

Mahadeo Prasad Bais

Vs

Income-Tax Officer 'A' Ward, Gorakhpur And Another

Civil Appeal No. 1934 of 1978

(S. Ranganathan, V. Ramaswami – II, N. D. Ojha JJ)

12.09.1991

JUDGMENT

RANGANATHAN, J. –

1. The Income Tax Act, 1961 replaced the Indian Income Tax Act, 1922 w.e.f. April 1, 1962. The repeal of the earlier Act necessitated the enactment of transitional provisions to facilitate the change over. Perhaps the simplest course would have been to provide that the new Act would apply to all proceedings for the assessment year 1962-63 and thereafter. The legislature, however, evolved a more complicated procedure. While Section 297(1) of the new Act declared that the Indian Income Tax Act, 1922 stood repealed by the new Act, sub-section (2) of the above section made detailed and meticulous provisions in clauses (a) to (m) as to whether the new Act or the old Act will govern in the various situations dealt with therein. These provisions have led to a lot of litigation and the controversy in this appeal also arises out of one such provision. We are concerned here with the scope of proceedings for reassessment in respect of assessment years prior to 1962-63 and the answer to the question before us turns on the provisions of the following Sections 297 and 150 of the 1961 Act :

#"297. (1) * * *##

(2) Notwithstanding the repeal of the Indian Income Tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act), -

* * *##

(d) where in respect of any assessment year after the year ending on the 31st day of March 1940, -

(i) a notice under Section 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in Section 147 and no proceedings under Section 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under Section 148 may, subject to the provisions contained in Section 149 or Section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly."

150. (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 recomputation in consequence of or to give effect to any finding or direction or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision."

2. We may proceed now to set out how the question arises in the present case : The appeal arises out of an order of the High Court in a writ petition filed by one Mahadeo Prasad Bais (since deceased, represented by his legal representatives) challenging reassessment proceedings initiated against him for the assessment years 1953-54 to 1963-64. The appeal is, however, restricted to the assessment years 1953-54 to 1961-62. Up to assessment year 1948-49, the appellant was being assessed as the Karta of a Hindu Undivided Family consisting of himself, his mother, his wife and three sons. For the assessment year 1949-50 and subsequent years up to 1961-62 he had filed a return in his individual capacity on the footing that there had been a total partition of the family within the meaning of Section 25-A of the Indian Income Tax Act, 1922 and that he was assessable in respect of the income from the properties of the family allotted to him at the partition. In the alternative, he claimed partial partition of some of the joint family properties. Both these claims were initially negatived and the entire income was assessed in the hands of the Hindu Undivided Family. The returns filed by the appellant in his individual capacity were finalised by holding that there was no income assessable in his individual capacity. The Hindu Undivided Family went up in appeals and ultimately the Tribunal accepted the claim of partial partition in respect of some of the properties with effect from different dates. This conclusion of the Tribunal was also affirmed by the High Court in the decision reported as Mahadeo Prasad Rais v. Income Tax Officer ((1972) 84 ITR 48 (All)) which related to the assessment years 1956-57 to 1958-59. Consequent on these decisions of the Tribunal and the High Court, the income from some of the erstwhile family properties stood excluded from the assessment of the Hindu Undivided Family and became liable to be included in the hands of the present appellant. The assessment for 1949-50 and subsequent years up to 1961-62 on the family had been completed and the appeals and reference disposed of under the Indian Income Tax Act, 1922.

3. The original assessments made on the appellant as an individual for the assessment years 1953-54 to 1961-62 had been completed under the Indian Income Tax Act, 1922. In these assessments no income from the erstwhile joint family properties had been included as the officer was of the view, as in 1949-50, that it was assessable in the hands of the family. There were no proceedings initiated or pending under Section 34 of the 1922 Act in respect of these assessment years as on April 1, 1962. Quite some time after the High Court had decided the reference for 1949-50 in the case of the family, the Income Tax Officer thought of steps to include the income assessable in the hands of the appellant consequent on the decisions of the Tribunal and the High Court which he had failed to assess earlier. He, therefore, served on the appellant on March 19, 1977 notices for reassessment, as required by Section 297(2)(d)(ii), under Section 148 of the 1961 Act. The appellant resisted these proceedings, inter alia, on the ground that the notices were barred by limitation. The department, however, contended that, though normally reassessment proceedings had to be initiated within a period of four, eight or sixteen years as the case may be, under the then provisions of Section 149 of the 1961 Act, the reassessment proceedings in this case were saved by the provisions of Section 150(1) of the 1961 Act set out earlier. This contention of the department has been accepted by the High Court in the decision under appeal before us which is reported in Mahadeo Prasad Rais v. ITO ((1980) 125 ITR 49 : 1978 TLR 344 (All)).

4. The issue involved in this appeal is basically a short one turning on the language of Section 150(1). Before considering the interpretation of this section, we may, however, point out that, on

this question, there appears to be a conflict of judicial opinion between the several High Courts. The Allahabad High Court, in the decision presently under appeal ((1980) 125 ITR 49 : 1978 TLR 344 (All)) and the Calcutta High Court, in ITO v. Eastern Coal Co. Ltd. ((1975) 101 ITR 477 (Cal)) have taken the view that a reassessment in such circumstances is saved by the provisions of Section 150(1) of the 1961 Act. An earlier Allahabad decision in CIT (Addl.) v. Kamalapat Motilal ((1977) 110 ITR 769 : 1977 TLR 233 : 1976 UPTC 693 (All)) and an earlier Bombay decision in Ambaji Traders P. Ltd. v. ITO ((1976) 105 ITR 273 (Bom)) took a similar view on the analogous provision contained in Section 153(3) of the 1961 Act but a contrary view was taken by the latter High Court in the later case reported as CIT v. T.P. Asrani ((1980) 122 ITR 735 : (1979) 11 CTR (Bom) 298). Both sets of decisions have placed reliance on certain observations of this Court in differing contexts. But it will best to have a look at the statutory provisions first, in the context of the facts of the present case.

5. To start with, there is no dispute that reassessment proceedings were rightly initiated under Section 148 of the Act. It is also common ground that on the language of Section 148, as it stood at the relevant time, no notice under Section 148 could have been issued in March 1977 for the assessment years in question. The revenue can successfully support the validity of this notice only by reference to Section 150(1). Two questions then arise : (i) Are the provisions of Section 150(1) attracted ? (ii) If yes, do they save the impugned proceedings ? The answer to the first question is furnished by Section 297(2)(d)(ii), the very clause which authorises the issue of the notice of reassessment under Section 148. It permits the issue of the notice under Section 148, "subject to the provisions contained in Section 149 or Section 150". Though the words "subject to" may be appropriate in the context of Section 149 and Section 150(2) (which place restrictions on the issue of the notice under Section 148), they are somewhat inappropriate apropos Section 150(1) which relaxes the conditions for issue. But there is no doubt that the statute clearly intends that the benefit of enlargement of the time limited under Section 149 should be available in respect of the notice issued under Section 148 read with Section 297(2)(d)(ii). The answer to the second question is furnished by Section 150(1) itself. It removes the bar of time when the reassessment proceedings are initiated in consequence of or to give effect to a finding contained in an order passed by any authority in any proceeding by way of appeal, reference or revision. There is no difficulty here for the orders of the Tribunal and the High Court for the several years between 1949-50 and 1961-62 were passed in proceedings by way of appeals and reference and there is no dispute that the reassessment proceedings have been initiated to give effect to findings in such orders. There is, however, a catch in applying the terms of Section 150(1) to this case. There is no doubt that the whole idea of the sub-section was to lift the embargo placed on initiation of reassessment proceedings and to remove the time-limit where the notice of reassessment is issued with a view to give effect to a direction or finding contained in an appellate order or an order passed on revision or on reference. Unfortunately, however, in expressing its above intention, the legislature has worded the exemption from time-limit so as to cover only cases where the finding or direction is contained in an order passed by any such authority in any such proceeding "under this Act" i.e. the 1961 Act. In the present case the assessments for 1949-50 and subsequent years in the case of the family were made under the old Act and were the subject matters of appeal to the Appellate Assistant Commissioner and Tribunal and of reference to the High Court under the provisions of the 1922 Act. In other words, the finding in consequence of which the assessments presently under consideration are being sought to be reopened is a finding contained in orders passed not 'under this Act' but in orders passed under the 1922 Act. Literally applied, therefore, the language of section 150(1) does not help the department to overcome the bar of limitation otherwise imposed by Section 149.

6. Pressing for the literal construction of the sub-section, it is contended for the appellant that there are good reasons why this construction should be accepted :

(1) To accept the contention of the department would mean the virtual deletion of the words "under this Act" from Section 150(1);

(2) It seems clear that the above words have not been inadvertently used in the statute. If one turns to Section 153(3), which is an extension of Section 150(1) removing the time bar for the completion of assessments initiated for the same purpose, the legislature goes further than Section 150(1) and makes specific reference to particular provisions of the new Act;

(3) The provisions of Section 150(1) will not become redundant if read in the manner contended for by the assessee. While no doubt the proceedings are initiated, in all cases covered by Section 297(2)(d)(ii), under the new Act, the orders, for giving effect to a finding or direction in which such proceedings are initiated, may belong to either category - they may be orders passed under the old Act or they may be orders passed under the new Act. The terms of Section 150(1) will be effective in the latter category of cases; and

(4) The provisions contained in Sections 150(1) and 153(3) are provisions exempting the applicability of a normal rule of limitation otherwise applicable to actions for reassessment and such provisions should be construed strictly.

On the other hand, it is contended for the department that the object of the provision being very obvious, namely, that where reassessment proceedings are initiated to give effect to orders on appeal, reference or revision, there should be no time limit tying down the hands of the revenue as such orders are seldom likely to be passed within the limits of time mentioned in Section 149, we should give effect to the clear intention of the legislature and should not frustrate its object. It is, therefore, necessary to examine the provisions of Section 297(2)(d)(ii) and Section 150(1) a little more closely and examine which of the two interpretations is preferable.

7. Taking up the appellant's interpretation first, it has no doubt the attractiveness of simplicity. It is a strict and literal interpretation of Section 150(1). This apart, learned counsel drew our attention to the fact that the decided cases have referred to certain decisions of this Court in this context. We do not, however, think that the decisions of this Court in *S.B. Jain, ITO v. Mahendra* ((1972) 4 SCC 114 : 1973 SCC (Tax) 604 : (1972) 83 ITR 104) and *Govinddas v. ITO* ((1976) 1 SCC 906 : 1976 SCC (Tax) 133 : (1976) 103 ITR 123) cited by appellant's counsel are of any assistance to them. In the former case, a notice under Section 34 had been issued before April 1, 1962 but it had been quashed as without jurisdiction as it was barred by time. The question was whether the proceedings initiated by the notice can be said to have been pending as on April 1, 1962. The Court answered the question in the affirmative. It held that, for purposes of Section 297(2)(d)(ii), all that had to be seen was whether proceedings under Section 34 of the 1922 Act were factually pending on April 1, 1962. That the notice issued before that date was barred by time and was held so later was immaterial. The notice had in fact been quashed by the High Court in a writ only much later, on March 6, 1963, and so proceedings under Section 34 were pending as

on April 1, 1962. We are unable to see how this decision is of any help here. In the second case, the claim by the assessee, a Hindu Undivided Family, that there had been a partial partition on November 15, 1955 (as a result of which the share income from two firms had ceased to be the income of the family from that date) was accepted by the Income Tax Officer. Subsequently, the assessments of the two firms for the assessment years 1950-51 to 1956-57 had been reopened and reassessments were made on them enhancing their income. Consequently action was also taken to reopen the assessments of the family (which, for the relevant previous years had a share in the firms' income). These assessments were initiated under the new Act in accordance with the provisions of Section 297(2)(d)(ii). The assessee had no grievance thus far. But, while completing the reassessment, the officer, in addition to reassessing the family, also took advantage of the provisions enacted in Section 171(6) and (7) of the 1961 Act - which had no counterpart in the 1922 Act - and passed orders apportioning the tax assessed on the family amongst its members. This was objected to by the assessee. The department, referring to the language of Section 297(2)(d)(ii) - "that all the provisions of this Act shall apply accordingly", contended that the ITO could legitimately invoke the provisions of Sections 171(6) and (7) as well while making the reassessments. This contention was negated. The Court observed : (ITR p. 134)

"These words merely refer to the machinery provided in the new Act for the assessment of the escaped income. They do not import any substantive provisions of the new Act which create rights or liabilities. The word 'accordingly' in the context means nothing more than 'for the purpose of assessment' and it clearly suggests that the provisions of the new Act which are made applicable are those relating to the machinery of assessment."

It will be at once clear that this line of approach can have no validity in the context of Section 297(2)(d)(ii). Hence there is no need to guess or speculate on which provisions of the new Act are to apply. The Section itself, in so many words, provides that Sections 148, 149 and 150 will apply to the initiation of a reassessment proceeding under Section 297(2)(d)(ii) and this cannot be negated by the last few words of that clause. On the contrary, as pointed out earlier, they place it beyond all doubt that the provisions of the 1961 Act have to be applied to the reassessment on the basis that Sections 148 to 150 apply. This case also does not, therefore, advance the case of the assessee.

8. It is next contended by the appellant's counsel that the very issue before us has been considered in the decision of this Court in *R.B. Seth Gujar Mal Modi v. CIT* ((1972) 4 SCC 440 : 1974 SCC (Tax) 172 : (1972) 84 ITR 261) and this concludes the issue in his favour. The second headnote at page 261 seems to bear out this contention. It reads : (SCC p. 442, para 5)

".... Since the Appellate Assistant Commissioner's order was not passed under the 1961 Act, the department could not take any support from Section 150(1) of the 1961 Act."

A perusal of the decision shows, indeed, that this was the ground on which a separate contention urged on behalf of the department on the basis of Section 150(1) was repelled. It is no doubt seen from the facts of the case that it was a case of reassessment under Section 297(2)(d)(ii) of the Act and the Court specifically held that reassessment proceedings should have been initiated under Section 34 of the 1922 Act and not under Section 148 of the 1961 Act. In view of this conclusion no

question of drawing any support from Section 150(1) could at all arise. Still an argument was addressed and was repelled on the basis of the words "under this Act" used in Section 150(1) thus upholding the literal construction argument now addressed on behalf of the assessee. We shall consider this later after considering the department's contentions.

9. As against the above contentions, Sri Manchanda submits that the provisions of Section 150(1) should be applied not blindly but with necessary modifications to suit the situation. In support of this plea, he relies strongly on the last few words of Section 297(2)(d)(ii). It is urged that the expression : "all the provisions of this Act shall apply accordingly" should be so construed as to enable the revenue to invoke reassessment proceedings on the footing that the orders on appeal or reference were ones passed "under this Act" within the meaning of Section 150(1). Sri Manchanda cited two decisions in support of his contention. In *Third ITO v. M. Damodar Bhat* ((1969) 71 ITR 806 : AIR 1969 SC 408 : (1969) 2 SCR 29) the question was whether proceedings under Section 226(3) of the new Act would apply with respect to a tax liability incurred under the 1922 Act. The answer to his question, in the affirmative, turned on the language of Section 297(2)(j) which provided that any tax or other dues payable under the 1922 Act may, notwithstanding the repeal of the 1922 Act, be recovered under the Act. The contrary interpretation accepted by the High Court in that case would have had the effect of nullifying the provisions of Section 297(2)(j). Again, in *Jain Bros. v. Union of India* ((1969) 3 SCC 311 : (1970) 77 ITR 107 : AIR 1970 SC 778) it was held that a penalty could be imposed under Section 271(1) of the 1961 Act in respect of returns filed before April 1, 1962 and assessments completed after April 1, 1962 but under 1922 Act. This was because of Section 297(2)(g), the special transitory provision in this behalf, which provided that "any proceeding for the initiation of a penalty in respect of any assessment for the year ending on the 31st day of March 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act." Here again Section 297(2)(g) had been enacted to provide for the exact situation in question and to have held to the contrary would have rendered the provisions of Section 297(2)(g) meaningless and redundant.

10. The position is no doubt a little different here. The provisions of Section 150(1) have been specially made applicable and operative in respect of the notice under Section 148 issued in pursuance of Section 297(2)(d)(ii) and, as pointed out earlier, the application of the provisions of Section 297(2)(d)(ii) gives rise to two sets of situations to one of which the language of Section 150(1) would squarely apply and so the interpretation sought for by the appellant does not render the words of Section 150(1) redundant. Despite this point of difference in the two situations, we think that the principle of the above decisions that the *mutatis mutandis* rule should be invoked in interpreting Section 297(2) has application here also. Not to do so would no doubt not make Section 150(1) redundant but it will bring about an unintended and inequitable situation. It is clear that Section 150(1) will operate to lift the time bar in cases where the reassessment is initiated under Section 148 to give effect to an order passed under the 1961 Act. Equally, where assessments had been reopened under Section 34 of the 1922 Act before April 1, 1962 to give effect to orders passed under the 1922 Act and are continued after that date by virtue of Section 297(2)(d)(ii), the provisions of the second proviso to Section 34(3) of that Act would preclude the operation of the normal rule of limitation for reassessments. In this situation, it will be a great anomaly to reach the conclusion that the time-limit will operate in cases where proceedings under Section 148 are initiated to give effect to an order on appeal, revision and reference merely because such order is one passed under the 1922 Act. Neither reason nor rhyme can explain how the statute could have intended such anomaly or why it should be so interpreted as to result in a discriminatory treatment only to this class of cases. An interpretation which will result in such anomaly or absurdity should be avoided. It is also necessary to remember that Section 297(2) is a provision enacted with a view

to provide for continuity of proceedings in the context of repeal of one Act by a fresh one broadly containing analogous provisions and the transitory provisions should, as far as possible, be construed so as to effect such continuity and not so as to create a lacuna. For these reasons we think that it will be appropriate to so read the words of Section 297(2)(d)(ii) as to permit the applicability of Section 150 (or Section 153) with the necessary modifications. To paraphrase, the last words of Section 297(2)(d)(ii) should be read to mean that where the proceedings initiated under Section 148, subject to the relaxations and limitation of Section 149 and 150, all the provisions of the Act shall apply accordingly : that is to say, in the same manner as they would apply in case of proceedings normally initiated under these provisions. Since reassessment proceedings so initiated to give effect to orders on appeal, revision or reference will not be subject to a time-limit, the proceedings likewise initiated under Section 297(2)(d)(ii) read with Section 148 will also not be subject to any limitations save to the extent mentioned in Section 150(2).

11. We would like to add that, even if Section 150(1) is to be read literally and considered as posing a hurdle as contended for by the appellant, we think this result can be overcome by a liberal interpretation of Section 297(2)(k). This clause reads :

"(k) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly."

This is principally a provision intended to save administrative steps taken under the 1922 Act by deeming them to be steps taken under the 1961 Act. Strictly construed, the words "order issued" also would seem, prima facie to carry only a similar connotation. But we see no objection, for our present purposes, in the way of our construing these words liberally and consequently deeming the orders passed and issued by the Tribunal and the High Court in this case for the assessment year 1949-50 and subsequent assessment years as orders passed or issued under the corresponding provisions of the new Act. Once this deeming is made, there is no difficulty in the way of accepting the revenue's contention. We think that the circumstances justify a slight straining of the language of this clause and applying it so interpreted to the problem before us so as to avoid a meaningless anomaly. Thus construed, the statute can be said not to have misfired in its application to the situation in the present case.

12. We should, before we conclude, refer to the decision of this Court in the *Gujar Mal Modi* case ((1976) 1 SCC 906 : 1976 SCC (Tax) 133 : (1976) 103 ITR 123). As we have pointed out earlier, the principal conclusion reached in that case was the proceedings under Section 148 could not have been initiated as the case fell under the provisions of Section 297(2)(d)(i). It was, therefore, unnecessary to deal with the contention based upon Section 150. Moreover, this part to the decision was only based on a prima facie reading of Section 150(1) and contains no discussion of the various aspects that need consideration and have been touched upon above. We do not, therefore, think that the above decision can be treated as conclusive on the issue before us which, for the reasons discussed above, we think, should be answered differently.

13. We affirm the conclusion of the High Court and dismiss the appeal. No costs.

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