

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "F", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.1796 & 1797/Del/2017
Assessment Years: 1997-98 & 1998-99

Shri Raju Verma, 17/1, Curzon Road, Dehradun	Vs.	DCIT, Central Circle, Dehradun
PAN :ABIPV8176F		
(Appellant)		(Respondent)

Appellant by	Dr. Rakesh Gupta & Shri Somil Aggarwal.
Respondent by	Shri Surender Pal, Sr.DR

Date of hearing	06.03.2019
Date of pronouncement	09.04.2019

ORDER

PER O.P. KANT, A.M.:

These two appeals by the assessee are directed against two separate orders dated 17/02/2017 passed by the Ld. Commissioner of Income-tax (Appeals)-IV, Kanpur [in short 'the Ld. CIT(A)'] for assessment years 1997-98 & 1998-99 respectively. As in both the appeals for assessment years 1997-98 & 1998-99, identical issue in dispute is involved, we proceeded to decided the appeals by a consolidated order for convenience and to avoid repetition of facts.

2.1 The grounds of appeal raised by assessee in ITA No.1796/Del/2017 are as under:

1. *On the facts and circumstances of the case, the order passed by the Commissioner or Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.*
2. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that initiation of proceedings under Section 147, read with Section 148 is bad in the eye of law as the condition and procedure prescribed under the statute have not been satisfied and complied with.*

(ii) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned A.O. are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.*
3. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the notice issued under section 148 of the Act is bad and liable to be quashed as the same is barred by limitation.*
5. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the notice issued under section 148 of the Act is bad and liable to be quashed, as the same has been issued invoking the provisions of section 149(c) of the Act, despite the fact that the said provision was inserted by the Finance Act, 2012, w.e.f. 1.07.2012 and thus cannot have a retrospective effect.*

(ii) *On the facts and circumstances of the case, learned CIT(A) has erred both on the facts and in law in ignoring the fact that an assessment which stands barred by limitation cannot be revised/reopened by a subsequent amendment made of such period of limitation.*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the addition of an amount*

of Rs. 56,10,737/- made by the AO on account of deposits in HSBC account, Geneva.

7. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the addition of an amount of Rs. 3,09,152/- made by the AO on account of interest on deposits in HSBC account, Geneva.*
 - (ii) *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition on the basis of an allegation that the said deposits in the bank account are unexplained income of the assessee.*
8. *That the addition was made arbitrarily taking the rate of interest at 5.5%.*
9. (i) *That the aforesaid addition was made despite the fact that there is no material whatsoever that such deposits were made during the year under consideration.*
 - (ii) *The findings confirmed by the learned CIT(A) are contrary to AO's findings given in the order for assessment year 2012-13.*
 - (iii) *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the action of the AO in taxing the same income twice.*
 - (iv) *Without prejudice to the above and in the alternative, the addition so made is untenable as the same has been taxed in the assessment year 2012-, by a separate order.*
10. *The appellant craves leave to add, amend or alter any of the grounds of appeal.*

2.2 The grounds of appeal raised in ITA No.1797/Del/2017 for AY 1998-99 are as under:

1. *On the facts and circumstances of the case, the order passed by the commissioner of income tax (Appears) [CIT(A)] is bad, both in the eye of law and on the facts.*
 - (i) *On the facts and circumstances of the case, the Learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that initiation of proceedings under Section 147, read with Section 148 is bad in the eye of law as the condition and procedure prescribed under the statute have not been satisfied and complied with.*

- (ii) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned A.O. are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the notice issued under section 148 of the Act is bad and liable to be quashed as the same is barred by limitation.*
5. *(i) On the facts and circumstances of the case, the Learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the notice issued under section 148 of the Act is bad and liable to be quashed, as the same has been issued invoking the provisions of section 149(c) of the Act, despite the fact that the said provision was inserted by the Finance Act, 2012, w.e.f. 1.07.2012 and thus cannot have a retrospective effect.*
- (ii) On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in ignoring the fact that an assessment which stands barred by limitation cannot be revised/reopened by a subsequent amendment made of such period of limitation.*
6. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the addition of an amount of Rs. 3,09,152/- made by the AO on account of interest on deposits in HSBC account, Geneva.*
- (ii) That the addition was made arbitrarily taking the rate of interest at 5.5%.*
7. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition on the basis of an allegation that the said deposits in the bank account are unexplained income of the assessee.*
8. *Without prejudice to the above and in the alternative, the computation of interest confirmed by the learned CIT(A) is wrong.*
9. *(i) The findings confirmed by the learned CIT(A) are contrary to AO's finding given in the order for assessment year 2012-13.*

(iii) On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the action of the AO in taxing the same income twice.

(iv) Without prejudice to the above and in the alternative, the addition so made is untenable as the same has been taxed in the assessment year 2012-13, by a separate order.

10. *The appellant craves leave to add, amend or alter any of the grounds of appeal.*

3. Briefly stated facts the case are that the assessee an individual, derives income from other sources. For both the years under consideration, proceedings under section 147 of the Income-tax Act, 1961 (in short 'the Act') were commenced by way of issue of notice under section 148 of the Act on 12/06/2014. In the reasons recorded for reopening of the assessment, the Assessing Officer recorded that assessee was holding bank account in foreign bank i.e. HSBC Geneva and said account was not disclosed to the Income-tax Department. The detailed reasons recorded by the Assessing Officer have been reproduced by the Assessing Officer in assessment orders dated 30/01/2015 for AY 1997-98 and 1998-99 respectively. In the assessment year for AY 1997-98, addition of Rs.56,10,737/- has been made for unexplained deposit in the said bank account and addition of Rs.3,09,152/- has been made for the interest income on said deposits. In AY 1998-99 addition has been made for interest accrued of Rs.3,09,152/- in Foreign bank account. On further appeal, the Ld. CIT(A) upheld the validity of the reassessment proceeding as well as upheld the addition on merit in both the years. Aggrieved, the assessee is before the Tribunal by way of the raising grounds as reproduced above.

For AY:1997-98

4. In the grounds No. 2 to 5 of the appeal for assessment year 1997-98, the assessee has challenged validity of the reassessment proceeding. In grounds No. 6 to 9, the assessee has challenged merit of the addition made.

5. In ground No. 4 and 5, the assessee has challenged the notice issued under section 148 of the Act as barred by limitation.

6. The Ld. counsel filed two Paper-Books containing pages 1 to 28 and 29 to 280 respectively. The learned counsel submitted that limitation for issue of notice under section 148 of the Act for reopening has been provided under section 149 of the Act. According to the Ld. counsel by way of Direct Tax Laws (Amendment) Act, 1987 w.e.f. 01/04/1989, the period of limitation for reopening under section 147 of the Act was prescribed to be 10 years after the end of the relevant assessment year, which has been further reduced to 6 years by way of amendment to section 149 by Finance Act, 2001 w.e.f. 01/06/2001. In view of the said provisions of section 149 of the Act, reassessment proceeding under section 147 of the Act could have been initiated within the six-year from the end of the relevant assessment year i.e. 1997-98, then the limitation for reopening under section 147 of expired on 31/03/2004. According to the Ld. counsel, the assessment for the year under consideration attained finality and said finality cannot be disturbed by way of issue of notice under section 148 invoking limitation of 16 years provided under section 149(c) of the Act by way of amendment introduced by Finance Act, 2012, w.e.f., 01/07/2012. The Ld. counsel in support of his contention relied on the decision of the Hon'ble High Court of Delhi in the case of

Brahm Datt Vs ACIT reported in (2018) 100 taxmann.com 324 (Delhi).

7. The Ld. counsel also assailed the reassessment proceeding on the ground of approval not obtained from the authority prescribed and also on the ground that there was no live nexus between the reasons recorded and the belief by the Assessing Officer. In support of his contention, he also relied on the various decisions cited by him during hearing of the appeal.

8. On the other hand, the learned DR relied on the order of the Ld. CIT(A). The Ld. DR also relied on the decision of the Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. Vs. ITO reported in 236 ITR 34 (SC) and decision of Hon'ble High Court of Delhi in the case of Sonia Gandhi Vs. ACIT, Circle-52(1), reported in (2018) 97 taxmann.com 150 (Delhi). On the issue of decision of the Hon'ble Delhi High Court in the case of Brahm Datt (supra), the Ld. counsel submitted that in said case the account was not held in the personal capacity and it was held as settler of the trust and facts of present case being different, ratio of the said judgment cannot be applied over the facts of the instant case.

9. We have heard the rival submission and perused the relevant material on record. In the case, the assessment has reopened on the basis of the statement of the assessee recorded under section 132(4) of the Act during the course of search proceeding at his premises. In assessment year 2012-13, the assessee declared outstanding balance in the HSBC, Zeneva account which includes principal amount and interest component accumulated till date excluding the withdrawal made from time to time. This account was initially opened in "the British Bank of Middle East", Geneva in financial year 1996-97 and funds were

deposited in that. The British Bank of Middle East was later on merged with HSBC bank, Geneva in financial year 1998. During assessment proceeding, the assessee filed bank statement of the account w.e.f. 16/09/1998. Account of the prior period was not provided by the assessee. According to the statement 1,58,093.46 US dollar (USD) was transferred into the account with HSBC Bank. In view of no details provided for the year under consideration i.e. the period of account with M/s. British Bank of Middle East, the Assessing Officer presumed that same amount i.e. opening balance in HSBC Bank must have been remained in the account in financial year corresponding to the assessment year under consideration, i.e., 1996-97 (the period when the account was actually opened) including the initial deposit and the interest earned thereon. The explanation in support of initial deposits as received by way of will of Mrs. Barbara Shukla, was not accepted by the Assessing Officer in absence of any documentary evidence to support. Accordingly, he made addition for the amount of Indian rupees equivalent to 1,58,093.46 USD, i.e., Rs.56,10,737/- as unexplained credit under section 68 of the Act.

9.1 The Assessing Officer has issued notice under section 148 of the Act in terms of limitation of 16 years from the end of the relevant assessment years provided under section 149(c) of the Act in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax has escaped assessment.

9.2 But according to the learned counsel, the period of 6 years for issue of notice under section 149 of the Act provided during relevant period has already expired on 31/03/2004 and thus

assessment attained finality. The contention of the learned counsel is that said finality of assessment cannot be disturbed by way of amendment to section 149 of the Act w.e.f. 01/07/2012. The learned counsel has relied on the decision of the Hon'ble Delhi High Court in the case of Brahm Datt (supra). In the said case also, notice under section 148 of the Act was issued for assessment year 1998-99 invoking limitation of 16 years provided in section 149(c) of the Act for holding bank account in HSBC, Zeneva. In the said decision, the Hon'ble Delhi High Court has relied on the decision of the Hon'ble Supreme Court in the case of K.M. Sharma vs. ITO 254 ITR 772(SC), wherein the Hon'ble Supreme Court has held that law of limitation was intended to give certainty and finality to legal proceedings and therefore, proceedings which had attained finality under the existing law due to bar of limitation, could not be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting proceedings, which has already been completed and attained finality. The Hon'ble Delhi High Court in view of the various decisions cited quashed the reassessment observing as under:

"14. The ratio of K.M Sharma and S.S. Gadgil, in the opinion of this court covers the facts of this case. Reassessment for 1998-99 could not be reopened beyond 31.03.2005 in terms of provisions of Section 149 of the Act as applicable at the relevant time. The petitioner's return for assessment year 1998-99 became barred by limitation on 31.03.2005. The question of revival of the period of limitation for reopening assessment for AY 1998-99 by taking recourse to the subsequent amendment made in Section 149 of the Act in the year 2012, i.e., more than 8 years after expiration of limitation on 31.03.2005, has been dealt with by the Supreme Court in K.M. Sharma (supra).

15. The AO has conceded in the order rejecting the petitioner's objection that "It is also found that the assessee was a non-resident as contended by him, in the AY 1998-99." In the circumstances, there can be no question about the applicability of the then existing provision- Section 149 (b), which stated that the normal time limit for reopening assessment was 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."

16. It has been said that "the government in all its actions is bound by rules fixed and announced beforehand--rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's affairs on the basis of this knowledge" (Ref. FA Hayek, "Road to Serfdom", 1944). In this case, the interpretation proposed by the revenue has the potential of arming its authorities to re-open settled matters, in respect of issues where the citizen could genuinely be sanguine and had no obligation of the kind which the Revenue seeks to impose by the present amendment. All the more significant, is the fact that absent a clear indication, every statute is presumed to be prospective. The revenue had sought to contend that the amendment (to Section 149) is merely procedural and no one has a vested right to procedure; and that procedural amendments can be given effect any time, even in ongoing proceedings.

17. This court is of the opinion that there is no merit in the revenue's contention. In *Sri Prithvi Cotton Mills Vs Broach Borough Municipality*, AIR 1970 SC 192, examined the validity of the retrospective amendment of a statute in light of Article 19(1)(g) of the Constitution of India, i.e. a fundamental right to practice any profession, or to carry on any occupation, trade or business. The court said:

"In testing whether a retrospective imposition of a tax operates so harshly as to violate fundamental rights under article 19(1)(g), the factors considered relevant include the context in which retroactivity was contemplated such as whether the law is one of validation of taxing statute struck-down by courts for certain defects; the period of such retroactivity, and the decree and extent of any unforeseen or unforeseeable financial burden imposed for the past period etc."

18. In *Govinddas v Income Tax Officer* AIR 1977 SC 552 the Supreme Court held that Section 171 (6) of the Income Tax Act was prospective and inapplicable for any assessment year prior to 1st April, 1962, the date on which the Act came into force and observed that:

"11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospectively and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

In Commissioner of Income Tax v Scindia Steam Navigation Co. Ltd AIR 1961 SC 1633, it was held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law upsetting the position and imposing tax liability after that date, even if made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year. These principles were reiterated in Commissioner of Income Tax v Vatika Township (P) Ltd [2014] 367 ITR 466.

19. In view of the above discussion, it is held that the petition has to succeed; the impugned reassessment notice and all consequent proceedings are hereby quashed and set aside. The writ petition is allowed; however without order on costs."

9.3 In view of the facts of the instant case being identical to facts in the case of Brahma Datt (supra), respectfully following the decision of the Hon'ble Delhi High Court, the notice issued under section 148 of the Act is held to be barred by limitation and the reassessment proceeding are accordingly quashed.

9.4 Since we have already quashed the reassessment proceeding on the ground of the limitation of notice under section 148 of the Act, we are not adjudicating the other argument challenging the validity of the reassessment as well as addition on merit as same

are rendered only as an academic exercise. Accordingly, the appeal in ITA No.1796/Del/2017 for assessment year 1997-98 is allowed.

10. As regards the appeal for assessment year 1998-99, since the facts and circumstances of the case for the assessment year 1998-99 are identical to the facts of the case for assessment year 1997-98, and also the reassessment proceedings has been quashed in ITA No.1796/Del/2017 for assessment year 1997-98, thus, following the same, the grounds of appeal for assessment year 1998-99 are also allowed. Accordingly, the appeal for assessment year 1998-99 is allowed.

11. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 9th April, 2019.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 9th April, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi