

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-1730-2015

Date of Decision:-13.01.2023

M/s Sandeep Theatre Abohar

...Petitioner

vs.

Income Tax Officer, Ward II and anr.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISH BATRA**

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate
for the petitioner

Ms. Pridhi Jaswinder Sandhu, Jr. Standing counsel
for the respondents-department.

Ritu Bahri, J.

The present petition has been filed under Article 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing of notice dated 11.03.2014 (Annexure P-11), notice dated 17.11.2014 (Annexure P-12), order dated 08.01.2015 (Annexure P-14) whereby explanation of the petitioner has been rejected.

The facts in brief is that on 13.11.1956 (Annexure P-1), Raja Ram HUF entered into a lease for 99 years in respect of the land on which the theatre run by the petitioner is operating. Vide letter dated 10.10.1956 (Annexure P-2), the petitioner sought licence under Rule 5 of the Punjab Cinema Act for construction of permanent Cinema Hall on the above leased land.

Vide letter dated 14.12.1995, the permission for construction of the said Cinema Hall was granted by the Sub Divisional Magistrate, Fazilka. On

11.07.1958 (Annexure P-3), the license under Section 5 of the Punjab Cinema (Regulation) Act, 1952 was issued in favour of Raja Ram with the name of M/s Sandeep Theatre. In the year 1962, for the management of the said theatre, a partnership firm in the name of M/s Sandeep Theatre was sought to be established. A partnership deed dated 17.09.1962 (Annexure P-4) was executed, which would have effect from 01.04.1962. Clause 3 of the said partnership deed is reproduced as follows:-

“3. That the partnership concern shall manage the talkies exhibit Cinema Films and other dramatic shows and give on rent the stalls etc.”

Vide sale deeds dated 29.08.1966 and 03.09.1966 (Annexure P-5 colly), Raja Ram Nagpal HUF became owner of the land upon which the theatre was constructed on which the lease had already been executed. This partnership firm M/s Sandeep Theatre regularly maintained its account. The copy of balance sheet for assessment year 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2006-2007 are attached Annexure P-6 colly and as per the above balance sheets, the land on which the theatre is constructed and primary building have never been shown to be the assets of the firm. In the year 2006, due to continuous loss in business, the partnership firm managing the theatre was dissolved on 31.03.2006.

Thereafter, an order under Section 272 A (2) (b) of the Income Tax Act 1961 (for short ‘Act 1961’) was passed on 25.08.2010 (Annexure P-7) imposing a penalty of Rs.1,50,220/- for not complying with the provision of Section 176 (3) of Act 1961 by not intimating the factum of discontinuation of business by the firm within 15 days of the date of discontinuation. A demand notice under Section 156 was also served upon the petitioner. Feeling aggrieved against this order, petitioner preferred an appeal under Section 250 (6) of Act 1961 and the impugned order dated 25.08.2010 was set aside and the explanation given

by the petitioner was accepted for the assessment year 2006-2007, vide order dated 12.03.2013 (Annexure P-8).

However, for the assessment year 2007-2008, a notice was served upon the petitioner under Section 148 as no return of income had been filed for the said assessment year. In response to the above notice, it was intimated that after discontinuation of business by the partnership, Raja Ram HUF is filing returns as a sole proprietor. However, the said explanation was rejected and an ex-parte assessment order dated 30.12.2010 (Annexure P-9) under Section 144 of Act 1961 was passed.

An appeal was then filed against order dated 30.12.2010 before the Commissioner of Income Tax (Appeal), Bathinda and vide order dated 12.03.2013 (Annexure P-10), the impugned order dated 30.12.2010 was set aside:-

“While adjudicating the various grounds of appeal, it has been held above that the AO was not justified in completing the assessment in the status of Firm' because the firm had discontinued its business w.e.f. 31.03.2006 in as much as no renovation was carried out by the firm' during the period relevant for the assessment year 2007-08. During appellate proceedings before me, the A/R of the appellant stated that the same AO completed the assessment in the case of Shri Raja Ram Nagpal,HUF for the assessment year 2009-10 vide order w/s 147/143(3) dated 21.09.2012 (i.e. the person who had infact carried out renovation of the theatre building) but accepted the expenditure incurred by him on the renovation of the theatre building and in such circumstances, the completion of assessment in the case of appellant assessee in the status of firm' at a figure of Rs.5,50,000/- was highly objectionable, absolutely wrong and unjustified. Accordingly, on the facts and in the circumstances of the case, the AO was not legally right in completing the assessment in the status of

firm' at a total income of Rs.5,50,000/-. This ground of appeal of the appellant is accordingly accepted."

Till date, no appeal has been filed against order dated 12.03.2013 and thus it attained finality.

However, vide letter/notice dated 11.03.2014 (Annexure P-11) the respondent issued a notice stating that for the assessment year 2007-2008 the assessable chargeable income to tax has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961. Subsequently, a notice under section 142(1) of Act 1961 was issued to the petitioner on 17.11.2014 (Annexure P-12) directing that a correct return of income in the prescribed format may be submitted. The said notice was accompanied by a shows cause notice under section 144 of Act 1961 dated 17.11.2014 in respect of the assessment year 2007-2008 stating that proceedings under section 147 were initiated. It is stated in the notice that the capital assets of the partnership firm have been assessed Rs. 10,22,82,820/- as on 01.04.2006 as at as against Rs. 1,57,880/- shown in the return of income of the firm. Thus an amount of Rs. 10,21,24,940/- is liable to be charged as per provision of section 45(4) of the Act 1961 for the year 2006-2007 relevant to the assessment year 2007-2008. The petitioner was directed to appear on 10.12.2014.

The petitioner gave reply (Annexure P-13) to the above notice dated 17.11.2014 stating therein that the partnership firm i.e M/s Sandeep Theatre Abohar ceased to exist from 31.03.2006 and the petitioner had already submitted their objections to notice under Section 148 of Act 1961. Further it has been stated that no assessment for the year 2007-2008 can be done in the name of the firm as it did not exist in the relevant period. It was further submitted that no proceeding under section 147 of Act 1961 can be initiated only on the basis of a valuation report. However, vide impugned order dated 08.01.2015, the reply of the

petitioner was rejected in respect of assessment year 2007-2008. Hence the present writ petition challenging the impugned orders.

On notice of this petition, a reply dated 27.05.2015 has been filed by respondent No. 2 admitting the fact that the firm ceased to exist on 31.03.2006. However, since the assets of the firm on dissolution of the firm stand transferred to the partners, they are liable for the Capital Gain in the hands of the firm as per the provisions of Section 45 (4) of Act 1961. While giving reply to para 2 (xi), the submissions made by the appellant were accepted, as the proceedings under Section 147 were initiated by the then Income Tax Officer, Ward-II (3), Abohar and notice under Section 148 was duly issued on 15.03.2010 and thereafter, assessment under Section 144 was completed on 30.12.2010.

The petitioner filed replication dated 10.09.2015 to reply filed by respondent No. 2 reiterating his stand taken in the writ petition that as per sale deed, the transfer was made in favour of Raja Ram as the vendee who was already in possession of the property and has constructed a building on the said property in the name and style of Sandeep Theatre. No sale has been made in favour of the firm. The property has never been debited to the capital account of the partners on dissolution. As per licence, the *renovation was required and done due to advancement in Technology*. The property was never asset of the firm and operation of Section 45 (4) is one the date of transfer i.e 31.03.2006 and thus, no assessment could be made for the assessment year 2007-2008.

Heard.

Reference at the very outset can be made to licence issued to the petitioner on 11.07.1958 (Annexure P-3), which reads as under:-

“Annual licence under section 5 of the Punjab Cinemas (Regulation) Act, 1952

The building know as (a) Sandeep situated at (b) Abohar within the town of Abohar in the district of Ferozepur licensed under section 5 of

the Punjab Cinemas (Regulation) Act, 1952, as a place where exhibitions by means of a cinematography may be given.

This licence has been granted to (c) Shri Raja Ram and shall remain in force until the 10th July, 1959 provided that the said (c) Shri Raja Ram or any person to whom with the consent of the licensing authority the xx is transferred xxxxxxxx used in the said (a) Sandeep Theatre, Abohar

This licence is granted subject to the provisions of the Punjab Cinemas (Regulation) Act, 12952, and of the rules made thereunder, and to the conditions (set forth in the attachedSchedule).

<i>(a) Name of building</i>	<i>Sandeep Theatre, Abohar</i>
<i>(b) Name of street or mohalla.</i>	<i>Thana Raod, Abohar</i>
<i>(c) Name of licensee.</i>	<i>Sh. Raja Ram Nagpal"</i>

On an application/letter dated 10.10.1956 filed by the petitioner, the above license was granted to the petitioner and thereafter, partnership deed was executed on 17.09.1962 (P-4). As per this partnership deed, the partnership concern shall manage the talkies exhibit Cinema Films and other Dramatic Show and gave shop on rent etc. The profit or loss of the firm is to be divided among members of the firm. The Bank accounts of this partnership shall be operated upon by ShriMunshi Ram.

The theatre was taken on lease by Sh Raja Ram, HUF and has never been transferred to the partnership firm. The license was also issued in the name of Raja Ram Nagpal, HUF, Proprietor M/s Sandeep Theatre Abohar. Since there was change in HUF and thus, changes were made in the partnership deed as well. However, the partnership firm had separate identity and HUF had separate identity. Hence the HUF being separate identity, the land was purchased by Raja Ram independently being HUF. The partnership firm M/s Sandeep Theatre regularly maintained its account as per Annexure P-6 collly, which were not in dispute. Hence, two separate returns to be filed one by HUF and one by partnership deed. Since partnership firm had come to an end and vide order dated 12.03.2013, the explanation given by the petitioner has been accepted, therefore, for all intents and purposes, the firm ceased to exist on 31.03.2006. In this background, the penalty of Rs.1,50,220/- imposing penalty upon the petitioner was set aside, vide order dated 12.03.2013 (Annexure P-8). Once this order had attained finality, there was no occasion with the respondents to issue a fresh notice

under Section 147 of the Act 1961 with respect to assessment year 2007-2008 on the ground that after dissolution of the firm on 31.03.2006, the assets were distributed among partners and as per provisions of Section 45 (4) of the Act 1961, all capital assets of the firm transferred to individuals was liable for capital gain at fair market value on the date of transfer in the hands of the firm.

Learned senior counsel for the petitioner has argued that as per provisions of 149 of Act 1961, the time limit of notice under Section 148 was issued after expiry of the prescribed period of limitation i.e six years. Section 149 of Act 1961 reads as under:-

“149. Time limit for notice

(1)⁵ No notice under section 148 shall be issued for the relevant assessment year,-

(a) in a case where an assessment under sub- section (3) of section 143 or section 147 has been made for such assessment year,-

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub- clause (ii) or sub- clause (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or likely to amount to rupees fifty thousand or more for that year;

(iii) if seven years, but not more than ten 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 ¹] rupees one lakh or more for that year;

(b) in any other case,-

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub- clause (ii) or sub- clause (iii);

(ii) if four years, but not more than seven 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 twenty- five thousand or more for that year;

(iii) if seven years, but not more than ten 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 fifty thousand 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..”

On the other hand, learned counsel for the respondent that the notice issued to the petitioner were not barred by limitation.

This argument is liable to be rejected as the firm ceased to exist on 31.03.2006 and after the assessment of the year 2006-07, since there was no

transfer of any surety in favour of any members, the proceedings under Section 149 have to be set aside on the ground that they are issued after a gap of six years. Further, the order dated 25.08.2010 imposing a penalty of Rs.1,50,220/-, was set aside and the explanation given by the petitioner was accepted for the assessment year 2006-2007, vide order dated 12.03.2013 (Annexure P-8). Till date, no appeal has been filed against order dated 12.03.2013 and thus it attained finality. The department had thus accepted the dissolution of the firm. The department is now bound by the licence issued to the petitioner (P-3). It was Raja Ram HUF who became owner and HUF being separate identity had to file separate return. The word Management has been used in the partnership deed. After dissolution of the firm, there was no transfer of any asset to the partners of the firm.

In view of the above factual position, the present petition is allowed and notice dated 11.03.2014 (Annexure P-11), notice dated 17.11.2014 (Annexure P-12), order dated 08.01.2015 (Annexure P-14) are set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

13.01.2023
G Arora