

1. Case :- WRIT TAX No. - 1086 of 2007

Petitioner :- Mahesh Kumar Gupta

Respondent :- Commissioner Of Income Tax & Another

Petitioner Counsel :- Nikhil Agrawal,Dhruv Agrawal

Respondent Counsel :- S.C.

2. Case :- WRIT TAX No. - 1156 of 2007

Petitioner :- Smt. Rukmani Devi

Respondent :- Commissioner Of Income Tax & Another

Petitioner Counsel :- Nikhil Agrawal,Dhruv Agrawal

Respondent Counsel :- S.C.,B.J.Agrawal,D.Awasthi

3. Case :- WRIT TAX No. - 1157 of 2007

Petitioner :- Yogesh Kumar Gupta

Respondent :- Commissioner Of Income Tax & Another

Petitioner Counsel :- Nikhil Agrawal,Dhruv Agrawal

Respondent Counsel :- S.C.

Hon'ble Prakash Krishna,J.

Hon'ble Ram Surat Ram (Maurya),J.

(Delivered by Prakash Krishna, J.)

These three writ petitions were heard together and are being disposed of by a common judgment. Out of all these three petitions two are on behalf of the brothers and third one is on behalf of their mother.

Sri Pyare Lal Gupta was the leaseholder of plot situate at 3 Edmonstone Road, Allahabad (now known as Tashkand Marg, Allahabad) under the Government Grants Act, 1985. Lease of the plot expired in the year, 1962 and was renewed on 7th of May, 1990 for a further period of thirty years with further renewal's clause. It was renewed in the name of Smt. Rukmani Devi, Sri Yogesh Kumar Gupta, brother, and in the name of petitioner Mahesh Kumar Gupta. The leasehold rights were subsequently got converted into freehold rights on 27th of August, 1990. It appears that these persons decided to sell a parcel of the land and they applied for and were granted sanction by the Income Tax Department under section 230(A) (i) of the Income Tax Act. The parcel of the land was sold for a sum of Rs.8,25,000/- and each petitioner got Rs.2,75,000/- in his share.

The dispute relates to the assessment year 2000-2001 in all these petitions. The petitioners filed returns which were accepted. The further allegation is that the sale consideration was invested in fixed deposit and UTI Bonds etc. with which we are presently not concerned.

The present writ petition arises out of the reassessment notice under section 148 of the Income Tax Act. The said notice is dated 23rd of March, 2007 for the assessment year 2000-2001. In response to the notice the petitioner has filed the return of income and also his/her objections challenging

the very initiation of reassessment proceedings on various grounds. The objections having been dismissed by the order dated 29th of June, 2007, impugned in these petitions.

Heard Sri Nikhil Agrawal, learned counsel for the petitioners and Sri D. Awasthi, learned standing counsel for the respondents.

The only point urged before us is that the impugned notice under section 148 of the Income Tax Act is barred by time. Therefore, the proceedings for reassessment should be dropped.

The controversy centres around the interpretation of section 149 (1) (b) of the Income Tax Act. For the sake of convenience, the relevant portion of section 149 is reproduced below:-

Time limit for notice.

149. (1) No notice under section 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 sub- clause (b) or sub- clause (c);
- (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 rupees one lakh 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.]

(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 under section 148 is to be served is a person treated as the agent of a non- resident under section 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 six years from the end of the relevant assessment year.

Sri Nikhil Agrawal, learned counsel for the petitioner, submits that the notice under section 148 is dated 23rd of March, 2007 and it relates to the assessment year 2000-2001. A period of four years from the end of the relevant assessment year is normal period within which assessing authority can issue a notice unless the case falls under the clause (b) (c). Clause-(b) gives extended period of six years from the end of the relevant assessment year unless the income chargeable to tax which has escaped the assessment amounts to or is likely to amount one Lakh of rupees or more for that year. The argument is that in the case on hand, there is no material before the department to show that the income which is said to have been escaped,

amounts to or is likely to amount to Rs.1 Lakhs or more. Attention of the Court was invited towards its earlier order dated 7th of August, 2007, which is reproduced below:-

"The original record of the sanction by the Addl. Commissioner has been produced by learned counsel for the Income Tax Department. It does not show that while according sanction, mind had been applied by the Addl. Commissioner whether the income which was believed to have escaped assessment exceeded Rupees One Lakh. In fact there was no suggestion from the side of the proposing officer that the amount was above Rupees One Lakh.

The limitation for issuing notice will be enhanced from four years to six years, only if income escaping assessment was in excess of Rupees One Lakh. The notice has admittedly been issued beyond four years and within six years.

Counter affidavit may be filed within two weeks, rejoinder affidavit may be filed within two weeks thereafter.

List thereafter.

The original file has been returned to the learned standing counsel of the Income Tax Department."

A counter affidavit has been filed on behalf of the respondents. There it has been stated that an assessee has not disclosed the income under the head 'capital gains' in the return filed on 30th of August, 2000 and sale consideration was above Rs.10 Lakhs, the income escaped was more than Rs.1 Lakh, vide para 3 of the counter affidavit. It appears that the respondents have no idea about the sale consideration and that is the reason few paragraphs afterwards in para 5 it has been stated that the sale consideration was around Rs.6 Lakhs. The whole basis of the counter affidavit is that the assessee did not act in accordance with law and it was obligatory upon him to pay the taxes on short term capital gain income which has escaped the assessment. In the counter affidavit, no material has been disclosed therein to show that at the time of seeking sanction for extension of period of limitation as provided for under section 149 the Assessing Authority or the sanctioning authority had any material in their possession that the income chargeable to tax which has escaped the assessment amounts to or is likely to amount to Rs.1 Lakh or more.

At this stage, we may consider the reasons recorded by the Income Tax Officer for reopening the assessment. The same is reproduced below:-

"During the Assessment Year 2000-2001 the assessee Shri Mahesh Kumar Gupta sold the property (land) situated at 13-D Tashkant Marg, Allahabad after converting leasehold land into freehold and the capital gain/loss arrived at was offered for duration as long term capital gains.

The assessee sold the property within three years after converting the land into freehold resulting into short term capital gains in view of the judgment of Hon'ble Karnataka High Court in the case of CIT vs. Dr. V.V. Mody (218 ITR page 1).

I have, therefore, reason to believe that the income chargeable to tax under the head Short Term Capital Gains has escaped assessment."

The reason assigned for reopening is that the petitioner after converting the leasehold land into freehold sold the property within three years after converting the land into freehold resulting into short term capital gain in view of the Karnataka High Court's decision referred to above. What income is said to have been escaped does not find mention therein. Even assuming for the sake of argument, the income was liable to be taxed as short term gain unless there is any material before the authority concerned that it exceeds the limit of Rs. 1 Lakh, extended period of limitation of six years will not be available to the department. The normal period of limitation is four years for giving the notice under section 148 and where the escaped income is likely to amount to Rs.1 Lakh or more, the extended period of limitation of six years would be attracted. This objection of the petitioner has been rejected by the impugned order on the ground that since the permission has been granted by the Joint/Additional Commissioner, Income Tax, statutory requirement stands fulfilled vide para-3 of the order which is reproduced below:-

"You have also objected that it is not mentioned in the reasons of taking action U/S 148 that the escaped income is more than 100000/-. In this connection this to inform that it is mentioned in notice U/S148 itself that the notice is being issued after proper sanction of Joint/Addl. Commissioner of Income Tax. This fulfills the requirement of law, you have provided the reasons of initiating action U/S148 not computation of income. The computation of income will be provided after proper hearing & giving proper opportunities to be heard."

The stand of the department as is evident from the above quoted paragraph has no legs to stand. The Joint/Additional Commissioner, Income Tax was not aware about the fact that the income chargeable to tax which has escaped the assessment is Rs.1 Lakh or more for the relevant Assessment Year. The proviso to section 151 (1) fortifies our view which says that after the expiry of four years from the end of the relevant Assessment Year no notice under section 148 shall be issued or unless the Chief Commissioner or Commissioner is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for issue of such notice. On a true and proper construction of the proviso it is imperative that the Assessing Officer in his reason should state that the escaped income is likely to be Rs.1 Lakh or more so that the Chief Commissioner or the Commissioner may record his satisfaction. The sanctioning authority must be aware that it has exercised power of extended period of limitation under 149 (1) (b) of the Act. Exception has been carved out by clause (b) to section 149(1) in respect the income chargeable to tax which has escaped assessment, amounts to Rs.1 Lakh or more. To fall within exception clause the relevant facts should have been recorded by the Assessing Authority in its order while recording the reason so that a sanctioning authority may apply its mind to the proposition while granting the sanction.

The learned counsel for the department after close of the argument has filed the following judgements for consideration of this Court:-

1. GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and others, 259 ITR, page 18.

2. Dr. H.S. Bawa Vs. CIT, 25 Taxman, 15 (P & H).
3. Vikram Kothari HUF Vs. State of U.P., 10 Taxman, 280 (Allid).
4. Export Credit Guarantee Corporation of India Vs. Addl. Commissioner of Income Tax, 30 Taxman, 211 (Bom).
5. A.C.I.T. Vs. Rajesh Jhavri, 291 ITR, Page 500 (SC).
6. C.C.I.T. Vs. Kanhaiya Lal Kapoor, 147 Taxman, 12 (Allid).
7. Pooran Mal Vs. Director of Inspection, New Delhi, 93, ITR 505.
8. Deep Chand Daga Vs. I.T.O., 77 ITR, 661 (MP).
9. Fisher Xomox Sanmar Ltd. Versus Assistant Commissioner of Income-tax, 294 ITR 620 (Mad.)

None of the judgments referred to above have any connection to the point in issue even remotely. They relate either to the question of non-disclosure of income or failure on the part of the assessee to disclose the income fully or truly and what amounts to "reason to believe an information". None of these points were urged before us and we failed to understand the filing of the rulings by the counsel as referred to herein above.

The only point urged and pressed before us is whether in absence of anything in the reasons recorded to suggest that the income chargeable to tax which has escaped the assessment is Rs. one lakh or more having not been mentioned the reassessment notice given after four years of the close of the assessment order is valid or not.

For the reasons given above, we find sufficient force in the argument of the learned counsel for the petitioner that on the basis of the reasons recorded by the Assessing Officer, the initiation of the reassessment proceedings relevant to the Assessment Year 2000-2001 by means of the notice dated 23.3.2007 after more than four years is clearly barred by time.

In the result, all the three writ petitions succeed and are allowed and the impugned notices dated 23rd of March, 2007 are hereby quashed.

No order as to costs.

(R.S.Ram (Maurya), J.) (Prakash Krishna, J.)

Order Date :- 17.4.2013
LBV