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RAM BAI

v.

COMMISSIONER OF INCOME TAX

FEBRUARY 18, 1999

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[D.P. WADHWA AND M. SRINIVASAN, JJ.]

Income tax Act, 1961 : Sections 139(4) and 147(a).

Income Tax—AY 1965-66—Reassessment proceedings—Initiation of By
C *ITO—No material to support reassessment—Assessee's land acquired under Land Acquisition Act and compensation awarded—Subsequently, civil court enhanced compensation including solatium and interest which was affirmed by High Court—Assessee filed return under S. 139(4) disclosing interest on belated payment of compensation as her income—ITO rejected it as invalid,*
D *initiated proceedings under S. 147(a) and issued notice—ITO obtained sanction for reassessment from CIT on the ground that the land acquired was not agricultural land as it had not been subjected to agricultural operation and the capital gains thereon were chargeable to income tax-Validity of—Held, in the absence of material to support reassessment, initiation of reassessment*
E *proceedings, invalid—Land Acquisition Act, 1894.*

Section 256(1)—Income Tax—Reference—Scope and power of High Court—High Court completely ignored and overlooked the findings of fact rendered by CIT (Appeals) and ITAT—Further, it discussed the matter as if it was sitting in appeal and also assumed that the ITO had looked into the
F *Revenue records in order to reopen assessment—Correctness of—Held, such a course adopted by High Court, not approved.*

Practice and Procedure :

Precedents—High Court decision—Binding nature of—On subordinate
G *courts and tribunals—Judgment of High Court reversed by Supreme Court long after reopening of assessment by ITO—However, ITO applied a test different from that laid down by High Court in that judgment—Correctness of—Held, at the time of reopening of assessment High Court judgment held the field and, therefore, binding on ITO—Hence, ITO not justified in deviating*
H *from the said High Court judgment.*

New plea—Raising of—For the first time before Supreme Court—Such a plea not raised before any authorities or courts below—Permissibility of—Held, not permissible—Constitution of India, 1950, Art. 136.

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The appellant assessee's land was acquired under the Land Acquisition Act, 1894 and the assessee was awarded compensation during the previous year relevant to the Assessment Year 1965-66. Subsequently, the civil court enhanced the compensation including solatium and interest. The same was affirmed by the High Court. The assessee filed a return under Section 139(4) of the Income Tax Act, 1961 disclosing the interest on the belated payment of compensation as her income.

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The ITO rejected the return as invalid as it was filed beyond the period prescribed under Section 139(4) of the Act, initiated proceedings under Section 147(a) of the Act and issued a notice under Section 148. The ITO obtained sanction for reassessment from CIT on the ground that the land acquired was not agricultural land as it had not been subjected to agricultural operation and the capital gains thereon were chargeable to income tax.

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Accordingly, the ITO made an order of reassessment and initiated penalty proceedings. But the CIT (Appeals) held that the ITO could not have any reason to believe that there was escapement of income as there was no material whatever at that time to indicate that the lands were non-agricultural. The Commissioner of Income Tax allowed the appeal and cancelled the order of assessment under Section 147(a). The High Court allowed the appeal filed by the Revenue. Hence this appeal.

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On behalf of the respondent-Revenue it was contended that the interest accrued from year to year on the compensation paid to the assessee would have to be brought to assessment on protective basis and the same was sufficient to reopen the assessment, and that the land in question did not satisfy the test prescribed by this *Court in Officer-in-Charge (Court of Wards)* case.

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Allowing the appeal, this Court

HELD : 1.1. The Income Tax Officer has made an assertion in the communication to the Commissioner of Income Tax seeking sanction to reopen the assessment that the land in question was not subjected to

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A agricultural operation and that he had reason to believe the income chargeable to tax had escaped for the assessment year 1965-66 by reason of omission or failure on the part of the assessee to make a valid return. But for such assertion, no reference has been made to any material on the basis of which he proceeded to invoke the provisions of Section 147(a) of the Income Tax Act, 1961. Even the assertion as such was a bare one without any reference to the materials on the basis of which he made the said assertion. [765-H; 766-A]

1.2. It is not possible to accept the contention of the Revenue that the land in question did not satisfy the test prescribed by this Court in *Officer-in-Charge (Court of Wards)* case which reversed the Full Bench decision of the High Court was since the said decision of this Court was rendered long after the reopening of the assessment by the ITO in the present case. Thus when the ITO invoked Section 147(a) of the Act, the Full Bench judgment of the High Court was holding the field. Hence, the ITO could not have applied a test different from that laid down by the said Full Bench for determining whether the land in question in this case was an agricultural land. [766-E-F]

CWT v. *Officer-in-Charge (Court of Wards)* (1976) 105 ITR 133 SC and *Central Provinces Manganese Ore Co. Ltd.* v. *ITO,* (1991) 191 ITR 662 SC, held inapplicable.

Officer-in-Charge (Court of Wards) v. *CWT,* (1969) 72 ITR 552 AP BF, held reversed.

2.1. The Commissioner of Income tax (Appeals) and the Income Tax Appellate Tribunal have discussed the matter in great detail and pointed out several facts which were sufficient to show that the land in question was an agricultural land. In the face of such materials if the ITO wanted to reopen the assessment he should have at least some materials to the contrary which could enable him to say that he had reason to believe that the lands were non-agricultural lands and there was escapement of income. [767-A-B]

2.2. The High Court has, while answering the reference, completely ignored and overlooked the findings of fact rendered by the CIT (Appeals) and the Appellate Tribunal and proceeded to discuss the matter as if it was sitting in appeal over the order of the Tribunal. The High Court has also assumed that the ITO had looked into the Revenue records and other

connected records on the basis of which he came to the conclusion that the reopening of the assessment was necessary. It is not possible to agree with the reasoning of the High Court. [767-C]

3. There was no argument before any of the authorities or the High Court to the effect that the interest accrued from year to year on the compensation paid to the assessee would have to be brought to assessment on protective basis and the same was sufficient to reopen the assessment. In the circumstances, the High Court's judgment that the reassessment proceedings initiated by the ITO were valid requires to be upset. [767-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4911 of 1993.

From the Judgment and Order dated 1.4.91 of the Andhra Pradesh High Court in C.R. No. 60 of 1983.

T.V. Ratnam for the Appellant.

T.L.V. Iyer, S. Rajappa and B.K. Prasad for the Respondent.

The Judgment of the Court was delivered by

SRINIVASAN, J. The appellant owned certain lands in Nacharam village near Hyderabad. The Government of Andhra Pradesh acquired the same under the provisions of the Land Acquisition Act. A sum of Rs. 25,240 was awarded as compensation by the Land Acquisition Officer on 20.11.65. On a reference at the instance of the appellant the civil court enhanced the compensation to Rs. 2,72,136 including solatium and interest. The same was affirmed on appeal by the High Court on 16.10.70. The appellant filed a return under Section 139 (4) of the Income-tax Act (hereinafter referred to as the 'Act') on 17.2.72 disclosing the interest on belated payment of compensation as her income. The I.T.O. rejected it as invalid as it was filed beyond the period prescribed under S.139 (4) of the Act. The I.T.O. initiated proceedings under Section 147(a) of the Act for the year ending 31.3.65 in March, 1973 and issued a notice under Sec. 148 on 21.4.73. He sought the sanction of the Commissioner on the ground that the land acquired was not agricultural land as it had not been subjected to agricultural operation and the capital gains thereon were chargeable to income -tax.

2. On 4.9.78, the I.T.O. made an order of assessment holding that a sum of Rs. 2,43,934 was payable as tax and initiated penalty proceedings. On appeal by the assessee, the Commissioner of Income-tax (Appeals) held that the I.T.O. could not have had any reason to believe that there was escapement of income as there was no material whatever at that time to indicate that the lands were non-agricultural. The Commissioner allowed the appeal and cancelled the order of assessment under S.147(a). The Department approached the Income-tax Appellate Tribunal with an appeal but in vain as the Tribunal agreed with the Commissioner and confirmed his order.

3. The Revenue applied for reference to the High Court on the following three questions :

> 1. Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal is correct in holding that the reassessment proceedings were not valid by considering only a part of the Income-tax Officer's note?
>
> 2. Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal is justified in holding that the Income-tax Officer had no reason to believe that the land was not agricultural and in view of the Andhra Pradesh High Court's decision in the case of *CIT* v. *Officer-in-charge (Court of wards)* v. *CWT* (72 ITR 552) which was not accepted by the Department?
>
> 3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the lands are agricultural lands?

4. By a detailed order, the Tribunal rejected the application with reference to Questions 2 & 3 but referred only the first question by recasting it as follows:-

> "Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in holding that the reassessment proceedings initiated by the Income-tax Officer in this case were not valid in law?

The High Court by its judgment dated 1.4.91 answered the question in the negative in favour of the Revenue and against the assessee. Aggrieved by this the assessee filed this appeal on Special Leave.

5. We have earlier referred to the fact that the Tribunal referred only one question to the High Court for its decision and refused to refer the other two questions as desired by the Revenue. The High Court has mentioned in its judgment that the counsel appearing before it made a representation that the other two questions were also subject-matter of another reference. The High Court has recorded in its judgment that the particulars about the other alleged reference were not furnished and thus the only question to be considered was that referred to it by the Tribunal.

6. We have already mentioned that the I.T.O. sought sanction of the Commissioner to reopen the matter. That was by a communication dated 17.3.73 in which the relevant part read as follows :-

> "In this case the assessee owned 16 acres 33 cents in Nacharam village near Hyderabad. This was acquired by the Government with effect from 27.10.1964. The assessee was awarded a final compensation of Rs. 2,10,361 on 7.7.1967. The land in question is not agricultural land and has not been subjected to agricultural operations. The capital gains are chargeable to income tax. The value as on 1.1.54 is estimated at Rs. 1,000 per acre and the total value of the entire land as on 1.1.1954 would be about Rs. 16,500. Thus the assessee made a net capital gain of Rs. 1,93,860. Besides the amount of interest that accrued year to year will have to be included as a protective basis. The assessee has filed a return disclosing an income of Rs. 3599 being interest on belated compensation on 17.2.1972. As this has been filed beyond the period prescribed under Section 139(4) the return has been treated as invalid and filed. I have therefore, reason to believe the income chargeable to tax has escaped for the assessment year 1965-66 and that such escapement was by reason of omission or failure on the part of the assessee to make a valid return under Section 139 for the assessment year 1965-66. I request the Commissioner to accord sanction for reopening the assessment under Sec. 147(1)."

7. Apart from the said communication, there is nothing on record to disclose the material on which the I.T.O. decided to reopen the assessment. He has made an assertion in the said communication that the land in question was not subjected to agricultural operation and that he had reason to believe, the income chargeable to tax had escaped for the assessment year 1965-66 by reason of omission or failure on the part of the assessee

A to make a valid return. But for such assertion no reference has been made to any material on the basis of which he proceeded to invoke the provisions of Sec. 147(1) of the Act. Even the assertion as such was a bare one without any reference to the materials on the basis of which he made the said assertion.

B 8. An attempt was made on behalf of the Revenue to show that the land in question did not satisfy the test prescribed by this Court in *Commissioner of Wealth-tax Andhra Pradesh* v. *Officer-in-charge (Court of wards) Paigah*, (1976) 105 I.T.R. 133. In that case this Court laid down that for the purposes of Wealth Tax Act agricultural land should be shown to have C connection with an agricultural purpose and user in order to be considered as an agricultural land and the mere possibility of user of land by some possible future owner or possessor for an agricultural purpose was not sufficient. The Court said that it was not the mere potentiality which will affect its valuation as part of the assets but its actual condition and intended user had to be seen for purposes of exemption from wealth tax. D By that judgment, this Court reversed the judgment of the A.P. High Court in *Officer-in-charge (Court of wards)* v. *Commissioner of Wealth-tax*, (1969) 72 I.T.R. 552 (F.B.). The Full Bench of the High Court had in its judgment held that actual user of the land for agricultural purposes was not necessary for making it an agricultural land and it was sufficient if the land could have been put to agricultural use. The judgment of this Court was rendered E only on August 6, 1976 long after the re-opening of the assessment by the I.T.O. in the present case. Thus when he invoked Section 147(a) of the Act, the aforesaid judgment of the Full Bench of the AP High Court was holding the field. Hence the I.T.O. could not have applied a test different from that laid down by the said Full Bench for determining whether the F land in question in this case was an agricultural land. Consequently, the decision of this Court in *C.W.T.* v. *Officer-in-charge (Court of wards) Paigah* (supra) will be of no help to the Revenue.

9. Learned counsel for the Revenue has placed reliance on the G judgment of this Court in *Central Provinces Manganese Ore Co. Ltd. v. Income-tax Officer, Nagpur* (1991) 91 I.T.R. 662. It was held on the facts in that case that the reasons recorded in the notice issued under Section 147(a) and the material on record justified the issue of such notice. That ruling will not help the Revenue in this case as there is no material whatever on record to justify the issue of notice by the I.T.O. under Section H 147 of the Act.

10. The Commissioner of Income-tax (Appeals) and the Appellate Tribunal have discussed the matter in great detail and pointed out several facts which were sufficient to show that the land in question was an agricultural land. In the face of such materials if the I.T.O. wanted to reopen the assessment he should have at least some materials to the contrary which could enable him to say that he had reason to believe that the lands were non-agricultural lands and there was escapement of income. A B

11. The High Court has while answering the reference completely ignored and overlooked the findings of fact rendered by the Commissioner of Income-tax (Appeals) and Appellate Tribunal and proceeded to discuss the matter as if it was sitting in appeal over the order of the Tribunal. The High Court has also assumed that the ITO has looked into the Revenue records and other connected records on the basis of which he came to the conclusion that the reopening of the assessment was necessary. We are unable to agree with the reasoning of the High Court. C

12. The learned counsel for the Revenue has attempted to support the order of the High Court by stating that the interest accrued from year to year on the compensation paid to the assessee would have to be brought to assessment on protective basis and the same was sufficient to reopen the assessment. There was no such argument before any of the authorities or the High Court. D E

13. In the circumstances, the order of the High Court requires to be upset and accordingly we allow this appeal and set aside the judgment of the High Court. The question referred to the High Court by the Tribunal is answered in the positive in favour of the assessee. There will be no order as to costs. F

V.S.S. Appeal allowed.