

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23RD DAY OF JULY, 2009

PRESENT

THE HON'BLE MR.JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

Income Tax Appeal No.637 of 2007

Between:

1. THE COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE
C.R.BUILDING, QUEENS ROAD
BANGALORE
- 2 THE ASST. COMMISSIONER
OF INCOME TAX
CIRCLE -13(1), C R BUILDING,
QUEENS ROAD
BANGALORE. ... APPELLANTS

[BY SRI K V ARAVIND, ADV., FOR
SRI. M V SESHACHALA, ADV.]

And:

LATE SRI RAMAKRISHNA HEGDE
L/R SMT SHAKUNTALA HEGDE
NO.229, "KRITHIKA"
RMV EXTENSION
SADASHIVANAGAR
BANGALORE. ... RESPONDENT

THIS APPEAL IS FILED UNDER SEC. 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 13-4-2007 PASSED IN ITA NO. 817/BANG/2006, FOR THE ASSESSMENT YEAR 2000-01, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO. 817/BANG/2006, DATED 13-4-2007 CONFIRM THE ORDERS OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT

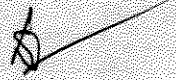
COMMISSIONER, CIRCLE-13(1), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, D V SHYLENDRA KUMAR.J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal by the Revenue under section 250-A of the Income Tax Act, 1961 [for short 'the Act'] is directed against the order passed by the Income Tax Appellate Tribunal, Bangalore Bench, in Appeal No.817/Bang/2006 dated 13.04.2007.

2. The assessee is an individual and the assessment year is 2000-01. The assessment had been initially concluded under section 143 of the Act in the normal course.
3. The Income Tax Officer purporting to have come across certain fixed deposit receipts in the name of the assessee found in the course of recovery proceedings, particularly, by invoking section 226[3] of the Act, had thought it fit to reopen the assessment for the year 2000-01 being of the



view that the source of investment for issue of the fixed deposit receipts was required to be explained properly.

4. The assessee's legal heir had been called upon to explain the same by reopening the concluded assessment by issue of notice under section 148 of the Act as per notice dated 26.08.2004 as by that time the assessee was no more, and indicating that the source of investment for the fixed deposit receipts was required to be explained properly as in the absence of a proper explanation it could be deemed to be the unexplained income of the assessee in the previous year in which it was detected.

5. It appears the legal representative of the assessee explained that it was perhaps attributable to the savings from the agricultural income and as the assessee had considerable agricultural income during the assessment years relevant for the years 1996-07 upto 2000-01 and it appears in the assessment year 2000-01, the assessee had also declared an agricultural income of Rs. 10,12,281/-.



6. The assessing officer in the course of reopened proceedings, found that the assessee for declaring the agricultural income of Rs.10,12,281/- for the assessment year in question, had claimed expenses towards agricultural operation at one-sixth of the receipts from agricultural operations, whereas normally such agricultural operation necessitated expenditure at 50% of the receipts and therefore had obviously inflated the agricultural income and correspondingly had suppressed non-agricultural income which was otherwise liable to tax under the Act.

7. The assessing officer thought it fit to reduce the agricultural income part from the total income for the assessment year 2000-01 by taking the agricultural income to be only at Rs.3,80,000/- as against Rs.10,12,281/- as had been assessed and added back the difference to the regular income and completed the reassessment on such terms, called upon the assessee to pay an amount of Rs.3,84,614/- which was inclusive of tax and interest.



Separate penalty proceedings were directed to be initiated under section 271[1][c] of the Act.

8. The assessee appealed to the appellate commissioner. However, the appellate commissioner upheld the action of the assessing officer, particularly, being of the opinion, that inclusion of the difference between one-sixth and 50% of the gross receipt of agriculture towards regular income was justified and accordingly dismissed the appeal though wrongly the order reads 'the appeal is allowed'.

9. In the further appeal to the Tribunal, the Tribunal while was of the view that the reopening which was more based on change of opinion rather than on any fresh information to the assessing officer, particularly, as details of the fixed deposit receipts had figured in the course of the assessments of the assessee for the earlier years and the interest earned from the fixed deposits having already been offered to tax etc., reopening of the assessment was bad in law, but, nevertheless, thought that the actual ground for reopening was one but the assessment order being on some



other basis, namely, that the assessee had claimed depleted agricultural expenses for the year 2000-01 for reducing his regular income and this ground for reassessment having not been disclosed in the notice, thought it fit to remand the matter to the assessing officer for an opportunity to be accorded to the legal representative of the assessee and then to pass orders afresh.

10. It is against this order of the Tribunal, the present appeal by the revenue raising the following substantial questions of law.

“Whether the Tribunal was correct in holding that there was no material based on which the Assessing Officer could have arrived at a conclusion that there was escapement of income and the reopening was based on surmise and suspicion which is liable to be quashed?”

Whether the Tribunal was correct in holding that the legal heirs of the assessee required to be given one more opportunity to substantiate their case despite number of opportunities having been given to them before the Assessing Officer?”


11. We have heard Sri. Aravind, learned counsel for the appellant – revenue who has taken us through the orders and also made submissions that the Tribunal could not have



held that reopening is bad in law while remanding the matter to the assessing authority for giving a proper opportunity to the legal representative of the assessee for reassessment on the precise ground and it is also submitted that whether in the circumstances the tribunal could have opined that there was no proper opportunity to the legal representative of the assessee before passing the assessment order.

12. On a perusal of the order of the Tribunal as also the assessment order etc., we find that the assessing officer has virtually revised the assessment order for the year in question and on the premise that the assessee had claimed reduced agricultural expenditure to boost or inflate the agricultural income and reduce the regular income.

13. While we find that the reasoning given by the assessing officer that an expenditure of one-sixth of the receipts from the agricultural operation is a bit lower than normal expenditure and perhaps 50% of the receipts being expenditure is quite



reasonable and proper, that in effect is only a correction or revision of the assessment order and that has been done by revising the assessment order.

14. Though Sri. Aravind, learned counsel for the appellant would draw our attention to the explanation [2] to section 147 of the Act which reads as under:

***147. Income escaping assessment -**

Explanation 2 - For the purpose of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

- [a] where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax;
- [b] where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;



- [c] *where an assessment has been made, but,*
- [i] *income chargeable to tax has been underassessed; or*
 - [ii] *such income has been assessed at too low a rate; or*
 - [iii] *such income has been made the subject of excessive relief under this Act; or*
 - [iv] *excessive loss or depreciation allowance or any other allowance under this Act has been computed."*

we are of the clear view that while this also is an escapement for the purpose of section 147 of the Act, nevertheless, the reopening can be only based on information and which should be necessarily from outside and in the present case, the information as from the fixed deposit receipts was no fresh information as the fixed deposit receipts were subject matter of other assessment years and the interest on the fixed deposit receipts had already been accounted for by the assessee also for other years, but more importantly the escapement of income can be inferred only by the revision of the assessment order and not otherwise. The assessment



order is an exercise which is subsequent event, but a mere detection of the fixed deposit receipts would not in any way constitute information for reopening of the order ^{As per D} under assessment. This apart, we find that another view of the assessing officer that the assessee was in the habit of claiming inflated agricultural income starting from the year 1996-97 which was not within the scope of notice issued for reopening in terms of section 148 for the purpose of section 149[1][a] of the Act as the reopening can only be in respect of only four assessment years and not beyond. In any view of the matter, the question even as posed by the revenue goes against the revenue as both questions are to be answered against the revenue that the reopening is bad and the other question is also properly answered by the Tribunal, but we find when once first question of reopening of assessment is bad, in favour of the assessee, there is no question of giving any further opportunity to the assessee and if there is no other question involved in the order of the Tribunal, there is no question of remand to the assessing authority and at any



rate it is not open to the assessing officer even if there is remand on other aspects to examine the question on the additional income tax of the year 2000-01.

15. Accordingly, this appeal is dismissed.

Sd/-
Judge

Sd/-
Judge

AN/-