

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.5282 of 2014
Reserved on:26.03.2015
Date of decision:10.04.2015

Sudhir Kapoor

Income Tax Officer & another

Versus

.....Petitioner

.....Respondents

CWP No.5283 of 2014

Sudhir Kapoor

Income Tax Officer & another

Versus

.....Petitioner

.....Respondents

CWP No.5285 of 2014

Sudhir Kapoor

Income Tax Officer & another

Versus

.....Petitioner

.....Respondents

CWP No.5309 of 2014

Sudhir Kapoor

Income Tax Officer & another

Versus

.....Petitioner

.....Respondents

CWP No.5311 of 2014

Sudhir Kapoor

Income Tax Officer & another

Versus

.....Petitioner

.....Respondents

CWP No.5313 of 2014

Sudhir Kapoor

Income Tax Officer & another

Versus

.....Petitioner

.....Respondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Ms. Radhika Suri, Sr. Advocate
with Ms. Rajni Paul, Advocate, for the petitioner.

Mr. Yogesh Putney, Advocate, for the respondents.

G.S.Sandhawalia J.

1. This judgment shall dispose of a bunch of 6 writ petitions bearing CWP Nos.5282, 5283, 5285, 5309, 5311 & 5313 of 2014, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP No.5282 of 2014 titled *Sudhir Kapoor Vs. Income Tax Officer, Panipat & another*, pertaining to the assessment year 1996-97.

2. Challenge in the present writ petition is to the order dated 17.02.2006 (Annexure P8), vide which, the Commissioner of Income Tax, Karnal (for short, the 'CIT')-respondent No.2 rejected the objections raised in the revision petitions of the deceased assessee-Hira Lal Kapoor, predecessor-in-interest of the present petitioner. Challenge has also been raised to the order dated 12.09.2013 (Annexure P12), passed by respondent No.2, under Section 154 of the Income Tax Act, 1961 (for short, the 'Act'), whereby it was held that the assessee could not point out any apparent mistake in the order passed under Section 264 of the Act, which could be rectified and therefore, the revision petitions filed were rejected.

3. The necessary facts for deciding the present bunch of writ petitions is that the land of the HUF of the deceased assessee was acquired vide notification issued under Section 4 of the Land Acquisition Act, 1854. The award was passed on 21.02.1992 by the Land Acquisition Collector, Panchkula (for short, the 'LAC') and as per the case of the petitioner, the land was situated out of the limits of the notified area and the compensation amount received was exempted from the Long Term Capital Gain (for short, the 'LTCG').

4. A notice dated 11.03.2003, under Section 148 of the Act was issued by recording reasons that 15 acres of land had been acquired and the amount had been deposited in four bank accounts of Panipat and income tax returns had been filed for the assessment years 1994-95 and 1995-96 but no return for income had been filed for the year 1996-97. As per the reasons, the quantum of income which had escaped assessment was ₹2,54,659/- for the period from 01.04.1995 to 31.03.1996, relevant to assessment year 1996-97. On account of the reason to believe that due to the failure on the part of the assessee to file his income tax returns for the said years and for the said amounts, permission was sought by the Income Tax Officer, Panipat (for short the 'ITO')-respondent No.1, to assess the escaped income. The deceased-assessee, vide objections dated 26.02.2004, through the present petitioner, filed objections wherein reliance was placed upon the judgment of the Apex Court in **K.M.Sharma Vs. Income Tax Officer, Ward 13(7), New Delhi AIR 2002 SC 1715** on the ground that Section 149 of the Act prescribes a maximum period of 4 years for initiating reassessment proceedings and the quantum of tax had to be of more than ₹1 lac for that year. The assessment proceedings for the year 1996-97 to 1999-2000, was accordingly, sought to be dropped wherein the objection was taken that the assessment proceedings for the year 1996-97 and 1998-99 were time-barred. Similar objections were also sent on 27.02.2004. However, assessment order was passed on 19.03.2004 (Annexure P6).

5. A perusal of the letter dated 08.03.2004 (Annexure P5) from the ITO would also show that the said officer had called for information under Section 133 of the Act from the LAC wherein the details of the award were provided to him and the amount of compensation which had been paid to the assessee. The assessment was framed on 19.03.2004 wherein it was noticed that the present petitioner had attended the proceedings and the necessary objections had been

filed on 26.02.2004 and the assessee had been asked to file returns by 09.01.2004 but no return had been filed. The reply of the assessee was held to be unwarranted, untenable, without any force and the ITO came to the conclusion that the assessee was not cooperative and made the *ex parte* assessment on the basis of the best judgment and material on the ground that there was a receipt of interest on the deposit of ₹2,54,659/-. The assessee having received additional compensation of ₹1,56,270/- by cheque dated 04.09.1995, was assessed under LTCG under Section 45(5)(b) Explanation (1) of the Act and accordingly, penalty notices were also issued for concealment of income and for non-compliance of the noticed issued under Section 142(1) of the Act, apart from charging of interest etc.

6. The revision petitions, filed under Section 264 of the Act were then filed before respondent No.2 by taking the plea that the objections had not been disposed of regarding the initiating of proceedings under Section 148 of the Act and the compensation originally charged was not liable to capital gain tax which had been wrongly charged on the enhanced compensation and was liable to be exempted apart from raising other objections.

7. Respondent No.2 only dealt with the issue of LTCG and held that the assessee had been asked to produce the copy of the original notification issued by the State Government and therefore, it was not possible to verify the genuineness of the contention of the assessee and the same was rejected. However, on the issue of limitation, for the assessment years 1996-97 and 1998-99, no reference was made whether the proceedings were time-barred, as had been raised before respondent No.1.

8. In the meantime, the assessee expired. Resultantly, the rectification application, under Section 154 of the Act, was filed on 28.02.2013 wherein copy of the objections dated 26.02.2004 were also attached and written submissions

dated 05.04.2013, were also submitted, taking the plea that the land which had been acquired was not situated within the notified area and the notification was only issued on 06.01.1994 for Panipat and the enhanced amount of compensation was exempted from LTCG. Reliance was placed upon the judgment of the Apex Court in **Commissioner of Income Tax, Faridabad Vs. Ghanshyam (HUF)** **[2009] 315 ITR 1 (SC)**.

9. The issue of the amount of tax adjudged was only ₹71,990/- and the quantum being less than ₹1 lac, as per Section 148 of the Act, the objection was raised to the jurisdiction for opening the assessment. Respondent No.2 again fell into the same error regarding the non-disposal of the so called objections by holding that it would not render the assessment order illegal. The reasoning given to justify the action was that the demand raised in both the assessment orders for the years 1996-97 and 1997-98, on conclusion of reassessment proceedings was more than ₹1 lac and the contention was not maintainable. The completion of assessment without passing a separate order on the said objections were held to be justified. The fact that the land was located beyond the municipal limits was held not to be especially established by the assessee at the assessment stage or under the proceedings under Section 264. Accordingly, the decision under Section 264 was upheld, while being weighed down by the ground that the petition was filed 2 days before the limitation expired and therefore, the order under Section 264 was not liable to be interfered with.

10. Learned Senior Counsel for the petitioner has, thus, contended that once specific objections had been raised on the issue of jurisdiction for two assessment years and there was sufficient material before the Assessing Officer regarding the details of the land and when the award was passed, he was not justified in framing the assessment and imposing LTCG. Reference was, accordingly, made to the notification dated 06.01.1994 which had been attached

in the written submissions before the respondent No.2, to contend that once the land was beyond the notified area and was agricultural land and not falling within the jurisdiction of Municipality, as provided under Section 2(14) of the Act, the authorities below were in error in not dealing with all the contentions.

11. Counsel for the revenue, on the other hand, defended the impugned orders on the ground that the petitioner had not been cooperative and did not provide the requisite information and therefore, the impugned orders were passed. It would, thus, be necessary to refer to Section 149(1)(b), which reads as under:

“Section 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 clause (b) [or 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 one lakh rupees or more for that year.”

12. After hearing counsel for the parties, we are of the view that the assessee has raised a legal objection in his communications dated 26.02.2004 and 27.02.2004 before respondent No.1, pertaining to the assessment years 1996-97 and 1997-98 wherein he has raised the objection of jurisdiction under Section 149(1)(b) and specified that the income chargeable would be the income that escaped tax, which is the relevant factor. Thus, the quantum of tax which has escaped assessment was to be kept in mind. Admittedly, the interest income was only ₹2,54,659/- which had, supposedly, escaped income and the return had not been filed. The income chargeable to tax on the said amount was, thus, relevant factor which was sought to be agitated but never dealt with by respondent No.1, solely on the ground that the return had not been filed. The objections having not

been dealt with solely on the ground that return had not been filed inspite of being asked to, would, thus, violate the mandate of the Apex Court laid down in **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & others [2003] (259) ITR 19 (SC)** wherein it has been held that the Assessing Officer is bound to dispose of the objections by passing a speaking order. Relevant portion reads as under:

“We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.”

13. The same error was made by respondent No.2 wherein also, the petitioner had filed the revision petitions under Section 264 of the act and thereafter, the rectification application was filed under Section 154 of the Act. Admittedly, the rectification application was also within limitation and solely on account of the fact that it was filed just before the limitation coming to an end, would not be a ground for respondent No.2 to deny the relief. Merely on the ground that the amount of demand on conclusion of the reassessment proceedings was more than ₹1 lac, on the income which is chargeable and which had escaped assessment would have to be seen at the time of issuing notice under Section 149 of the Act and not at the time of the conclusion of assessment proceedings and therefore, the reasoning arrived at by respondent No.2 is also without any justification. We are also of the view that there was sufficient material before

respondent No.1 regarding the amount of compensation received by the deceased-assessee which had been supplied by the LAC vide letter dated 08.03.2004 and therefore, the respondent No.1 was not justified in coming to the conclusion that the deceased-assessee had not supplied the material facts. It was also the bounden duty of respondent No.1 to take into consideration the fact that the land fell within the notified area of the Panipat Municipality or not.

14. In CWP Nos.5285, 5309, 5311 & 5313 of 2014, the assessee had filed his returns but the interest received by the assessee was assessed to tax without taking into consideration the tax deducted at source and without referring to the interest certificates issued by the banks, on the same grounds that the assessee was not cooperating.

15. Accordingly, we are of the view that the matter is liable to be remanded to respondent No.1 for fresh decision and to take into consideration the returns filed for each assessment years, separately, and also take into consideration the TDS certificates issued by the banks regarding the interest element. The issue of jurisdiction for the 2 years pertaining to the years 1996-97 and 1997-98, as arising under Section 149(1)(b) also be specifically dealt with.

Resultantly, the present writ petitions are allowed and the impugned orders dated 17.02.2006 (Annexure P8) and 12.09.2013 (Annexure P12) are quashed along with the assessment made for the years 1996-2000 and matter is remanded to respondent No.1, for fresh decision, on merits.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

10.04.2015
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