

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

ITA No. 143 of 2005 (O&M)

Date of decision: 13.1.2016

Ranjeet Singh

-----Appellant

Vs.

The Commissioner of Income Tax, Faridabad

-----Respondent

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sanjay Bansal, Sr. Advocate with
Mr. B.M.Monga, Advocate for the appellant-assessee.

Mr. Tejinder K.Joshi, Advocate for he respondent-
revenue.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA No.143 and 166 of 2005, as learned counsel for the parties are agreed that the issue involved in both the appeals is identical. Further, an application was filed by the assessee under Section 254(2) of the Income Tax Act, 1961 (in short, "the Act") before the Tribunal in ITA No.166 of 2005 which was declined on 15.2.2005. It was urged by the learned counsel for the parties that both the appeals can be

disposed of by one order. However, the facts are being extracted from ITA No.143 of 2005.

2. ITA No.143 of 2005 has been preferred by the appellant- assessee under section 260A of the Act against the order dated 29.9.2004, Annexure P.1 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' New Delhi (for brevity, "the Tribunal") in ITA No.2646/Del/2004 for the assessment year 1991-92, claiming following substantial questions of law:-

- i) Whether on the admitted factual position emerging from the material on record, the decision rendered by the Tribunal is a result of incorrect interpretation of the provisions of section 151 of the Income Tax Act, 1961?
- ii) Whether in view of the provisions of Section 151 of the Income Tax Act, 1961, the proceedings under section 148/147 could be initiated after a period of four years even in a case where assessment under section 143(1)(a) had been made without authority of law for the relevant assessment year by the Assessing Officer?
- iii) Whether on a correct interpretation of the provisions of Section 151(1) of the Income Tax Act, 1961, the Tribunal was justified in holding that proceedings initiated under Section 148/147 after a period of four years on an approval and sanction having been granted by the Additional Commissioner of Income Tax were valid?
- iv) Whether on the facts and in the circumstances of the case, the view taken by the Tribunal is contrary to the decision rendered by this Hon'ble High Court, being the jurisdictional High Court, rendered in the case of *CIT vs. Rajesh Talkies* (1996) 220 ITR 107 (P&H)?
- v) Whether the appellant being a joint owner of the agricultural land in equal share was liable to be taxed on the 50% of the commission amount alleged to have been received by him?

3. Briefly, the facts as available on the record of ITA No.143 of 2005 may be noticed. The assessee is an individual. For the assessment year 1991-92, the assessee did not file his return. Notice under section 148 of the Act dated 22.2.1994 was issued by the Assessing Officer to the assessee for the purpose of bringing to tax a sum of ₹ 73,132/- which he had received as interest from M/s Kevikon Agro Farming (P) Limited on the deposit of the sale consideration received on sale of his agricultural land. In response to this notice, the assessee filed his return on 19.3.1996. Intimation under section 143(1)(a) of the Act was issued on 22.3.1996. The Assessing Officer issued another notice under section 148 of the Act on 17.3.1997 for the purpose of bringing to tax a sum of ₹ 2 lacs which the assessee received as commission from one C.P. Singh of Rama Finance Company. In response to this notice, the assessee did not file any return of income. Two notices under section 142(1) of the Act were issued but there was no compliance by the assessee. The assessment was therefore completed under section 144 of the Act vide order dated 30.3.1999, Annexure P.3 by bringing to tax a sum of ₹ 2 lacs received as commission by the assessee. Aggrieved by the said order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The assessee challenged the validity of the reassessment proceedings. According to the assessee, pursuant to the first notice issued under section 148 of the Act, intimation was issued by the Assessing Officer and this constituted assessment and therefore in the light of specific provisions of section 151(1) of the Act, no notice could be issued under section 148 of the Act unless the Chief Commissioner or Commissioner is satisfied that it is a fit case for issue of such a notice. The

assessment was sought to be reopened after four years from the end of the relevant assessment year and thus the assessee pleaded that satisfaction of the Commissioner must be obtained. The CIT(A) vide order dated 19.3.2004, Annexure P.2, did not agree with the submissions of the assessee and held that processing of return under section 143(1)(a) of the Act was not an assessment. Aggrieved by the order, the assessee filed appeal before the Tribunal. Vide order dated 29.9.2004, Annexure P.1, the Tribunal dismissed the appeal. In ITA No.163 of 2005, the assessee filed an application under section 254(2) of the Act before the Tribunal for rectification of the order dated 29.9.2004 which was declined vide order dated 15.2.2005 in the said petition. Hence the instant appeals by the assessee.

4. We have heard learned counsel for the parties.

5. The primary contention of learned counsel for the appellant-assessee was that in pursuance to first notice issued under Section 148 of the Act on 22.2.1994, the intimation which was sent to the assessee under Section 143(1)(a) of the Act was an assessment under Section 147 of the Act and therefore, the case of the assessee fell under Section 151(1) of the Act for which the satisfaction of the Chief Commissioner or Commissioner thereunder was mandatory for the issue of such a notice. It was urged that the same having not been complied with, the assessment framed in pursuance to second notice under Section 147 of the Act on 17.3.1997 was non-est. On merits, the addition of ₹ 2 lakhs was assailed by arguing that only ₹ 1 lakh could be added as the property was jointly owned and the commission received was also for the entire property and the share of the assessee being 50%, only ₹ 1 lakh fell to his share. On the other hand,

learned counsel for the revenue besides supporting the order of the Assessing Officer, CIT(A) and the Tribunal submitted that the case of the assessee fell under Section 151(2) of the Act and not under sub section (1) of Section 151 of the Act.

6. It would be expedient to quote Section 151 of the Act which is in the following terms:-

“Sanction for issue of notice.

151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

Explanation.—For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148,

need not issue such notice himself.”

7. Section 151 of the Act deals with sanction for issue of notice of reassessment. From perusal of Section 151(1) of the Act, it would emerge:-

(a) if an assessment has been made under section 143(3) or section 147 and four years have not expired from the end of the relevant assessment year, a notice under section 148 has to be issued by the Assessing Officer who is not below the rank of the Assistant CIT or the Deputy CIT but before issuing any such notice, the Joint CIT is to be satisfied on the reasons recorded by such Assessing Officer that it is a fit case for issue of such notice.

(b) If, however, the period of four years has expired and the assessment order has been made under section 143(3) or section 147, the notice is to be issued only after the satisfaction has been recorded by either the Chief CIT or the CIT on the reasons recorded by the Assessing Officer aforesaid that it is a fit case for issue of such notice. Therefore, in other words, the Assessing Officer not below the rank of the Assistant CIT can issue a notice but before issuing the notice, the satisfaction of the CIT or the Chief CIT is necessarily to be obtained.

8. According to Section 151(2), no notice can be issued under Section 148 of the Act by an Assessing Officer who is below the rank of Joint Commissioner of Income Tax after the expiry of four years from the end of the relevant assessment year unless the Joint Commissioner of Income Tax is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

9. The Tribunal relying upon the following decisions in :-

(i) *Apogee International Limited and another vs. Union of India and another* And *Anil Kapoor vs. ITO and another*, (1996) 220 ITR 248 (Delhi).

- (ii) ***Pardeep Kumar Harsaran Lal vs. Assessing Officer***,
(1997) 94 Taxman 124 (All) and
(iii) ***CIT vs. KV Manakram & Co.*** (2000) 111 Taxman 439
Kerala.

concluded that the processing of return under Section 143(1)(a) of the Act even in pursuance to notice under Section 147 of the Act did not result into an assessment. It may be noticed that the judgment of the Delhi High Court in ***Apogee International Limited's*** case (supra) was quoted with approval by the Apex Court in ***Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers Pvt. Limited***, (2007) 291 ITR 500. Once that was so, sub section (1) of Section 151 of the Act was not attracted. It has been categorically recorded by the Tribunal that first notice under section 148 of the Act dated 22.2.1994 was served on the assessee on 7.3.1994 in response to which he filed his return on 19.3.1996. The proceedings for reassessment commenced by the issue of first notice could be completed only upto 31.3.1996 in view of the provisions of section 153(2) of the Act. As on 31.3.1996, the Assessing Officer did not assess or reassess the assessee's income on the basis of first return filed by him on 19.3.1996 instead issued intimation under Section 143(1)(a) of the Act on 22.3.1996. Only intimation under Section 143(1)(a) of the Act was issued which was not an assessment. Thus, no proceedings were pending before the Assessing officer when the second notice was issued on 17.3.1997 on the basis of information about commission income of ₹ 2 lacs received by the assessee from one C.P.Singh and was therefore valid. The relevant findings recorded by the Tribunal read thus:-

“7. We have heard the rival submissions. In the present case, the

first notice under section 148 dated 22.2.1994 was served on the assessee on 7.3.1994 in response to which the assessee filed his return on 19.3.1996. The AO received information about the assessee having received commission income of ₹ 2 lacs from one CP Singh. The proceedings for reassessment commenced by the issue of the first notice could be completed only upto 31.3.1996 in view of the provisions of Section 153(2) prescribing time limit for completion of assessment or reassessment proceedings. As on 31.3.1996, the Assessing Officer could not proceed to assess or reassess assessee's income on the basis of the first return filed by the assessee on 19.3.1996. Therefore, it could not be said that any proceedings were pending before the Assessing Officer when the second notice was issued. The second notice issued under section 148 dated 17.3.1997 was therefore valid.

8. As far as the objection of the assessee regarding absence of consent under section 151(1) proviso is concerned, it cannot be said that there was any assessment done in the case of the assessee pursuant to the first notice under section 148. Only an intimation under section 143(1)(a) was issued. The decisions referred to by the learned CIT(A) on this issue clearly support the view that intimation under section 143(1)(a) is not assessment. Therefore, the provision of Section 151(2) alone would apply to the present case. Therefore, consent under section 151(1) for issue of notice under section 148 has rightly held by the CIT(A) to be not necessary.”

Nothing could be shown that the aforesaid conclusion of the Tribunal was erroneous.

10. Examining the issue on merits relating to taxability of only 50% in the hands of the assessee, the same was negated with the following observations:-

“9. What now remains for consideration is ground No.5 which

reads as follows:

'That without prejudice to the above stated grounds of appeal and merits of the case it is submitted that the action of the learned CIT(A) was not justified to tax the amount of commission income of ₹ 2,05,805/- on receipt basis and not on accrued basis and that too without dividing the same in the ratio of 50:50 as the land in question was jointly sold by appellant alongwith his brother who was also co-owner of the land”.

10. The admitted facts are that the assessee sold his lands to one M/s DLF. The sale was mediated through one Mr. CP Singh of M/s Pawan & Co. Pvt. Limited over and above the sale consideration received by the assessee from Mr. CP Singh on the following dates:

On 31.3.1991	Rs.55,804/-
On 22.7.1992	Rs.1,50,000/-

Rs.2,05,804/-

11. The plea of the assessee was that this sum was commission which CP Singh paid to him from and out of the commission which he received from DLF. The plea of the assessee with regard to taxability of this income was (a) that the sale of the land was on 17.11.1989 and the commission accrued to the assessee on that date and therefore, cannot be brought to tax in assessment year 1991-92; (b) that the land belongs to 2 persons viz. the assessee and his brother Mr. Dayachand in equal shares, and if at all any income is brought to tax, the assessee should be considered as having carried only 50% of the commission, the other 50% should be brought to tax in the hands of Mr. Dayachand, his brother.

12. The CIT(A) rejected the contention of the assessee holding as follows:-

“I have carefully considered the facts and submissions made. I find no merit in the assessee's contention that the

commission accrued on 17.11.1989 i.e. the day when the sale deed was executed. The sale deed does not mention anything about the commission payment to the assessee. The explanation that commission on sale of agricultural land was received as part of custom in the family cannot be believed as there is no credence in the explanation of the assessee. This amount is obviously payment over and above what is mentioned as sale price in the sale deed. However, the assessment has mentioned that commission was received by him in two years i.e. ₹ 55804/- on 31.3.1991 and ₹ 1,50,000/- on 22.7.1992. The AO may verify this fact and if it is indeed so, tax the amount of ₹ 2,00,000/- accordingly.”

13. Before us, the learned counsel for the assessee reiterated submissions that were made before the CIT(A). Whatever be the nature of the money received by the assessee, the same was in the nature of income liable to tax. The CIT(A)'s direction to bring to tax this sum in the assessment year in which the assessee received these sums was proper and calls for no interference.”

11. The findings recorded by the Tribunal are pure findings of fact which have not been shown to be illegal or perverse in any manner by the learned counsel for the appellant-assessee warranting interference by this Court.

12. Adverting to the judgments relied upon by the learned counsel for the assessee, it may be noticed that in ***Dr. Shashi Kant Garg vs. Commissioner of Income Tax, Additional Commissioner of Income Tax, Range 2 (formerly Jt. Commissioner of Income Tax, Range) and Income Tax Officer***, (2006) 285 ITR 158 (All.), the Assessing Officer before issuing notices under section 148 of the Act had obtained sanction of the Additional CIT. The assessee challenged the same on the ground that the sanction had

to be taken from Chief CIT or CIT instead of Additional CIT. Thus, the impugned order were held to be invalid. In ***Rajesh Jhaveri Stock Brokers Pvt. Limited's*** case (supra), sending of intimation was mandatory under Section 143(1)(a) of the Act. So long as the ingredients of Section 147 of the Act were fulfilled, the Assessing Officer was free to initiate proceedings under section 147 and failure to take steps under Section 143(3) of the Act will not render the Assessing Officer powerless to initiate reassessment proceedings even when intimation under Section 143(1) had been issued. The decisions based on individual fact situation involved therein do not come to the rescue of the appellant. Consequently, the substantial questions of law claimed are answered accordingly. Both the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

January 13, 2016
'gs'

(Raj Rahul Garg)
Judge

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