143(3) of the Act. We feel that the controversy may not detain us for long because we have already dealt with the issue in detail in Apogee International Ltd. Vs. Union of India and Another, . In the said judgment delivered by us on 4th March, 1996, after analysing the provisions of s. 143(1), (2) and (3) of the IT Act, we have held that an intimation to the assessed under s. 143(1)(a)(i) of the IT Act even after issue of notice under s. 143(2), does not oust the jurisdiction of the AO to issue a fresh notice under s. 143(2) of the IT Act, where he considers it to be necessary or expedient to ensure that the assessed has declared his income correctly. Following the said judgment, we reject the contention.

For the forgoing reasons, we are of the opinion that in the facts and circumstances of the instant case, the impugned notices issued under ss. 148 and 143(2) of the IT Act and ss. 17 and 16(2) of the WT Act (subject-matter of the petitions under the WT Act) are valid.

7. There is no merit in the writ petitions and the same are accordingly dismissed. The rule is discharged in all the petitions, leaving the parties to bear their own costs.

8. Before parting we may clarify that any observations made on the merits of the additions sought to be made to the income already assessed are only for a limited purpose to determine whether or not the AO was justified in initiating proceedings by issuing the afore noted impugned notices and the dismissal of these writ

petitions will not preclude the petitioner from urging any question of fact or law before the appropriate forum.