Km Sharma vs Income Tax Officer, Ward 13(7)New Delhi on 11 April, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1715, 2002 (4) SCC 339, 2002 AIR SCW 1659, 2002 TAX. L. R. 803, (2002) 4 JT 10 (SC), (2002) 122 TAXMAN 426, 2002 (3) SLT 123, 2002 (5) SRJ 467, (2002) 174 CURTAXREP 210, (2002) 3 SCJ 77, (2002) 2 LACC 115, (2002) 3 SCALE 383, (2002) 254 ITR 772, (2002) 169 TAXATION 539, (2002) 3 SUPREME 235

Bench: Chief Justice, N. Santosh Hegde, D.M. Dharmadhikari

CASE NO.:
Appeal (civil) 7742 of 1997

PETITIONER:
KM SHARMA

Vs.

RESPONDENT:
INCOME TAX OFFICER, WARD 13(7)NEW DELHI

DATE OF JUDGMENT: 11/04/2002

BENCH:
CJI, N. Santosh Hegde & D.M. Dharmadhikari

JUDGMENT:

DHARMADHIKARI, J In this appeal, which is filed after obtaining special leave, the Order dated 24th May, 1996 of the High Court of Delhi has been assailed. The main question involved is on the application and interpretation of the provisions of Section 150 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

The relevant facts necessary for deciding the legal question raised are as under: -

1. The appellant's lands were acquired under Section 6 of the Land Acquisition Act and an award was passed on 2.12.1967 by the Chief Commissioner of Delhi granting compensation in favour of the appellant. The Additional District Judge by Judgment dated 20.5.1980 held the appellant entitled to 1/32 share of the compensation awarded under various awards and the appellant was granted total compensation in

the sum of Rs.1,18,810/- approximately in the year 1981.

2. On a reference under Section 18 of the Land Acquisition Act, the learned Additional District Judge, Delhi vide his Judgment dated 31.7.1991 awarded a sum of Rs.1,10,20,624/-. The amount was paid to the appellant between 15.10.1992 and 26.5.1993. The amounts paid represented principal sum of compensation of Rs.41,96,496/- and interest in the sum of Rs.76,84,829/- upto 18.5.1992. Before making the above payments, tax was deducted at source amounting to Rs.8,60,701/-

3. Since the lands acquired were agricultural lands and were acquired prior to 1.4.1970, capital gains tax was not leviable but tax was leviable on interest earned on the amount awarded on year to year basis.

4. The appellant through counsel sent a letter dated 17.9.1993 informing the ITO that he had received interest amount of Rs.76,84,829/- and interest accrued from year to year was assessable in each year. Year-wise break up of the interest was also given in the letter. According to the appellant, no tax was leviable on interest accruing up to 31.3.1982 as assessment for it had become barred by time. The appellant, therefore, requested that necessary action be taken under Section 147 of the Act to enable the appellant as assessee to file his Income Tax Return and pay tax accordingly.

5. On 31.3.1994, the appellant was served with impugned notices under Section 148 of the Act for 16 assessments years i.e., 1968-69 to 1971-72 and assessments years 1981-82 to 1992-93.

6. The appellant, in the High Court, assailed the notices issued under Section 148 of the Act for reassessment for the assessment years 1968-69 to 1971-72 and for the year 1982-83 on the ground that the proposed reassessment for those assessment years had already become barred by time under Section 149 of the Act, for which in the relevant periods maximum period of four years or seven years limitation was prescribed depending upon the quantum of liability towards tax.

7. The High Court by the impugned Judgment accepted the contention of the Department that the provisions of Section 150(1) of the Act, as amended with effect from 1.4.1989, could be resorted to for reassessment to levy tax on the increased amount of interest earned by the appellant in the relevant assessment years. It was held that bar of limitation prescribed under Section 149 of the Act was not attracted by virtue of the provisions of Section 150 (1) because notices for such reassessments are based on the awards passed in the land acquisition proceedings by the Court of the Additional District Judge on a reference under Section 18 of the Land Acquisition Act. Upholding the validity of the assessment proceedings initiated by the Department under Section 148 of the Act, the High Court rejected the contention of the assessee that sub-section (2) of Section 150 of the Act is an explanation to sub-section (1) and proceedings for reassessment, which had already become barred

> by time under Section 149 of the Act before 1.4.1989, could not have been commenced on the amended provisions of sub-

section (1) of Section 150.

8. To appreciate the contentions advanced by learned counsel for the parties and the decision of the High Court, it is necessary to reproduce for critical examination the provisions of Section 150 (1) and (2) of the Act. The provisions read as under:

> "150 (1) Notwithstanding anything contained in section 149, the notice under section 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] [The portion bracketed and underlined above is inserted aby the Direct Tax Laws (Amendment) Act, 1987 with effect from 1.4.1989.] (2) The provisions of sub-section (1) 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."

9. Section 149 of the Act prescribes maximum period of four or seven years depending upon the quantum of tax as mentioned in the said Section for initiating reassessment proceedings. Section 150 (1) states that the period of limitation prescribed in Section 149 is not applicable, if the reassessment is proposed on the basis of any Order passed by any 'authority in any proceedings under the Act by way of appeal, reference or revision' or 'by Court in proceedings under any other law'. Sub-section (2) of Section 150, however, makes it clear that reassessment permissible under sub-section (1) of Section 150 would not be available to the Department where the period of limitation for such assessment or reassessment has expired at the time it is proposed to be reopened. In sub-section (1) of Section 150, by Direct Tax Laws (Amendment) Act, 1987 with effect from 1.4.1989, the words 'or by a Court in any proceeding under any other law' were inserted which are shown in bracket with underline in the Section reproduced above.

10. The main question that has been raised on behalf of the learned counsel appearing for the parties is whether the provisions of sub-section (1) of Section 150 as amended can be availed for reopening assessments, which have attained finality and could not be reopened due to bar of limitation, that was attracted at the relevant time to the proposed reassessment proceedings under the provisions of Section 149 of the Act.

11. The submission made on behalf of the appellant is that neither the provisions of sub-section (1) nor sub-section (2) can be read as giving more than intended operation to the said provision. The

provisions, it is argued, do not permit the authorities to reopen assessments, which have become final and reassessment of which had become barred by time before 1.4.1989 when Section 150(1) was amended. Reliance is placed on the decision of this Court in S.S.Gadgil v. Lal and Co. reported in [1964] 53 ITR 231.

12. The learned counsel appearing on behalf of the Department has made an effort to persuade this Court to accept his construction of the provisions of Section 150(1) and (2) of the Act. It is argued that it is for the specific purpose of assessing income, which might accrue on the basis of any decision of any Court in any proceeding in any other law that the provision has been amended to lift bar of limitation for reassessment.

13. Fiscal statute more particularly on a provision such as the present one regulating period of limitation must receive strict construction. Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to sub-section (1) of Section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to sub-section (1) of Section 150 which intends to lift embargo of period of limitation under Section 149 to enable Authorities to reopen assessments not only on the basis of Orders passed in proceedings under the IT Act but also on Order of a Court in any proceedings under any law has to be applied prospectively on or after 1.4.1989 when the said amendment was introduced to sub-section (1). The provision in sub-section (1) therefore can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for assessment under section 149 of the Act.

14. To hold that the amendment to sub-section (1) would enable the Authorities to reopen assessments, which had already attained finality due to bar of limitation prescribed under Section 149 of the Act as applicable prior to 1.4.1989, would amount to giving sub-section (1) a retrospective operation which is neither expressly nor impliedly intended by the amended sub-section.

15. On behalf of the assessee before the High Court and in this Court reliance has been placed on the provisions contained in sub-section (2) of Section 150. It is submitted that the provision contained in sub-section (2) of Section 150 is in the nature of clarification or explanation to sub-section (1). Sub-section (2) makes it clear that the embargo of period of limitation lifted under sub-section (1) for proposed reassessments based on Order in proceedings appeal, reference or revision, as the case may be, would not apply to assessments which have attained finality due to bar of limitation applicable at the relevant time.

16. The High Court rejected the above contention of the assessee on the ground that on the amendment introduced with effect from 1.4.1989 in sub-section (1), which enables reopening of assessment based on any Order of 'Court in any proceedings in any law', there is no corresponding amendment made in sub-section (2) of Section 150 to bar reassessment based on Order of Court

passed in any proceedings in any law in cases where prescribed period of litigation for reassessment had already expired.

17. We do not find the above reasoning of the High Court is sound. The plain language of sub-section (2) of Section 150 clearly restricts application of sub-section (1) to enable the Authority to reopen assessments which have not already become final on the expiry of prescribed period of limitation under Section 149. As is sought to be done by the High Court, sub-section (2) of Section 150 cannot be held applicable only to reassessments based on Orders 'in proceedings under the Act' and not to Orders of Court 'in proceedings under any other law'. Such an interpretation would make the whole provision under Section 150 discriminatory in its application to assessments sought to be reopened on the basis of Orders under the IT Act and other assessments proposed to be reopened on the basis of Orders under any other law. Interpretation, which creates such unjust and discriminatory situation, has to be avoided. We do not find that sub-section (2) of section 150 has that result. Sub-section (2) intends to insulate all proceedings of assessments, which have attained finality due to the then existing bar of limitation. To achieve the desired result it was not necessary to make any amendment in sub-section (2) corresponding to sub-section (1), as is the reasoning adopted by the High Court.

18. Sub-section (2) aims at putting embargo on reopening assessments, which have attained finality on expiry of prescribed period of limitation. Sub-section (2) in putting such embargo refers to whole of sub-section (1) meaning thereby to insulate all assessments, which have become final and may have been found liable to reassessments or re-computation either on the basis of Orders in proceedings under the Act or Orders of Courts passed under any other law. The High Court, therefore, was in error in not reading whole of amended sub-section (1) into sub-section (2) and coming to the conclusion that reassessment proposed on the basis of order of Court in proceedings under Land Acquisition Act could be commenced even though the original assessments for the relevant years in question have attained finality on expiry of period of limitation under Section 149 of the Act. On a combined reading of sub-section (1) as amended with effect from 1.4.1989 and sub-section (2) of Section 150 as it stands, in our view, a fair and just interpretation would be that the Authority under the Act has been empowered only to reopen assessments, which have not already been closed and attained finality due to the operation of the bar of limitation under Section 149.

19. This Court took similar view in the case of S.S.Gadgil (supra) in somewhat comparable situation arising from the retrospective operation given to Section 34(I) of Income Tax Act, 1922 as amended with retrospective effect from 1.4.1956 by the Finance Act of 1956. In the case of S.S.Gadgil (supra) admittedly under clause (iii) of the proviso to Section 34(I) of the Indian Income Tax Act, 1922, as it then stood, a notice of assessment or reassessment could not be issued against a person deemed to be an agent of a non-resident under Section 43, after the expiry of one year from the end of the year of assessment. The Section was amended by Section 18 of the Finance Act, 1956, extending this period of limitation to two years from the end of the assessment year. The amended was given retrospective effect from April 1, 1956. On March 12, 1957, the Income Tax Officer issued a notice calling upon the assessee to show cause why, in respect of the assessment year 1954-55, the assessee should not be treated as an agent under Section 43 in respect of certain non-residents. The case of

the assessee, inter alia, was that the proposed action was barred by limitation as right to commence proceedings of assessment against the assessee as an agent of non-resident for the assessment year 1954-55 ended on 31.3.1956, under the Act before it was amended in 1956. This Court in the case of S.S. Gadgil (supra) accepted the contention of the assessee and held as under:

> ". The legislature has given to section 18 of the Finance Act, 1956, only a limited retrospective operation, i.e., up to April 1, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income-tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided become barred."

20. On a proper construction of the provisions of Section 150 (1) and the effect of its operation from 1.4.1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to 1.4.1989 for assessments which have already become final due to bar of limitation prior to 1.4.1989. Taxing provision imposing a liability is governed by normal presumption that it is not retrospective and settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the Authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that sub-section (1) of Section 150, as amended with effect from 1.4.1989, does not enable the Authorities to reopen assessments, which have become final due to bar of limitation prior to 1.4.1989 and this position is applicable equally to reassessments proposed on the basis of Orders passed under the Act or under any other law.

21. As a result of the discussion aforesaid, the appeal is allowed. The Judgment of the High Court of Delhi dated 24.5.1996 is hereby set aside. As prayed in the petition, the impugned notices issued by the respondent of the Income Tax Department under Sections 148 and 142 of the Act against the appellant for the assessment years 1968-69 to 1971-72 and 1981-82 are hereby quashed. The appeal stands allowed with costs.

..CJI ...J [N. Santosh Hegde] ...J [D. M. Dharmadhikari] April 11, 2002