

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.18471 to 18477 of 2003
and WPMP.Nos.23079, 23081, 23083, 23085, 23087, 23089 & 23091
of 2003

W.P.No.18471 of 2003

Ajit Kumar Chordia

... Petitioner
in all the Writ petitions

Vs

1.The Commissioner of Income Tax,
Chennai-IX,
No.611, Anna Salai, II Floor,
Kannammai Building,
Chennai-6.

2.The Asst. Commissioner of Income Tax,
Range X,
No.611, Anna Salai, II Floor,
Kannammai Building,
Chennai-6.

.. Respondents
in all the Writ petitions

Common Pryaer:

Writ petition filed under Article 226 of the
Constitution of India praying for issuance of Writ of
Certiorari to call for the order under reference No.C.No.9/13
[18 to 24] 2002-2003 dated 31.03.2003 for the assessment year
1980-81, 1981-82, 1982-83, 1983-84, 1984-85, 1985-86, 1986-87
on the file of the 1st respondent and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar
in all W.P.s

For Respondents : Mrs.Hema Muralikrishnan
in all W.P.s Standing Counsel

C O M M O N O R D E R

The petitioner is before this Court challenging the order dated 31.03.2003 passed by the 1st respondent under Section 264 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Years 1980-1981 to 1986-1987. The dispute which arises for consideration in these cases, lies in a very narrow campus. The petitioner and his grandmother Bhawari Kaur Chordia were co-owners of an immovable property at Door No.6 and 7, Thambu Chetty Street, Chennai. The property was sold, pursuant to an agreement dated 02.01.1980 and possession was handed over and the sale consideration for the property was to be received in instalments. For the unpaid balance of the sale proceeds, the co-owners were entitled to receive interest and for such interest for the period 1980-81 and 1981-82, Rs.3.75lakhs each i.e., for the petitioner and his grandmother.

2. The co-owners namely, the petitioner and his grandmother had shown Rs.3.75lakhs as income from property and also claimed permissible deduction in respect of that claim. In the meantime, the assessment in respect of the petitioner's grandmother was completed and ultimately, it was challenged by the grandmother by filing an appeal before the Income Tax Appellate Tribunal by which judgment dated 19.12.1986, accepted the case of the petitioner's grandmother as to how the income has to be assessed.

3. Roughly about the same time, the petitioner is stated to have voluntarily gone before the Assessing Officer and requested to issue notice under Section 148 of the Act and assess the income, as in the case of his grandmother. This lead to the order of assessment dated 31.03.1981 under section 143[3] of the Act by revising the assessment, in confirmation with the order passed by the Income Tax Appellate Tribunal dated 19.12.1986. Since at that point of time, the assessment has to be in line with the petitioner's grandmother as both of them were co-owners, the petitioner appears to have been satisfied with the same and took no further steps to challenge the assessment.

4. However, in the case of petitioner's grandmother, the Department filed tax cases in TC.Nos.460 and 461 of 1991. The Hon'ble Division Bench by judgment dated 21.02.2001 held as follows :

"9. The Tribunal, therefore, was in error in holding that the interest on the unpaid purchase price could not be taxed in the hands of the vendor solely on the ground that the vendor had not shown that amount under the head income from other sources. That conduct of the vendor cannot serve as

a bar to the amount of real income being taxed under the proper head. The powers of the Commissioner extend to requiring the assessing officer to determine the true income under the proper head and bring proper amounts assessable to tax, to tax.

10. The amount that could be taxed was required to be taxed under the proper head, having regard to the nature of the income. The amounts which could not be taxed in the hands of the assessee, having regard to the admitted factual and legal position, could not have been taxed in the hands of the assessee.

11. As the computation of income of the assessee for those years is required to be redone on the basis of this order, we remand the matter to the Income Tax Officer to redo the assessment in accordance with law and in the light of what has been said in the course of this order. The question referred to us at the instance of the Revenue is answered by holding that while the interest received on unpaid purchase price was taxable under the head income from other sources in the hands of the assessee vendor, the rental income from the property was not taxable in the hands of the assessee vendor."

5. In terms of the above direction, the computation of income tax of the petitioner's grandmother for the relevant years was directed to be re-done on the basis of the order and the question which was referred to the Division Bench at the instance of the Revenue was answered by holding that while the interest received on unpaid purchase price was taxable under the head "income from other source" in the hands of the assessee/vendor from the rental income of the property was not taxable in the hands of the assessee.

6. After the judgment in T.C.Nos.460 and 461 of 1991 dated 21.02.2001, the petitioner filed an application under Section 264 of the Act requesting that the petitioner's income in respect of the aforesaid transaction pertaining to the said property, be determined in accordance with the decision of the High Court in the petitioner's grandmother's case. The petitioner also stated that he was very young at the relevant point of time and therefore, pleaded that the delay may be condoned and the petition may be considered and orders to be passed. The respondent has rejected the same by the impugned order dated 31.03.2003.

7. I have heard Mr.M.P.Senthil Kumar, learned counsel appearing for the petitioner and Mrs.Hema Muralikrishnan, learned Standing Counsel appearing for the respondents and carefully perused the materials available on record.

8. The petition filed by the petitioner under Section 264 of the Act has been rejected on two grounds. Firstly, on the ground that the petitioner's case is that he was subjected to double taxation, for the simple reason that he had filed declaration under the Voluntary Disclosure Scheme of 1986 and offered additional income. Secondly, it is stated that the petition is grossly delayed and the power of the Commissioner cannot be stretched to do something which cannot be done under normal provisions of the Act. After carefully perusing the materials placed on record, it is seen that what is referred to as Voluntary Disclosure Scheme is not in fact an application in any Voluntary Disclosure Scheme.

9. But on the voluntary request made to the Assessing Officer to issue notice under Section 148 of the Act is sought to be misinterpreted as if it is a Voluntary Disclosure Scheme. Thus, merely because the petitioner went before the Assessing Officer under Section 148 of the Act and completion of the assessment cannot be an estoppel for the petitioner to maintain a petition under Section 264 of the Act. With regard to the delay, the 1st respondent has rejected the petition by reckoning the period of limitation from the date on which the assessment was completed, namely on 31.03.1981.

10. In my considered view, this interpretation is incorrect, for the simple reason that the assessment was completed under Section 143[3] of the Act vide assessment order dated 31.03.1981, based on the order passed by the Income Tax Appellate Tribunal dated 19.12.1986 rendered in the petitioner's grandmother's case, who was a co-owner in respect of the same property. The petitioner's grandmother did not prefer any appeal against the said order and appears to have been satisfied with the decision. Therefore, the petitioner had no cause of action to question the assessment order dated 31.03.1981, until a direction was issued in the tax cases filed by the Department, which were disposed of by judgment dated 21.02.2001, issuing a specific direction to the Assessing Officer to re-do the assessment, based on the observations/ directions contained in the judgment.

11. Thus, when the petitioner's assessment was completed on 31.03.1981 based on the decision rendered by the Tribunal in the petitioner's grandmother's case, the respondents themselves should have revised the petitioner's assessment in tune with the said order. Having not done so, the Department cannot reject the petition filed by the petitioner under Section 264 of the Act. Thus, for all the practical purposes, the limitation in filing the petition had to be reckoned only after the judgment in the Tax Cases. The Assessing Officer had given effect to the order passed by the Division Bench dated 21.02.2001 and if that date is reckoned, there is no inordinate delay for the 1st respondent to reject the petition filed by the petitioner under Section 264 of the

Act.

12. At this stage, it would be beneficial to refer to the decision of the Hon'ble Division Bench in the case of Commissioner of Income Tax Vs S.Muthukarupan [2007]290 ITR 0154, wherein, the Court held that if during the same assessment year the same quantity of wealth in possession of one co-sharer is subjected to a lower rate of taxation, it would be highly improper to burden a similarly situated co-sharer with a higher rate of tax. If such an action on the part of the assessing authorities is sanctioned, it would militate against the principle of equality of laws enshrined in Article 14 of the Constitution of India. Similar view was taken in the case of Commissioner of Income Tax Vs Kumararani Smt.Meenakshi Achi [2007]292 ITR 0624, following the decision in the case of Muthukarupan.

13. One more reason which was pointed out in the impugned order as well as in the counter affidavit is, as if the petitioner has stated that he has been taxed twice or in other words, it is a case of double taxation, I have gone through the petition filed under Section 264 of the Act dated 29.01.2002 and nowhere, I find that the petitioner has pleaded a case of double taxation. Thus, to that extent, the observation made in the impugned order is not tenable.

14. For all the above reasons, the impugned order calls for interference and these Writ Petitions are allowed and the impugned order is set aside and the matter is remanded to the Assessing Officer to re-do the assesment on the lines as directed by the Division Bench in T.C.Nos.460 and 461 of 1991 dated 21.02.2001 in the case of petitioner's grandmother Smt.Bhawari Kaur Chordia. This direction be complied with within four weeks from the date of receipt of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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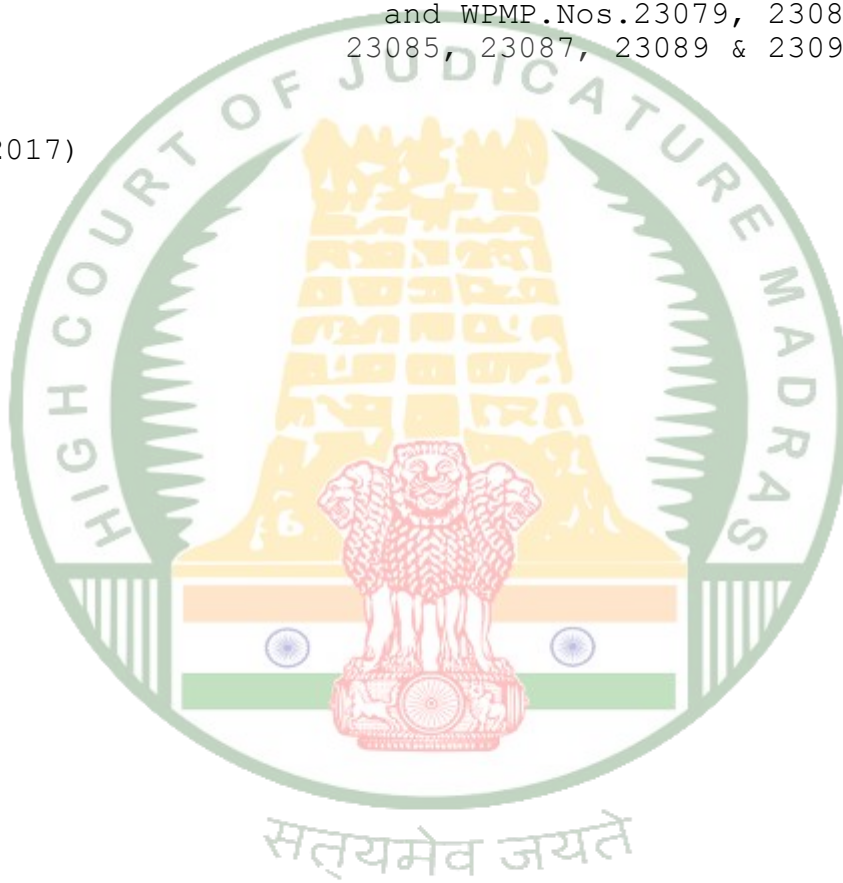
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+1 Cc to Mrs. Mallika Srinivasan, Advocate sr 54532
+1 CC to Mrs. Hema Muralikrishnan, advocate sr 54680

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VGI (CO)
sp(31/08/2017)



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