IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Income Tax Appeal No. 37 of 2015

Commissioner of Income Tax, Dehradun ……Appellant
Versus
Uttarakhand Van Vikas Nigam ....Respondent

Income Tax Appeal No. 38 of 2015

Commissioner of Income Tax, Dehradun ……Appellant
Versus
Uttarakhand Van Vikas Nigam ....Respondent

Income Tax Appeal No. 39 of 2015

Commissioner of Income Tax, Dehradun ……Appellant
Versus
Uttarakhand Van Vikas Nigam ....Respondent

Present:
Mr. Hari Mohan Bhatia, Advocate for the appellant.
Mr. S.K. Posti, Advocate with Mr. V.K. Kaparwan, Advocate for the respondent.

Coram : Hon'ble Alok Singh, J.
Hon'ble Servesh Kumar Gupta, J.

Hon'ble Alok Singh, J. (Oral)

Since, in all these connected appeals, identical questions of facts and law are involved, therefore, with the consent of learned counsel for the parties, all these appeals are taken up together for hearing and are being decided by this common judgment.

All these three appeals are directed assailing the common judgment dated 11.3.2015 passed by Income Tax Appellate Tribunal, Delhi Bench 'H', New Delhi, whereby three appeals filed by the assessee against the re-assessment orders for assessment year 2002-03, 2003-04 and 2004-05 were allowed on the ground that notice issued under Section 148 of the Income Tax Act was barred by limitation.

Brief facts of the present case, inter alia, are that Uttar Pradesh Forest Corporation (hereinafter referred as 'UPFC') was in existence before the bifurcation of the State of Uttar Pradesh; UPFC has received interest on the different FDRs, total amounting to Rs. 1, 20,15,19,945/-. It was contended before the Assessing Authorities by the UPFC that after the bifurcation of the State of Uttar Pradesh and creation of the State of Uttarakhand, UPFC was bifurcated and Uttarakhand Forest Development Corporation (hereinafter referred to as 'UFDC') came into existence and as per the directions issued by the Central Government, UFDC was held to be entitled for 54 % of the total assets of UPFC, therefore, tax liability of UPFC over the total interest income earned should not be more than 46%. ITAT, Lucknow Bench, vide judgment/order dated 6.3.2009, was pleased to hold that UPFC cannot be held liable to pay income tax on total income of the interest on the FDRs in view of the order passed by the Central Government and the tax liability of the UPFC should be confined to 46 % of the total interest income accrued on the FDRs. Judgment of the ITAT, Lucknow Bench was upheld by the Allahabad High Court. Pursuant to the judgment passed by ITAT, Lucknow Bench, dated 6.3.2009, assessing authority was pleased to issue notice under Section 148 of the Income Tax Act against the UFDC on 6.3.2013 saying 54% of the total interest income accrued on different FDRs was escaped assessment. It was further mentioned in the notice that since ITAT, Lucknow Bench has held that liability to pay income tax on 54% of the total interest accrued on the FDR is of the UFDC, therefore, reassessment is required to be made. UFDC has challenged the reassessment made on the ground that UFDC was not heard by ITAT, Lucknow Bench, therefore, notice issued under Section 148 of the Act for reassessment was hopelessly time barred in view of the provisions of Section 149 read with Section 150 and 153 (3)

Explanation 3 of the Income Tax Act. Ultimately, matter went before the ITAT, New Delhi, in appeal, wherein contention of the UFDC/assessee was accepted and appeals filed by UFDC were allowed. Feeling aggrieved, Revenue has preferred these appeals.

We have heard Mr. Hari Mohan Bhatia, learned counsel for the appellant and Mr. S.K. Posti, learned counsel for the respondent, and have carefully perused the record.

Sections 149, 150 and Explanation 3 of 153 (3) of the Income Tax Act read as under:

> ***"149. Time limit for notice.*** *[(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;]*
>
> *[(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.]*
>
> *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.]*

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 *is to be served is a person treated as the agent of a non-resident under* section 163 *and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of [six] years from the end of the relevant assessment year.*

[Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.]"

* * *

"150. Provision for cases where assessment is in pursuance of an order on appeal, etc. *– (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 W.P.(C) Nos. 7944/11, 7945/11, 7946/11 & 7947/11 Page 6 of 14 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.*

(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."

* * *

"Explanation 3.—Where, by an order [referred to in clause (ii) of sub-section (3)], any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 *and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed."*

Language of Sections 149 and 150 of the Act is unambiguous, plain and simple, which demonstrates that notice under Section 148 for reassessment shall be issued before the expiry of 4 years from the end of relevant assessment year unless the case falls either under clause (b) or clause (c). As per clause (b) of Section 149 (1), limitation period to issue notice under Section 148 may extend upto six years only from the end of the relevant assessment year if income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year, while, as per clause (c) of Section 149 (1), limitation to issue notice for reassessment under Section 148 shall be extended till 16 years from the date of previous assessment if income chargeable to tax has escaped assessment in relation to any asset (including financial interest in any entity) located outside India and is chargeable to tax, has escaped assessment.

As per Section 150 (1) of the Act, there will be no limitation to issue Re-assessment notice under Section 148 of the Act, if reassessment seems to be required pursuant to any observations made, direction issued by any Authority, under this Act, by way of appeal, reference or revision.

Bare perusal of Explanation 3 of Section 153 (3) of the Act shall demonstrate that excluded income of original assessee, can be assessed in the income of third party, if third party was heard by the Authority, making observations or issuing direction that excluded income is of third party, therefore, shall be excluded from the income of original assessee.

Meaning thereby, the third person whose liability is found by the assessing authorities while making assessment against the original assessee, such third party has to be heard before fixing his liability. If such third party is heard then only reassessment under Section 148 read with Sections 149 and 150 of the Act is permissible. However, if he is not heard, then notice for reassessment has to be issued within the period of limitation, as provided under Section 149 (1) (b) of the Act.

We find support from the judgment of Division Bench of Delhi High Court in the case of **Rural Electrification Corporation Ltd. vs. Commissioner of Income Tax** reported in **(2013) 315 I.T.R. (Delhi)**, wherein Delhi High Court has held as under:

> *"Before a notice under section 148 of the Income-tax, 1961, can be issued beyond the time limits prescribed under section 149, the ingredients of Explanation 3 to section 153 have to be satisfied. Those ingredients require that there must be a find that income which is excluded from the total income of one person is income of another person. The second ingredient is that before such a finding is recorded, such other person should be given an opportunity of being heard."*

In the present case, admittedly, assessee was not heard by ITAT, Lucknow Bench, while observing that out of total income derived from the interest on FDRs, tax liability of UPFC is only to the extent of 46% and liability on the total interest income to the extent of 54 % shall be of UFDC. Therefore, we do not find any illegality in the order passed by ITAT, Delhi Bench 'H', New Delhi. Therefore, question is answered against the Revenue and in favour of the assessee.

Consequently, all the appeals fail and are hereby dismissed.

CLMA Nos. 8525 of 2015 and 8524 of 2015 also stand disposed of accordingly.

Let copy of this judgment be placed in each and every connected appeals.

(Servesh Kumar Gupta, J.) **(Alok Singh, J.)**

13.08. 2015

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