CHAPTER -III

REVIEW AND EXAMINATION OF CASE LAW

3.1 A review of case Law during the period 1985 to 1992.

3.2 A Broad Examination of the case law

CHAPTER - III

REVIEW AND EXAMINATION OF CASE LAW.

INTRODUCTION :

In the present chapter we are going to deal with the cases filed under direct tax laws between 1985 to 1992. These are the speciman cases. The researcher has selected this period because, the Direct Tax Laws has undergone amendments from time to time during this period. This chapter sought after the causes and effects of the amendments on decisions.

3.1 A REVIEW OF CASE LAWS DURING THE PERIOD 1985 TO 1992.

This chapter deals with a review of case laws during the period 1985. to 1992. The period of 9 years is selected for the purpose of this study. The case laws has been taken from " Income Tax Reports". The following is the summary of relevant laws.

A] REVIEW OF CASE LAW DURING THE YEAR 1985.

1. a) The citation :-

Commissioner of Income-Tax (Andra Pradesh)

v/s

M. Chandrashekar.

b) Name of the Judges :

i) V.D. Tuljapurkar.

ii) R.S. Pathak.

c) Date of decision : 4.th Dec. 1984.

d) ITR No. - 151.

Page No.- 433.

e) BRIEF ISSUE :

PENALTY - RETURN - FAILURE TO FILE WITHIN "TIME ALLOWED" INCLUDES-PERIOD - UP TO THE DATE EXTENDED BY ITO - EXTENSION OF TIME ONLY ON APPLICATION - INTEREST - CHARGED EXTENSION OF TIME CAN BE PRESOMED-NO PENALTY LEVIABLE. INCOME TAX ACT 1961 S.S 139(1) PROV(iii) (4) (8) 271 (1)(a) (PRIOR TO AMENDMENT FROM 1-4-1971).

f) DECISION -

Held accorcinqly, affirming the High court and the "Tribunal (i) that in the ordinary cources of things, the ITO could have extended the date only upon being satisfied that there was good reason for doing so, and that would have been on grounds pleaded by the assessee and that in the circumstances of this case pre-sumotion could validily be raised that all that was done

(ii) that, on the facts, the extension was a water falling within sec.139 (1) and the returns furnished by the assessee must be attributed to that provision they were not returns furnished within the comtemplation of sec. 139(4).

(iii) that, therefore, penalty provision did not come in to olay at all

2. a) The citation -

commissioner of Wealth-Tax, Punjab, J & K and Chandigarh

V/S

Yuvaraj Amrinder Singh.

----------*****----------

commissioner of Wealth Tax, Punjab J&k and chandigarh.

V/S

Princess Rupinder Kumari

b) Name of the Judges :

i) V.D. Tulzapurkar

ii) Sabyasachi Mukharji.

c) Date of decision : 8 th Oct. 1985.

d) ITR No. - 156

Page No. - 525

e)BRIEF ISSUE :

WEALTH TAX - EXEMPTION - ANY POLICY OF INSURANCE INCLUDES POLICY OF DEFFRRED ANNUITY BASED ON HUMAN LIFE - OBJECT OF EXPMPTION - " LIFE INSURANCE" "ASSETS" "ANY POLICY OF INSURANCE' MEANING OF WEALTH TAX ACT 1957 S.S 2(e) (iv) 5(1) (vi)(vii) INSURANCE ACT.

1938 S.2(11)

F) Decision :

Held affirming, the decision of High Court, that the polices evidenced contract of incurance covering risk of human life. commutable annuities on life, like the one's in this case fell v/s 5(i) (vi) and the value thereof qualified for exemption from the charge of Wealth-Tax.

B) A REVIEW OF CASE LAW'S DURING THE YEAR 1986

1.A) The citation :

Dr. K. George. Thomas

v/s

commissioner of Income Tax Kerala

b) Name of the Judges :

i) R.S. Pathak

ii) Sabyasachi Mukharji

c) Date of Decision . 30 th April 1986.

d) ITR No. -159

Page No. -851

e) BRIEF ISSUE

INCOME ON CASUAL RECEIPTS - ASSESSEE RUNNING A PRINTING PRESS AN RUNNING A DAILY NEWS PAPER-REMITANCES RECEIVED FROM USA CREDITED IN SEPARATE ACCOUNT OSTENSIBLY AS OFFICE BEARER OF RELIGIOUS FAITH-ASSESSEE DRAWING HEAVILY FROM THIS ACCOUNT FOR THE NEWS PAPER AND FOR THE PERSONAL EXPENSES-AMOUNT RECEIVED FROM USA NOT CASUAL OR NON RECURRING RECEIPTS TAXABLE AS INCOME INDIAN INCOME TAX ACT 1922 Sec.10(3).

f) DECISION -

Held, affirming the decision of High Court, that the receipts from USA were assessable as the income of the appellant

and they could not be regarded as of a casual and non-recurring nature not arising from the appellant's business or the exercise of his profession or occupation within the meaning a section 10(3) of the Indian Income Tax Act,1922.

2. a) The citation :

S.o. Gramophone (p)

v/s

Commissioner of Income- Tax Patiyala

b) Name of the judges - i) V.D. Tulzapurkar

ii) Sabyasachi Mukharji

e) Date of decision 29th Jan 1986.

d) ITR No. - 158

Page No. - 313

e) BRIEF ISSUE -

FIRM - REGISTRATION -GENUINENESS -FACTUAL GENUINENESS AS RELEVANT AS VALIDITY IN LAIN SOME-PARTNERS HELD TO BE BENAMIDARS NO BAR TO REJECTING REGISTRATION OF THE FIRM. ON THE GROUND THAT FIRM WAS NOT GENUINE NESS-INDIAN INCOME TAX ACT 1922 Sec.26(a) INDIAN INCOME TAX RULE 1961.

F) DECISION :

Held, also that the appellant firm was not entitled to produce for the first time before the Supreme Court, the account books pertaining to the Subsequent years in which on the opening day entries showing distribution of the earlier years profit had been made since the department had no opportunity to make their comments and there genuiness will require investigation into facts.

G) A REVIEW OF CASE LAWS DURING THE YEAR 1987.

1) a) The Citation :

Commisioner of Income Tax, Kanpur

V/S

Dr. R.S. Gupta.

b) Name of the Judges :

i) Sabyasachi Mukharji

ii) S. Natrajan.

c) Date of Decision : 3rd February 1987.

d) ITR No. 168

Page No. 36.

e) Brief Issue :

GIFT - ESSENTIAL INGREDIENT - THREE MUST BE EXISTING PROPERTY. DONOR HOLDING ACCOUNT WITH PRIVATE COMPANY - COMPANY NOT HAVING OVERDRAFT ACCOUNT WITH BANK NOT CARRYING ON BANKING BUSINESS. GIFT BY DONOR BY TRANSFER ENTRIES IN ACCOUNTS OF COMPANY IN EXCESS OF CASH IN HAND WITH COMPANY INVALID. TRANSFER OF PROPERTY ACT, 1882, S.122.

WEALTH TAX - NET WEALTH - AMOUNTS HELD IN CREDIT WITH COMPANY - COMPANY NOT HAVING OVERDRAFT ACCOUNT WITH BANK. NOT CARRYING ON BANKING BUSINESS - GIFT OF AMOUNT BY TRANSFER ENTRIES - IN EXCESS OF CASH IN HAND WITH COMPANY - INVALID - AMOUNTS TRANSFERRED TO BE INCLUDED IN NET WEALTH - WEALTH TAX ACT, 1957, SS 2(M).

f) Decision :

Held, reversing the decision of High Court, that there were no valid gifts, since the only sum which could be taken by the doners was Rs. 4000 and the company was not a banking company and had no overdraft facility with any bank; there were no existing goods to be parted with. The sum of Rs 150,000 had therefore, to be included in the respondent's net wealth.

The respondent claimed that a sum of Rs. 67,560-12-0 stand-

ing to his credit in the books of a firm had been gifted by book entries on oral instructions. There was no evidence that the amount was available with the firm on the date of the gift.

Held, that the gifts were not valid and the sum of Rs. 67,560-12-0 had to be included in the resoondents net wealth for the ourpose of wealth tax.

2) a) The Citation :

Additional Commissioner of Income-Tax-Gujrat

V/s

Mohanbhai Pamabhai (and other appeals)

b) Name of the Judges :

i) R.S. Pathak.

ii) Ranganath Mishra.

iii) M.M. Dutt.

c) Date of Decision : 12th Feburary 1987.

d) ITR No. - 168.

Page - 166.

e) Brief Issue :

CAPITAL GAINS - FROM - RETIREMENT OF SOME PARTNERS-AMOUNT RECEIVING BY THEIR SHARE IN THE PARTNERSHIP INCLUDING GOODWILL - NO PART OF AMOUNT RECEIVED IN ASSESSABLE AS CAPITAL GAINS - INCOME TAX ACT, 1961, SS 2(14), 2(47) 45, 48.

f) Decision :

From the decision of Gujrat High Court in CIT V/s Mohanbhai Pamabhai (1973) 91 ITR 393, to the effect that when a partner retired from the firm and received his share of an amount calculated on the value of their paternashio assets including goodwill of the firm, there was no transfer of interest of the partner in the goodwill and no part of the amount received to him would be assessable as capital gains U/s 45 of the Income Tax Act 1961.

3. a) The Citation :

Commissioner of Income Tax Bihar & ORISSA & ANOTHER

V/s

S.P. Jain

b) Name of the Judges :

i) Ranganath Mishra

ii) G.L. Oza.

c) Date of Decision : 24th April 1987.

d) ITR No. 167.

Page No. 161.

e) Brief Issue :

SALARY - ACCRUAL - ORAL - AGREEMENT TO DISCONTINUE PAYMENT - NO ENTRY MADE IN ACCOUNTS TOWARDS SALARY -

RESOLUTION PASSED LATER SALARY DOES NOT ACCRUE - INDIAN INCOME TAX ACT, 1922 S.Y.

DEEMED DIVIDEND - EXCLUDED ON BASIS THAT HIGH COURT DECLARED THAT NO LIABILITY OF COMPANY FOR ORDER DECLARING UNDISTRIBUTED PROFIT TO BE DIVIDED - SUPREME COURT REVERSING DECISION HIGH COURT - DEEMED DIVIDEND TO BE INCLUDED - INDIAN INCOME TAX ACT 1922 S(2(6A)(C) 23A.

INCOME FROM OTHER SOURCES BENEFITS OR PERQUISITES - LAW BEFORE AMENDMENT IN 1955 - AMENDMENT NOT CLARIFLATORY - NO LIABILITY TO TAX PRIOR TO AMENDMENT. WHERE PERQUISITES OR BENIFITS NOT CONVERTIBLE INTO MONEY - INDIAN INCOME TAX ACT 1922, S 2(6C)(iii)

f) Decision :

Held, that the salary for the last two months did not accrue to the assessee and was not taxable for the relevant assessment year.

Two amounts were sought to be taxed in the hands of assessee an deemed dividend on the basis that the two companies of which he was shareholder were proceeded against under section

23(A) of the Indian Income Tax Act 1922. On a reference, the High Court held that the assessee was not taxable as the High Court had decided in the cases of the companies that there was no liability V/s 23(A) . The department appealed to the Supreme Court. In relation to one company the Supreme Court reversed the decision of the High Court but there was no similar information relating to the another company.

Held(i) that the assessee was liable in respect of the amount relatable to the company in relation to which the Supreme Court had reversed the decision of the High Court.

ii) That the liability in relation to the another company depended on whether the High Court decision had become final. Perquisites were taxable V/s 2 (6C).

iii) of the 1922 At before amendment in 1955 only if the perquisite were convertible into memory value. The amendment made by the Finance Act 1955 was not clarificatory.

D) A REVIEW OF CASE LAWS DURING THE YEAR 1988 :

1) a) The Citation :

Chuharmal

V/s

Commissioner of Income Tax (M.P.)

b) Name of the Judges :

i) Sabvasachi Mukharji.

ii) S. Ranganathan.

c) Date of Decision : 2nd mav 1988.

d) ITR No. 173.

Page No. 250.

e) Brief Issue :

DEEMED INCOME - UNEXPLAINED VALUABLE ARTICLES - SEARCH AND SEIZURE BY CUSTOM AUTHORITIES - WRIST WATCHES SEIZED FROM ASSESSEE'S BEDROOM - NO EXPLANATION GIVEN AT THE TIME OF SEIZURE - ASSESSEE NOT TAKING APPORTUNITY GIVEN TO SHOW THAT HE WAS NOT OWNER - VALUE OF WATCHES SEIZED - CAN BE DEEMED TO BE INCOME OF ASSESSEE - INCOME TAX ACT 1961S. 69A

PENALTY - INCOME RETURNED LESS THAN 80% OF INCOME ASSESSED - DEEMED INCOME COMPARISING VALUE OF UNEXPLAINED ARTICLES ADDED TO DISCLOSED INCOME - PENALTY CAN BE IMPOSED INCOME TAX ACT 1961, S271 (1) (C), Explanation (BEFORE AND AFTER AMENDMENT INIAS 1975).

INCOME TAX PROCEEDING - EVIDENCE PRINCIPLE THAT EVIDENCE ACT IS NOT APPLICABLE SCOPE OF PRINCIPLE - POSSESSION OF VALUABLE ARTICLES - OWNERSHIP CAN BE PRESUMED - INDIAN - EVIDENCE ACT 1872, S.110 - INCOME TAX ACT 1961, S143.

WORDS AND PHRASES - "INCOME" IN SECTION 69A INCOME TAX ACT

1961 - MEANING OF.

f) Decision :

Held dismising the petition and office running the decision of High Court.

i) that what was meant by saying that the Evidence Act did not apply to proceeding under the Income tax Act 1961, was that the rigour of the rules of evidence contain in the evidence Act was not applicable but that did not mean that when the taxing authorities were desirous of invoking the principle of the Evidence Act in processing before them they were prevented from doing so.

ii) That all that section 110 of the Evidence Act 1872 did was to embody a salutory principle of common law jurisprudence viz. where a person was found in possession of anything the onus of providing that he was not its owner was on that person. This principle could be attracted to a set of circumstances that satisfy its conditions and was applicable to taxation processing.

iii) that the expression "Income " as used in section 69A of the income tax Act 1961, had a wide meaning which meant anything which came in or resulted in gain.

iv) That on the facts, a legitimate inference could be drawn that the petition had income which he had intrested in purchasing the wrist watches and could be held to be the owner of the wrist watches and income by virtue of section 69A.

v) That as the total assessable meant was Rs. 90,568 after inclusion of the value of the watches, whereas the petitioner had returned an income of only Rs. 3113 which was less than so present of the assessed income the explanation to section 271(1) (c) inserted in 1964 applied and the department could be said to have discharged its onus of proving concealed income.

The amendment to the explanation to section 271(1)(c) by the Taxation Laws (Amendment) Act 1975 is prospective in effect.

2. a) The Citation :

R.K. Palshikar (HUF)

v/s

Commissioner of Income Tax M.P. Nagpure & Bhandara.

b) Name of the Judges :

i) R.S. Pathak.

ii) M.H. Kania.

c) Date of decision : 5th May 1988.

d) ITR No. 172.

Page . 311.

e) Brief Issue :

CAPATIAL GAINS - LAND DEVELOPED INTO BUILDING PLOTS LEASE OF PLOTS FOR 99 YEARS - SALAMI OR PREMIUM RECEIVED FOR LEASE - CAPITAL GAINS TAX LEVIABLE INDIAN INCOME TAX ACT 1922 SS 2(4A) 12(B).

REFERENCE - QUESTION NOT RAISED BEFORE TRIBUNAL NOT DECIDED BY IT NOT ALLOINED TO BE RAISED BEFORE SUPREME COURT - INDIAN INCOME TAX ACT 1922 SS 66 66A.

f) Decision :

Held (i) that it was not open to the appellant to raise the fresh contention as that question, whether section 12B could be brought into olay where the property sold had not cost anything to acquire it as it was gifted was not urged oefore any of the income tax authorities or the tribunal or even before the High Court. Further what the appellant sold was not the agricultural land which was given to the ancestor under the inam but land which was developed as housing sites at a considence cost.

ii) The the grant of lease of the plots amounted to transfer of capital assets as contemolated by section 12B. The appellant

had panted with an assets of an enduring nature viz, right of possession and enjoyment of the property teased for a period of 99 year and a premium had been changed therefore.

3. a) The Citation :

Commessioner of Income Tax-Bhopal

V/s

Abdul Hussain Mulla Muhammad Ali

b) Name of the Jucges :

i) R.S. Pathak

ii) M.N. Venkata Chailiah.

c) Date of Decision : 9th May 1988.

d) ITR No.- 172.

Page No.- 615.

e) Brief Issue :

WEALTH TAX-NET WEALTH "ASSETS"-LOAN BY WAY OF "QUARAZA - E- HASANA" - CLAMED THAT ASSESSEE COULD NOT DEMAND REPAYMENT AND DEBTOR NOT BOUND TO PAY - ONUS OF PROOF ON ASSESSEE - LLAIN NOT SUPPORTED EXCEPT BY STATEMENT OF DEBTOR - CLAIN NOT PROVED - LOAN INCLIDIBLE IN NET WEALTH - WEALTH TAX ACT 1957.

S(2) (F) (M).

TAXATION ONUS OF PROOF INCIDENTS OF TRANSACTION CLAIMED TO BE EXCLUDED FROM NET OF TAXATION - ONUS OF ASSESSEE.

f) Decision :-

Held. reversing the decision of the High Court (i) that as no authorative text principle or precedent recognised in muslim law was placed before the High Court or the Supreme Court to show that the transaction of the nature and incidents of "Quaraza - e -Hasana" was known to and recognised by the personal law of muslims and the contents and incidents of "Quarara-e-Haso" were not established it was not possible for the court to act upon such a rule of muslims law. much less afford relif to the proponent of such a rule.

ii) that the loan to F though it was a "passive" debt was required to be treated as due and payable to A. it was not A's case that the debt was a bad and irrecoverable debt and the declaration of F itself established its existence.

iii) That on the facts one partner had lent a large sum of money to another to be utilised as a capital in the partnership venture. The transaction was of a commercial nature and the presumption was that legal obligations were intended and the onus

was on the parties assesting the absence of legal obligations. The test was an objective one and was not subjective to the parties. The non-enforcebility of the debt was pleaded not as a part of what was permissible in the law of contracts but specifically as some inevokable incident of a particular tent peculier to and characteristics of the personal law of the muslims. That not having been established no appeal could be made to the principle of permissibility of exclusion of legal obligation existence of a debt implied an obligation to repay. No legal bon of the remedy was pleaded.

iii) That therefore the sum of Rs 4 Lackhs had to be included in the net wealth of A.

By the Court : "Where, as here the tax implications of large financial obligations are sought to be put an end to the burdon is heavy on the assessee to establish that what would otherwise be the incidents of the transactions were excluded from contemplation by the parties.

4. a) The Ciation :

Commissioner of Wealth Tax -II Ahemedbad

V/s

Arvind Narottam

b) Name of the Judges :

i) R.S. Pathak

ii) Sabyasachi Mukharji.

c) Date of Decision : 9th August 1988.

d) ITR No - 173

Page No - 479.

e) Brief Issue : -

WEALTH TAX - NET WEALTH - "ASSESTS"- TRUST - INTEREST OF BENEFICIARY - BENEFICIARY ENTILTED TO A MINIMUM ANNUAL PAYMANT - BALANCE - IF ANY . TO BE ADDED TO CORPIS - VALUE. OF INTEREST - ONLY CAPITALISED VALUE OF MINIMUM AMOUNT - NOT ENTIRE VALUE OF ASSETS OF TRUST - W.T. ACT 1957 SS 2(m) 21(1). 2(4).

WORDS AND PHARASES - "PROPERTRY" "INTEREST IN PROPERTY" MEANNING OF.

CONSTRUCTION OF DEEDS - WHERE LANGUAGE IS PLAIN - NO RESORT TO CONSIDERATIONS OF TAX AVOIDANCE.

F) Decision :

Held, affirming the decision of high Court that A. the respondent was entilted only to the minimum granted to him. So also on the distribution of accumulated balance at the end of the stipulated period there was no right to him to receive any part thereof. It was open to the trustees to ignore him altogether and

they family as they chose. The interest of A extreme to no more than the minimum and it was only the capitalised value of the minimum amounts payable to A which could be incomed in the Net wealth of A.

It is true that the experession "Property" must bear a comprehensive sense; but there must be a right oresent or contingent before it can be said that the assessee has an "interest" in property.

Gartside V/s Inland Revenue commissioner (1968) AC 553 (111) relied on.

Where the lanouage of the ceed of settlement is plain and admits of no ambiguity, there is no scope for consideration of tax avoidance.

Per Sabvasachi Mukharji (i) one would wish as noted by chinnaopa Readds in Mcdowell 2C0. Ltd.,m V/s CTO (1985) 154 ITR 148 (SC) that one could get the enthusiam of justic Holmes that taxes are the orice of civilisation and one could like to pay that orice to buy civilisation. But the cuestion which many ordinary
tax payers very often in a country of shortage with ostentaions consumption and deprivation for the large masses asking does he with taxes buy civilisation or does he facilitate the waste and

ostentations of the few-unless the waste and ostentation in Government spending are avoided or eschewed no amount of moral sermons would changes peoples attitude to tax avoidance.

ii) Where the true effects on the constructions of the deeds in clear appeal to discourage tax avoidance is not a relavant consideration.

E) A REVIEW OF CASE LAW DURING THE YEAR 1989.

1. a) The citation

Commissioner of Income Tax.Bombay.

v/s

Rasiklal Maneklal (HUF)

(And others Appeals).

b) Name of the Judges

R. S. Pathak

Rangnath Misra.

c) Date of Decesion 29th March 89.

d) ITR No.-177

page -198.

e) Brief Issue

CAPITAL GAINS-"EXCHANGE" AND "RELINQUISHMENT" OF CAPITAL ASSET-MEANING OF- ASSESSEE HOIDING SHARES IN COMPANY -

AMALGAMATION OF COMPNY WITH ANOTHER COMPANY AND DISSOLUTION OF OLD COMPANY- SHARES RECEIVED IN NEW COMPANY ON THE BASIS OF SHARES IN OLD COMPANY - DOES NOT AMOUNT TO "EXCHANGE" OR "RELIN-QUISHMENT"- NO CAPITAL GAIN ARISE INDIAN INCOME TAX ACT, 1922 S. 12B.

WORD AND PHRASES "EXCHANGE"-"RELINQUISHMENT" MEANING

f) Decision :

Affirming the decision of the High Court, that there was neither an "exchange" nor a "relinquishment" and no capital gains arose from the transaction.

An "exchange" involves the transfer of property by one person to another and reciprocally the transfer of property by that others to the first person. There must be a mutual transfer of owner-ship of one thing for the owner-ship of another.

A relinquishment" takes place when the owner withdrawn himself from the property and abondons his rights there to. It Presumes that the property continues to exist after the relinqu-ishment. where upon amalgamation, the company in which the asses-see holds shares stands dissolved, there is no " relinquishment" by the assessee

Decision of the Bombay High Court in Commissioner of Income Tax V/s Rasikla Maneklaw (HUF) (1974)95 ITR 656 affored

2. a) The citation

SHRI SHUBHALAXMI MILLS LTD.,

V/S

ADDITIONAL COMMISSIONER OF INCOME-TAX, GUJARAT

b) Name of the judges :

R.S. Pathak

Rangnath Misra.

c) Date of Decision 28.th March 1989.

d) ITR NO. - 177

Page No - 193

e) BRIEF ISSUE :

DEVELOPMENT REBATE- CONDITIONS CREATION OF RESERVE ESSENTIAL TO BE MADE IN THE YEAR IN WHICH MACHINARY OR PLANT IS INSTALLED OR FIRST PUT TO USE-EXISTENCE OF SUFFICIENT PROFITS NOT NECESSARY- MERE BOOK ENTRIES SUFFICIENT INCOME-TAX ACT, 1961 S.S 33(1),34(a)

f) Decision :-

In order to claim the deduction on account of develooment rebate under section 33(1) of the Income Tax Act:1961 it is obligatory that the debit entries in the profit and loss account should be made in the relevant previous year in which the machinary or plant is installed or first put to use. In view of the

explanation added with retrospective effect from the commence ment of the Act, to clause (a) of section 34(3) it is clear that what is contemplated is the creation of the reserve fund in the relevant previous year irrespective of the result of the profit and loss account disclosed by the books of assessee. Mere book entries will suffice for ereating such a reserve fund The debit entries and the entries relevant to the reserve fund have to be made before the profit and loss account is finally drawn up This is a condition for securing the benefit of develooment redate and if the conditions not satisfied the deduction on account of develooment rebate can not be claimed at all.

3. a) The Citation :-

Commissioner of Income Tax, Calcutta

v/s

Prahladrj Agarwala

b) Name of the Judges

R.s. Pathak

M.H. Kania

c) Date of decision 26 th Apr.1989.

d) ITR 177

Page no 399

e) Brief Issue

TRANSFER OF ASSETS- ASSESSEE MAKING GIFTS OF MONEY TO- INIFE

WIFE BECOMING PARTNER IN FIRM AND CONTRIBUTING SUCH MONIES TOWARDS CAPITAL WIFE'S CAPITAL- WIFE'S SHARE OF PROFITS FROM FIRM- NOT INCLUDIBLE IN ASSESSEES TOTAL- INCOME INCOME TAX ACT,1961 S64 (1)(II)

f) Decision :

Affirming the decision fo the High Court that there had to be a proximate connection between the accural of income and the assets transfered No doubt the wife became a partner because of the capital contributed by her in the firm, but it was upon agreement by the remaining partners that she bacame a member of the partnership the mere contribution of the capital by the wife would not automatically have entitled her to partnership in the firm the partnership was based on the agreement and it is the event of the agreement between the partners that brought the respondent's wife into the firm as a partner.The share of the profits of the wife could not be included in the respondent's total income under Sec. 64(1) (III)

F) A REVIEW OF CASE LAW DURING THE YEAR 1990.

1. a) The citation

Commissioner of Income Tax, Bombay

v/s

P.K.Jhaveri

b) Name of the Judges-

i) S .Ranganathan

ii) N.D.Ojha

iii) J.S.Verma

c) Date of Decision 6th Nov 1989

d) ITR No 181

Page No 79

e) Brief Issue :

DIVIDEND_ DIVIDEND OF SHAREHOLDER OF NEW INDUSTRIAL UNDERTA-KAKING _DEDUCTION FROM TO BE ON AMOUNT DIVIDEND AFTER DEDUCTION OF INTEREST ON MONEY BORROWED SPECIFICALLY FOR SUCH INVEST-MENT-INCOME.TAX ACT 1961 S.S 5>(iii)
80 B(S), 80(K)

f) Decision :

That deduction under sectior 80(K) of the Income Tax Act 1961, was allowable to the assessee only after amount of deduction of the interest paid on moneys borrowed specifically for investment in the shares and not on the gross amount received

2. a) The Citation :-

M.B.Abdulla

V/S

Commissioner of Income-Tax.Kerala

b) Name of the Judges.

i) Sabyasachi Mukharji

ii) M.M.Punchhi

c) Date of Decision 19th March 1990

d) I T R NO:-183

Page No.97

e) Brief Issue:-

REFERENCE- VALUE OF GOLD SEIZED FROM PETETIONER -TREATED AS INCOME FROM UNDISCLOSED SOURCES - TRIBUNER CONSIDERING IN APEAL ONLY WHETHER AMOUNT WAS TAXABLE-ASSESSEE NOT RAISING QUESTION WHETHER EVEN IF THE AMOUNT WERE INCOME- IT WAS DEDUCTIBLE AS BUISNESS LOSS- TRIBUNAL & HIGH COURT REJECTING ASSESSEE'S APPLICATION FOR REFERENCE OF QUESTION RELATING TO DEDUCTIBILITY AS LOSS CORRECT- SUPREME COURT DECLINING TO INTERFERE -INCOME TAX Act,1961 s.s. 6g (A) 256 (I),(2)

f) Decision :

Dismissing the petitions.that it was possible to take the view that the question whether the amount was business loss.even assuming that it was income,was substaintially different from the question whether the amount was income.and not merely an aspect of the same question consideration which went into the determination of whether an amount should be eated as

income and the consideration which were relevent to determine whether,even assuring that was income.the amount was deductible,were different the question in that form was not canvassed before the Tribunal at any point of time even as an alternative The High Court and Tribunal bore the correct principle in mind

3. a) The Citation :-

Uttamkumar Pramodkumar

v/s

Commissioner of Income Tax. Kanpur.

b) Name of the Judges :-

i) K.Jagannath Shetty

ii) Kuldip Singh.

c) Date of Decision : 30 th August 1990

d) ITR NO. 186

PAGE NO 189

e) BRIEF ISSUE :

FIRM- REGISTRATION-PREAMBLE RECITING THAT MINORS ADMITTED TO BENEFITS OF PARTNERSHIP-BUT MINORS TREATED AS PAR WITH MAJOR PARTNER'S FOR RIGHTS OF MANAGEMENT OF BUSINES'S AND LIABILITY FOR LOSSES ALSO- FIRM NOT ENTITIED TO REGISTRATION- INCOME TAX ACT,1961 S.185.

f) Decision:

Affirming the decision of the High Court, that although the preamble of the deed provided that the minors were admitted to the benefits of partnership, the dominant intention of the parties as it appeared from the terms of the deed, was to admit the minors as fulfledged partners and not merely to the benefits of partnership alone; and, therefore, the High Court was right in holding that the firm was not entitled to registration.

4. a) The Citation :

Poonjabhai Vanmalidas

v/s

Commissioner of Income-Tax, Ahmedabad

b) Name of the Judges :

i) Dr. T. K. Thommen

ii) R.M. Sahai

c) Date of Decision 9th october 1990

d) ITR NO. -185

PAGE NO . 573.

e) BRIEF ISSUE :

DEEMED PROFITS-BAD DEBT-WRITTEN OFF AND ALLOWED AS DEDUCTION IN ASSESSMENT YEAR 1959-60 UNDER 1922 ACT- PORTIONS OF DEBT RECEIVED IN ASSESSMENT YEAR 1964-65, 1965-66 AND 1967-68 - AMOUNT RECEIVED ASSESSABLE AS DEEMED PROFITS UNDER SECTION 41(4)

OF THE 1961 ACT - INDIAN INCOME TAX ACT 1922, Sec.10(2) (XI) - INCOME TAX ACT, 1961 S.S 36 (1) (VII),(2), 41(4) - GENERAL CLAUSES ACT, 1897, S.24.

f) Decision :

Affirming the decision of the High Court, that the repealed Section 10(2)(xi) of the 1922 Act was a composite one containing the ingredients of the re-enacted section 36(1) (vii),36(2) and 41(4) of the 1961 Act. Consequently, when a debt was written off by an order in terms of Section 10(2),(xi) of the 1922 Act, the Income Tax Officer excercised the same power as he would have excercised on the enactment of sect.36(1)(vii) of the 1961 Act. These two provisions were consistent with each other. Both section.36(1) (vii) and section 36 (2) Containing two of the ingredients of section 10(2) (xi) of the 1922 Act must be read together with reference to an order under which debts had been written off. In the light of section 24 of the General Clauses Act, 1897, the relavant order made under section 10 (2) (xi) of the 1922 Act with reference to which the debt in question had been written off had to be deemed to have been made under section 36(1)(vii) of the 1961 Act and such an order was what was contemplated by section 41(4) of the 1961 act Any amount which was recovered on any such debt was attracted by the provisions of

section.41(4) amd was, therefore, chargeable to Tax in terms of that sub-Section to the content of the "excess" specified therein.

6. A REVIEW OF CASE LAWS DURING THE YEAR 1991.

1. a) The Citation

Avadeshkumar Jain

v/s

Commissioner of Income Tax.

b) Name of the Judges

i) M.N. Venkatchaliah

ii) N.D. Ojha

iii) J.S. Verma.

c) Date of Decision : 12,th sept 1990.

d) ITR No. 187

Page No.217

e) BRIEF ISSUE

REFERENCE - AGRICULTURAL INCOME - "PROCESS ORDINARLY EXPLOYEED BY CULTIVATOR" PRESERVATIONS OF POTATOES BY REFRIGERATION IN COLD STORAGE - WHETHER AMOUNTS TO SOCH 'PROCESS' - IS A QUESTION OF LAW -INCOME TAX ACT,1961 Sec.2(1)(ii)(iii) 256

f) Decision :

The question where preservation of potatoes by refrigeration in cold storage is a "process" Ordinarily employeed by a culti-

vater within the meaning of clauses (ii) and (iii) of section 2(1) (b) of the Income Tax Act 1961 is a question of law.

2. a) The Citation :-

H.H. Sri Rama Verma

v/s

Commissioner of Income Tax

b) Name of the Judges

i) K.N. Singh

ii) K. Jagannath Shetty.

iii) Kuldip Singh.

c) Date of Decision : 12,th Sep. 1990

d) ITR No. - 187

Page No. 309

e) Brief Issue :

DONATIONS - DONATIONS TO CHARITABLE INSTITUTIONS ETC - DEDUCTION FROM TOTAL INCOME AVAILABLE ONLY WHERE DONATIONS IS BY PAYMENT OF AN AMOUNT OF MONEY DONATIONS IN KIND DO NOT QUALIFY FOR DEDUCTION - INCOME TAX ACT 1961 S. 80 (9)(2)(9)(iv) WORDS AND PHRASES "ANY SUMS PAID BY THE ASSESSEE" MEANING OF.

f) Decision :

The language used in section 80G(2) (a) of the Income Tax Act, 1961 is clear and unambiguous. On a plain reading of the

section It is apparent than an assesssee is entitled to claim a deduction from his Income on the amount of money paid by him as donations to the authorities and for the causes soecified therein. The context in which the expression "sums paid by the assessee" has been used makes the legislative intent clear that it refers to the amount of money paid by the assessee as donations. The Act provides for assessment of Tax on the income derived by an assessee during the assessment year, and the income relates to the amount of money earned or received by an assessee.Therefore for ourpose of claiming deduction under section 80G(2)(a) the donations must be a sum of money paid by the assessee. The plain meaning of the words used in the section does not contemolate donations in kind. Donations may be made by supplying goods of various kinds including building vehicles. or any other tangible property but such donations though convertible in terms of money. do not full within the scope of section 80G(2)(a).and will not entitle an assessee to deduction. Donations of shares of a comoany does not amount to oayment of any amount through the shares, On their sale, may be converted in to money and the donations so made does not fall within the limit of section 80G(2)(a). Since the expression and language used in section 80G(2)(a). is olain and clear. it is not open to the courts to enlarge scope by its interoretative process founded on the basis of the object and purpose underlying the provisions for granting relief to an

assessee.

3. a) The citation :

Commissioner of Wealth Tax Kanpur

v/s

B.K. Sharma.

b) Name of the Judges

i) K.N. Singh

ii) S. Ranganathan

iii) J.C. Verma.

c) Date of Decision : 9.th Oct. 1990.

d) ITR No. - 187

Page No. - 325

e) BRIEF ISSUE :

WEALTH TAX - NET WEALTH - VOLUNTARY DISCLOSURE OF INCOME - INCOME DISCLOSED INCLUDED IN NET WEALTH - TAX LIABILITY THEREON TO BE DEDUCTED - FINANCE ACT. 1965 S.68 - WEALTH TAX ACT, 1957, SS2(M),3

f) Decision

From the decision of the Allahabad High Court in C W T V/S B.K.Sharma (1977) 110 ITR 902, that were the concealed income voluntarily disclosed in 1965 under section 28 of the Finance Act 1965. By the responoent was included in the net wealth of the respondent for assessment years 1960-61 and 1961-62, the Income Tax liability thereon had to be deducted as a debt owed, the

Department preffered appeals to the Supreme Court.The Supreme Court dismissed the appeals on the ground that the question was squarely covered by Ahmed Ibrahim Sahigra Dhoraji v/s C W T (1981)129 ITR 314 (sc).

4. a) The Citation :

Commissioner of Wealth Tax

v/s

Smt. Anjamali Khan.

b) Name of the Judges :

i) K.N. Singh.

ii) S.Ranganathan.

c) Date of Decision : 6.th Nov 1990.

d) ITR No. - 187

Page No. - 345

e) Brief Issue :

WEALTH TAX - ASSETS - RIGHTS TO COMPENSATION ON ACQUISITION OF ESTATE - IS AN "ASSETS" - VALUATION OF ASSET - COMPENSATION PAYBLE TO BE DETERMINED AFTER PREPARATION OF ASSESSMENT ROLLS- ONLY PRESENT VALUE OF COMPENMSATION AS ON VALUATION DATE TO BE INCLUDED IN NET WEALTH - WEALTH TAX ACT 1957 SS2(E) OF 7 WEST BENGAL ESTATE ACQUISITION ACT, 1953

f) Decision :

The scheme under the west Bengal Estate Acquisition Act 1953, and under the Bihar Land Reforms Act, 1950, which was considered by the Supreme Court in Pandit Laxmikant Jha's Case (1973) 90 ITR 97, is the same and there is no material distinc tion between the two Acts so far as the question whether the value of the right possessed by the assessee to receive compensa- tion for the acquisition of his lands is an "asset" On the valua- tion date for the purpose of the Wealth tax Act 1957, is con- cerned. The moment on assessee's land is acquired or otherwise vested in the state. he becomes entitled to compensation. Natu- rally the amount of compensation could not be detrmined immi- diately. The provisions of the two Acts in question set out an elaborate procedure fore this quantification, roll. the determi- nation of the precise amount due and a decision as to the mode of payment of the amounts are all matters to be sorted out in course of time but all this does not alter the position that, as on the date on which the estate vested in the Government ,a right to receive had accured in favour of the assessee and that right is a valuable asset which is includible in the net wealth of the assessee. The right to receive compensation does not cease to be an asset includible in the net wealth for the purpose of wealth Tax merely because to compensation rolls contemplated by the west Bengal Act here not yet been published or the amount of compensa-

tion determined. ----

Where the compensation, as under the west Bengal Act, is to be determined and is payble at a date much later than the valuation date the value of the assessee's ritght to received compensation can only be the "present" value (i.e. the value as on the valuation date) estimated in accordance with proper priciple's of the amont that may be determined and paid as compensation in future.It can not equal to the amount of compensation payble under the Act

5. a) The Citation :

Commissioner of Gift Tax

v/s

Abdul Karim Mohd. (Decd by Les)

b) Name of the Judges :

i) K Jagannath Shetty.

ii) Yogeshwar Dayal.

c) Date of Decision : 10th July 1991.

d) ITR No. - 191

Page No. - 313.

e) Brief Issue :

GIFT TAX - EXEMPTION - GIFT MADE IN CONTEMPLATION OF DEALTH - SETTLEMENT OF MOVABLES - POSSESSION HANDED OVER TO DONEE NO RECITAL IN DEED THAT GIFT LIABLE TO BE REVOKED UPON ONER RECOVERING FROM ILLNESS - PARTY MAY PRODUCE EVIDENCE ALIUNADE TO

PROVE THAT DONER MADE GIFT WHEN HE HAS SERIOUSLY ILL AND CONTEM-PLATING DEATH - THESE FACTORS.'N CONJUNCTION WITH DEATH OF DONER SUFFICIENT TO INFER GIFT WAS IN CONTEMPLATION OF DEATH- GIFT TAX ACT, 1958, S.5(1)(xi) EXPLAIN .(D) - INDIAN SUCCESSION ACT 1925,S, 191.

MOHAMEDIAN LAW - GIFT MADE DURING MARZ-UL -MAUT =- QUALIFIES AS A GIFT IN CONTEMPLATION OF DEATH.

f) Decision :

Affirming the decision of High Court (i) that the recitals in the deed were not conclusive to determine the nature and validity of the gift The party could produce evidence dliunde to prove that the donor gifted the property when he was seriouly ill and contemplating his death with no hope to recovery. These factors in conjunctions with the factum of death of the donor might be sufficient to inter that the gift was made in contempla-tion of death. It was imolicit in such circumstances that the donee became the owner of the gifted property only if the donor died of the illness but if the donor recovered from the illness, the recovery itself oorated as a revocation of the gift. It was not necessary to state in the gift deed that the donee would become the owner of the property only upon the death of the donor.Nor was it necessary to specify that the gift was liable to

be revoked upon the death of the donor. The law acknowledged these conditious from the circumstances under which the gift was made.

ii) The exemption a gift in contemplation of death was provided under section 5(1)(xi) of the gift Tax Act, 1958 and not under section 191 of the Indian Succession Act, 1925 section 191 of the Succession Act furnished only the meaning or requirement of a gift in contemolation of death, if a gift in contemolation of death was recognised by the personal law of the oarties satisfying the conditions contemolated Uncer section 191 of the succession Act,it could not be denied exemption under section5 (1) (xi) of the gift Tax Act, even assuming that section 191 as such would not be applicable to the parties.

iii) That a gift made by a mohanmed on during marz-ul-maut could be regarded as a gift made in contemolation of death since it had all the requisites prescribed by section 191 of the Succession Act. The only limitations under mohammedan law was that the disoosition was restricted to a third of the donor's estate on account of the right of the heirs, mazz-ul-maut gift could not. therefore take effect beyond a third of the estte of the donor after payment of funeral exoences and debts unless the heirs gave their consent after the death of the donor to the excess taking effect.

H) A REVIEW OF CASE LAWS DURING THE YEAR 1992.

1. a) The citation :

Kamalabat Motilal

v/s

Commissioner of Income Tax (Addl.)

b) Name of the Judges :

i) S. Ranganathan

ii) V. Ramaswami

iii) N. D. Ojha

c) Date of Decision : 1st Nov. 1991

d) ITR No.193

Page No.339

e) Brief Issue :

REASSESSMENT-ESCAPEMENT OF INCOME FROM ASSESSMENT FROM INCOME-EXPENDITURE ALLOWED IN 1961-62 AAC HOLDING THAT IT SHOULD BE ALLOWED FOR EARLIER YEAR 1961-62 AAC'S ORDER MADE UNDER 1922 ACT REASSESSMENT UNDER 1961 ACT TO INCLUDE EXPENDITURE WRONGLY ALLOWED IN 1961-62 HIGH COURT HOLDING THAT THERE WAS ESCAPEMENT OF INCOME ASSESSABLE TO TAX IN 1961-62 AND REASSESSMENT WAS VALID-APPIAL TO SUPREME COURT BY SPECIAL LEAVE-DISINISSED INCOME TAX 1961. SEC. 147, 148, 150(1), 153(3), 297(2)(d)(ii).

f) Decision :

From the decision of the Allahabad High Court in CIT(Addi) v/s Kamalapati motilal (1977) 110 ITR 769 to the effect that the reopening under the 1961 Act for the Assessmey year 1961-62 was valid because an expenditure allowed in that year was held by the Appellate Assistant commissioner, by an appellate order under the 1922 Act, as ought to be allowed under the earlier year, Assessment year 1960-61. the apperlant assessee prefe fered in appeal to Supreme Court way of special leave order under article 136 of the constitution of India. The Supreme Court dismissed the appeal holding that this was not a fit case for interference under article 136 because the amount claimed as a deduction had already been allowed in the assesment year 1960-61 and the appellant assessee was virtually seeking in this appeal deduction of the same amount in the assessment year 1961-62, as well and this was inequitable and uncalled for.

2. a) The Citation :

Sk.AR.K.AR. Somasundaram Chettiar & Co..

v/s

Commissioner of Income Tax.

b) Name of the Judges :

i) K.Ramswami

ii) B.P.Jeevan Reddy

c) Date of Decision : 15,th Jan 1992.

d) ITR NO. 194

Page No. 1

e) Brief Issue :

SPECULATION LOSS - CONTRACT NOT DEEMED TO BE SPECULATIVE TRANSACTION - CONTRACT ENTERED INTO TO GUARD AGAINST LOSS - THROUGH PRICE FLUCTUATIONS.IN RESPECT OF CONTRACTS FOR ACTUAL DELIVERY OF GOODS SOLD - DOES NOT INCLUDE CONTRACT OF PURCHACE - INDIAN INCOME TAX ACT 1922. S.24(1) PROV.(iii)CL(a)

f) Held accordingly,that the loss incurred by the appellant was a speculative loss since the course of clause (a) of the third proviso to section 24(1) and could not be deemed not to be sueculative transactions.

3. a) The Citation :

Saharanpur Electric Supply co.ltd,.

v/s

Commissioner of Income Tax

(C.A.No. 1861 of 1977)

Patana Electric Supply Co. ltd,.

v/s

Commissioner of Income Tax.

(C.A. Nos. 904.221 & 2440 of 1980 & 4705 & 4711of 1948)

Tinnevelly Tuticorin Electric Supply Co. Ltd.

v/s

Commissioner of Income Tax

(C.A.No. 220 of 1980)

Muzzaffarpur Electric Supply Co. Ltd..

v/s

Commissioner of Income Tax

(c.a.No. 905 &906 of 1980)

Ahmedabad Electricity Co.Ltd.

v/s

Commissioner of Income Tax

(c.a. No. 4097 of 1991 and s.l.p (civil)No 15346 of 1991)

Bombay Subarban Electric Supply Co. Ltd.

v/s

Commissioner of Income Tax.

(c.a. No. 197 of 1985)

Salem Erode Electricity Distribution Co.Ltd.

v/s

Commissioner of Income Tax

(c.a. Nos 4703 & 4704 of 1984 & 212 & 213 of 1980)

Cuttack Electric Supply co,Ltd..

v/s

Commissioner of Income Tax

(c.a.Nos 4706 of 1984)

Tinnevelly Tuticorin Tea & Investment Co.Ltd.

v/s

Commissioner of Income Tax

(c.a. Nos. 4707 to 4710 of 1984)

South Madras Electric Supply Corporation Ltd.

v/s

Commissioner of Income Tax

(c.a. Nos 812 to 817 of 1977)

Riverside (Bhatpara) Electric Supply Co. Ltd.

v/s

Commissioner of Income Tax

(c.a Nos 217 of 1977)

Calcutta Electric Supply Corpn. Ltd

v/s

Commissioner of Income Tax

b) Name of the Judges :

i) S.Rangnathan

ii) N.D.Ojha.

c) ITR NO. 194

Page No. 297

e) BRIEF ISSUE

DEPRECIATION - SCOPE OF RIGHT TO DEPRECIATION ACTUAL COST OF ASSET - COMPUTATION ENVISAGED FOR EVERY ASSESSMENT YEAR - ORIGINAL FIGURE OF ACTUAL COST TO BE ALTERED FOR CURRENT YEAR ON THE BASIS OF SUBSEQUENT FACTUAL OR LEGAL INFORMATION - CHANGE OF LAW - NEW DEFINITION OF "ACTUAL COST" IN 1961 ACT EXCCUDING COST MET BY OTHERS - NOT UNREASONABLE - NOT RESTROSPECTIVE IN OPERA-TION - ONLY PART OF PERQUISITES DRAWN FROM - ANTECEDENT PERIOD - NEW PROVISIONS APPLES TO ASSETS INSTALLED PRIOR TO 1961 ACT COMMING INTO FORCE - NO ANOMALY OR ABSURDITY - ELECTRIC SUPPLY COMPANY - PART OF COST OF SERVICE LINES INSTALLED PRIOR TO 1961 ACT COMING INTO FORCE - RECOVERED FROM CONSUMERS - TOBE EXCLUDED FROM ACTUAL COST FOR ASSESSMENT YEAR 1962-63 AND THERE AFTER - INCOME TAX ACT,1961. S.S 32(1)(iii),34(2),41(2),43(1).(6),Exol. 2,4,6,8 - INDIAN INCOME TAX ACT,1922, s. 10(2) (vi) (5) (9).

f) Decision :

Held accordingly, that,in allowing depreciations on service lines installed by the appellant's Electric supply compa-nies prior to the preious year relevant to the assessment ear 1962-63, that part of the expenditure incurred in connection with

the installation which was recovered by the appellants from the consumer's had to be deducted in conputing the written down value for the assesment year 1962-63 and thereafter, and the actual cost of the assets as computed under the 1922 Act had to be recomputed under the provisions of section 43(1) of the 1961 Act.

4. a) The Citation :

Commissioner of Income Tax

v/s

Onkar Saran and Sons,

b) Name of the Judges :

i) S.Rangnathan.

ii) V. Ramaswami

iii) Dr.A.S.Anand.

c) Date of Decision : 13.th March 1992.

d) ITR NO. 195

Page No. 1

e) Brief Issue :

PENALTY - CONCEALMENT - QUANTUM OF PENALTY - CHANGE OF LAW - PRIOR TO 1968 BASING QUANTUM ON TAX AVOIDED - LAW AFTER 1968 AMENDMENT BASING QUANTUM ON INCOME CONCEALED ORIGINAL RETURN FILED PRIOR TO 1968 NOT DISCLOSING CERTAIN INCOME - NOTICE FOR

REASSEMENT RETURN AGAIN DISCLOSING CERTAIN INCOME AS IN ORIGINAL RETURN FILED AFTER 1968 - PENALTY TO BE BASED ON LAW AS ON DATE WHEN ORIGINAL RETURN WAS FILED - INCOME TAX ACT,1961 S.271(1)(C) BEFORE AND AFTER AMENDMENT W.E.F 1.4.19687

f) Decision

Held affirming the decision of High Court, that,even in case where a return filed in responce to a notice under section 148 involved an element of concealment,the law applicable would be the law as it stood at the time when the original return was filed for the assessment year in question and not the law as it stood on the date on which the return was filed in responce to the notice under section 148

5. a) The Citation :

R.K. Deo

v/s

Commissioner of Wealth Tax.

b) Name of the judges

i) R.M. Sahai

ii) Dr. A.S.Anand

c) Date of Decision : 12.may 1992.

d) ITR NO. 196

Page No. 129

e) Brief Issue :

WEALTH TAX - NET WEALTH - COMPUTATION - DEDUCTION OF DEBTS - DEMOND OF INCOME TAX ON FOREST INCOME FOR ASSESSMENT YEAR 1942-43 TO 1946-47 - LIABILITY DISPUTED BY ASSESSEE - LIABILITY UPHELD BY SOPREME COUT IN 1958 - FRESH DEMAND NOTICE ISSUED IN 1964 - TAX PAID IN MARCH, 1965 - LIABILITY NOT DEDUCTIBLE AS TAX WAS OUTSTANDING FOR MORE THAN TWELVE MONTH - WEALTH TAX ACT 1957 52(M) CI.(III)(B)

f) Decision :

Held that once that income tax procceedings became final and the law was declared by the Supreme Court and it was held that forest income was taxable, then the liablity to pay the amount should be deemed to have existed from the date the original demond was created by the income Tax officer. Therefore the tax payable for which a notice of demond had been served on the appellant but which had not been paid because of the pendency of an appeal, revision or other proceeding,became payble and since it remained outstanding for a period of more than 12 months on the valuation date, the bar under clause (iii)(b) of section 2(m) of the Wealth Tax Act '957 applied squarely Alternatively the Appellant was bound to pay the Income Tax assessed irrespective of Whether he had filed a reference or not, since the appellant had not paid the tax, the amount remained outstanding throughout the period the reference was pending in the High Court The effect

of non payment of tax under section 66(7) of the Indian Income Tax Act 1922 was that the tax became outstanding by operation by operation of law and it remained so on the relevant valuation dates. The amount of Rs. 6,69,776 was outstanding on the valuation dates for more than 12 months,whether the period was calculated from the service of the notice of demond in pursurance of the assessment order or from the final determination of the liabitily by the order passed by the Supreme Court in 1958 or because of the operation of section 66(7) of the Indian Income Tax Act,1922

There was no warrant for calculating the period of 12 months from october 1964when fresh notice of demond was served by the Income Tax officer

6. a) The Citation :

Commissioner of Wealth Tax

v/s

Vasudeo.v.Dempo

(Civil Appeals No.s. 1596 to 1598 of 1980)

Commissioner of Wealth Tax

v/s

Sudin Pandurang Timblo.

(Civil Appeals Nos. 5267 and 5268 of 1990)

b) Date of Decision

c) Date of decision 10th march 1992

d) ITR NO. 196

PAGE NO 217

e) Brief Issue :

WEALTH TAX - NET WEALTH - EXEMPTION SPOUSES GOVERNED BY PORTUGUESE CIVIL CODE MARRIED ACCORDING TO CUSTOM WITHOUT ANTE - NUPTIAL AGREEMENT TO KEEP PROPERTY SEPERATE - EACH SPOUCE ENTITLED TO EXEMPTION SEPERATELY - WEALTH TAX ACT 1957 S.S

f) Decision :

By the Court "The circulars issued by the deoartments are, normally meant to be followed and accepted by the authorities. We do not find any justification for the officer not following the circular nor was the department justified in pursuing the matter further in this court".

3.2 A BROAD EXAMINATION OF CASE LAWS

In the above discussion ,the researcher has discussed several cases which have been settled by the Supreme Court of India. All these cases nave been covered during the period from 1985 to 1992. These cases also deals with various direct tax laws. Such as Income Tax Act 1961,Wealth Tax Act 1957, and Gift Tax Act 1958. It may be observed from these case that.

i) The issues raised before the Supreme Court are diverse

that is there are number of areas in which the dispute arises between the assessee and the department

ii) The entire direct tax legislation provides large area for confrontation.

iii) There are certain areas such as registration of firms where constant disputes arises can be settled through simple legislation.

iv) There is a need to use simplicity in statutory language and avoid or minimise tax legislation.

The researcher quotes the following paragraphs for the need for minimising the tax disputes.

ORIENTATION OF THE LEGISLATION :-

Under the Government of India Act of 1935, the Income Tax became a divisible subject and ever since, the tax revenue has remained divisible between the states and the union.

Since, 1860, and during the interim period till 1918, the arrangement continued and all types of Income were divided in to four categaries. The income tax act of 1922 comprehensively substituted the earlier enactment and extensive amendments were brought about in the year 1939. During the periods from 1939 to 1956. The act was amended as many as 29 times, disfiguring the original act of 1922 so much that it ultimately became a compli-

cated piece of legislation. The Government, therefore,appointed a law commission during the post-Independence period, which submitted its report in 1958 . Meanwhile,the Direct Taxes Administration Enquiry Committee had already been appointed to consider the measures to improve public relations and to prevent evasion of Income Tax. The Income Tax Act of 1961 therefore, is an outcome of the deleberations of the law commission the Direct Taxes Administration Enquiry Committee and the central Board of Revenue. The basic structure of the law, however remained unchanged. The entire legislation, on the face of it, appears to be simplified and re-arranged, but in substance it is a re-arranged version of the Act of 1922. The very preamble of the Income Tax Act 1961 (Act 43 of 1961) confirms this fact. The preamble reads "An Act to consolidate and amend the law relating to Income Tax and Super Tax" Therefore, although the Act of 1961 is based on the draft prepared by the Law Commission, its substance and structure were practically extracted from the British Act 1922. The observations of law commission are significant, which bring out the following features :

1. The Act of 1961 is nothing but a logical rearrangement and regrouping of the sections contained in the Income Tax Act of 1922;

2. An attempt was made for simplifying the language of the Act by splitting-up the sections and by removing the provisions.

3. In fact, the terms of references did imoose certain constraints whereby the law commission was directed to effect or alter or modify the structure of the earlier legistation, consequent upon no major change affecting the substance of law could take place with reference to the substantive provisions The law commission,therefore after two years of celiberations, only attempted to provide a compact version of the legislation by replacing the Income Tax Act of 1922. The list of the the amending ligislation since 1961 woulc provide amole evidence in support of the fact that insipite of the soate of amendments from time to time, the substance of the act has not changed substantially from that of the Income Tax Act 1922. The act of 1922 was enacted by the Britishers due to the political and economic circumstances prevailing at that time and the circumstances were altogether of a different nature. The entire orientation of the Income Tax Act of 1961, therefore, did not take into account the economic and social necessities during the post independance period. In fact the Income Tax Act of 1961, with whatever amendments made therein, would reveal one silent feature that the amendment have been made in piecemeal fashion, depending upon the economic and judicial situations, which warranted the change in the act. But the substance still is of the British orientation so far as the major provisions and the language of the provisions

used in the statute are concerned. The major provisions under the Income Tax Act of 1961, therefore, in the initial period, remained almost similar to the act of 1922, but through the modifications made under the Finince Act are the amending Acts, to a substantial extent, changed the face of the whole legislation in the subsequent years. It is, nevertheless, obvious that economic and social interest have not been systamatically incorporated in the entire statute.

The British orientation of the entire act further provides another feature. So far as the interpretation of the various words, expressions or legal and factual issues are concerned, heavier reliance has been placed on the British jurisprudence. This is evident today, as a host of the Supreme Court judgements would reveal the fact that a major reliance is on the British tax cases.

In the latest Suoreme Court decision in McDowell & Co. Ltd, (1985) 47 CTR (SC)126, the Suoreme Court elaborately discussed the Westminister Principle, Which governs the distinction between the tax avoidance and tax evasion. The Suoreme Court also discussed the British case law as stated in W.T.Ramsay Ltd, v/s CIR and came to an independent conclusion based upon the prevalent practices in the country in the McDowell's case . The point that needs to be highlighted here is that the British case law takes

into account the economic,social and other conditions, which are altogether of diffrent nature than those prevailing in this coutry. This is a particularly significant in view of the fact that the rate of literacy, commercial practices, political setup legal and accounting structures prevailing in this country do not resemble with the British conditions and, therefore,the orientation of the law itself in substance and forms becomes questionable, calling for attention. The social and economic needs of an economically growing democracy are altogether diffrent and during the period between 1947 and 1990 have undergone metamorphic changes. The tax legislation, the tax administration and judicial practices coupled with the social and economic background prevailing in out set-up require that the entire direct tax legislation needs an overall structural change and simolification of the complicated fiscal issues. The legislation such as tax on wealth, tax on gift tax on expenditure and estate duity which are other direct taxes, have also under gone sevral changes. Some of the legislation have been altogether abolish and some of them, such as estate duty, have been absorbed under the Wealth tax law. However, the procedural and substantial form is parallel to that of the Income Tax Act 1961, which, inturn, continued to be linked to the Income Tax Act of 1922.

The following committees and commissions have attempted the

simplifications and rationalisation of the tax structure.

1. The Law Commission (Chairman : justic M.P. Setalwad).

2. Committee on Rationalisation and Simplification of the Tax structure. (Chairman : S. Bhoothlingam)

3. The Administrative Reform Committee (Chairman : Mr. H.A. Shah).

4. Committee on Taxation of Agricultural Wealth and Income (Chairman : Shri Raj).

5. The Direct Tax Enquiry Committee (Chairman : Mr. Justic Wanchoo).

6. The Direct Tax Law Committee (Chairman : Mr. C.C. Chokshi).

In the name of the simplification and rationalisation, the alien orientation of the statutes has not been substantially amended. piecemeal changes instituted at a particular point of time were introduced either or the pronouncement of the judicial forums. The fact still remains that the socio-economic objectives dependent upom the peculiar economic conditions prevailing in the country have not touched the core issue. Each amending legislation explains the objectives behind the change made. Some of the amendments were made to combat tax evasion, some to unearth black money and to prevent its proliferation, some other to reduce the tax arrears and still some others to rationalise the exemptions

and to streamiline the tax administration, but the basic fact still remains that the overall structure does not take into account the needs of the economy.

The overall structure of the legislation, therefore, has to be changed a fresh as the economy is already facing fiscal imbalance and the gap between the revenue and the expenditure has become very wide. Mounting tax arrears, growing tax evasion, pending litigation and administrative lethary, apart from the harsh, humiliating and unworthy treatment meted out to the asses sees are a sufficient proof in support of the fact that the Act has in orientation itself, failed to achieve the basic canons of public finance as enunciated by fiscal wizards.

It can also be pointed out that the Act of enacting of some of the direct takes is almost copying the laws of other countries. It was some towards the end of the last century when the estate duty was imposed be the British Parliament. The same tax law was copied by our Government after more than fifty years, in the year 1953, when the Estate Duty Act was placed on our Statute-Book.

This Act of "Copying" the tax law of a foreign country almost wholsale cannot be called commendable from other points of view, viz.

1. The developing state of our economy was wholly different from the fully developed economy of Britain.

2. The spiritual and cultural backgrounds of our society was not on all-fours with that of the British Society, particularly in the matters of :

(a) making gift and providing for public charities out of religious consideration, as a distinct from the motive of tax evasion and tax avoidance, and

(b) giving dutiful regards to the needs Act welfare of an individual's parents, elderly relatives, sisters, brothers, etc.; things which make out psychology less individualistic and more socialistic by the strength of our moral traditions and religious sanctions, rather than through the fore of tax laws and democratised civic sense;

3. Our taxpayers with the above psychology, see not much wrong in evading the tax burden, particularly when the tax law do not respect the special characteristics of our society, or otherwise, create artificial incentives against tax honesty.

That the difference in the prevailing social condition of India Vis-a-vis those of other countries are an important decid-

eratum for construing even the constitutional provision as shown by the observations in Balaji V/s ITO [(1987) 43 ITR 393].

Thus the following conclusions emerge from the foregoing discussions:-

1. The present direct tax structure inherits the British tax orientation and since it is an alien to the needs of the Indian Society. Systematic, scientific and simple enactments be made by entirely changing the fiscal statutes which have totally failed in achieving the parameters of the built in flexibility and buoyancy, resourses mobilisation and elimination of income and wealth disparities.

2. The dangerous effects of the copying the Acts can be stopped only if the present direct tax laws are totally scrapped and fresh laws, in tune with Indian Social peculiarities, are introduced.

LANGUAGE AND CODIFICATION OF THE LEGISLATION

LANGUAGE :

In the theory of jurisprudence, distinction has always been made between the substantive laws and the law of procedure.

The former defines the right whereas the latter determines the remedies. In case of direct statutes, the statutes involved both rights and remedies. Because, ultimately the entire administration of justice generally depends upon the statutory provisions. The statutes impose certain obligations upon the assessees, which ultimately are converted into the duties. The liabilities under the statutes are reouired to be discharged, firmly based on the sound interpretative language. Coming precisely to the orientation of the direct tax statutes, the observation of the above paragraphs would go to prove the fact that the entire direct tax structure is based upon the British Tax Struture and, therefore, the language used in direct tax statutes also assumes the same characteristics.

In a taxing statutes, there no intendment or presumptions. One has to look at the terms employeed, look fairly at the language used and ascertain what the statutes says. As discussed earlier, the Income Tax Act has under gone innumerable amendments since 1961. The impact of Finance Act and the Amending Acts have, infact disfigured the whole legislation. The statutes as also the amendments suffer from one significant infirmity which relates to the language used. There are several occasions where the language used by the legislature, does not achieve the objective of the legislation and the sprit of the law becomes elusive and

unsafe, throwing ultimately to the winds the intention of the legislature.

CODIFICATION :-

The issue related to the absence of the systematic coadification of the statutes and the absence of confusing language employeed there in involve interpretational problems of the realm of the judicial process. In the words of P.H. Lane, quoted in different context by Mr. K.S. Paripurnam and Mr. K.A. Nayar. J.J.

"In testing the validity of a law, it is required to :

i) Scructinise the very terms of challenged law, its specific provisions and the law as a hole and

ii) Ascertain from these terms, the precise and immidiate impact of the law, what kind of control or restriction is exerted by the law in the realm of rights and duties.Parliament has primafacie power to tax whom it chooses, power to exempt whom it chooses, power to impose such conditions as to liability or as to exemption as it chooses. The power to tax is the one great power upon which the whole national fabric is based. It is not only the power to destroy but it is also the power to keep alive".

The various provisions, explanations, sections, sub-section, circular's, notifications, Finance Act and Amending legislation taken together with the original Act would reveal one feature that the language used in the fiscal literature is beyond the comprehension not only of any layman but even a man of eminence, in the legal profession. According to English dictionary, "Word" is a unit of poken language, written sign signifying utterance, and a group of words constitutes a message of expressions of ideas in a language. However. not infrequently, the court have to look at the context, objective of a particular provision, meaning the word has been assigned elsewhere under similar circumastances in the same enacments or in a cognate piese of legislation and the legal absurdity of the self-defeating aspects of any particular imperfect interpretation of the word before comming out itself relatively to a matter.

Language thus forms a most important aspects of tax statutes and without the proper use of language of statutes, the whole codification fails to reflact a systematization of law as the codification is characterised by the absence of clarity force and harmony, resulting thereby, into various pitfalls, loopholes and equivocal and dubious expressions of old law. All the direct tax statutes present such type of codification as they fail to convey

a clearcut presentation of the message it wants to convey. The use of frequent insertions and commissions through amending statutes have made matters worse. Practically every section drafted has been subjected to such modifications. Therefore the initial purpose while codifying the law has been confused with various objectives behind every insertions. Economic objectives ,and political objectives have deeply penetrated as can be seen from various sections.The limitations of time and various ceilings under respective provisions further hamper the plain reading of such provisions. The statutes have been,time and again, inter linked with the companies act, Hindu law, Foreign Exchange Regulation Act, Indian Partnership Act, Indian Contract Act, Insurance Act, Banking Companies Act, Chartered Accountants Act, Cost Accountants Act etc,in adition to the provisions of the civil procedure code and the Indian Penel Code. The frequent use of the words such as " nothing contained herein " ," shall", "but" and "will" ,added with explanation and provisos and "now withstanding ",make the plain reding highly impossible unless one frequently seeks aid either of a solicitor's office or of a legal consultants opinion. In fact,the language itself has posed interpretative problems and if one goes through the case laws , particularly as reported in the Indian Tax Reporter,it would not be unusual to come across various cases in this context. An attemot is made to throw light through a cursory illustration from sec-

tion 5 of the Wealth Tax Act, 1957.

The defective language, which complicates interpretation, strains the mental faculties of even genius people, confers discriminatory use of such language on the administrative setup and encourages litigations, it simplifies, would positively result in reducing substantially the litigations which hold up the administrative procedure for protracted period; apart from the fact that through the use of simple language, cordial relationship between the tax gatherers and tax payers will prevail. Discretion through language enhances the scope for mal practices and deprives the revenue to attain expeditious disposal of cases and tax collections.

To throw much light on codification aspect, we should consider to observations of a former chief justice of Calcutta, who subsequently acted as the chairman of the Income Tax Investigation Committee, Mr. P.B.Chakravarty :

"To the Income Tax Act of shapeless structure, the Indian Income Tax Act,1922, was no exception. Indeed after the extensive amendments of 1939,and the further amendments of individual sections subsequently made from time to time, it became a particularly deplorable specimen of bad draftmanship, both as to the language of many of the sections and as to their locations and arrangements Unless one proceeded from the beginning of the act right up to its end, one could not meet all the sections bearing

on a particular topic, because they lay scattered all over the act, some of them in the unlike liest of places; and unless one hammered one's brain relentlessly and long,one could not hope to get at some meanings at least of the tortuous sentences of inordinate length of expressions and plainly inaccurate. That condation of the act was certainly due in a large measure to the initial lack of logical arrangement of its sections, but it deficiencies were aggravated by a succession piecemeal amendments, clumsily expressed and made without proper regard to their effect on the rest of the act. The growing habit of amending and act, or even the constitution,whenever an interpretation, unwelcome to the executive power is discovered, had its share of effect on the Income Tax Act as well. It became a singularly confused mass of illexpressed and mal adjusted provisions. Still, it is pleasant to recall that Government themselves came to be conscious of the condition to which the act had been brought and invited the law commission to revise its provisions so as to make them more intelligible, without however, effecting the basic tax sturcture. To simolfy the Income_Tax Act without simplifying the tax structure was wellright impossible..."

It has already been recorded that all the three Union Direct Tax Laws have a pronounced British orientatin, which is irrelevent in today's Indian Context. Hence, in order to import indigeneous social economic and political orientation to the tax laws,

these will have to be, first of all restructured and reformed with the help of experts in the fields of tax practice, economics, sociology and linguistics.

STABILITY OF TAX LAWS :

Stability of the tax structure in other words, is an effective counter measure against frequent amendments in tax laws. It has been observed that their have been very frequent amendments in the tax laws, either necessitated by Budget provisions or by changes in the policy. Such frequent amendments enhance the scope of misinterpretation and eventual litigations. The stability of the tax laws should, therefore, command the priority attention of the framers of the tax laws, as their could be absolutely no two opinions about this critical area.

Chokshi Committee's Report Clerly stated that :

"In Stability of our tax laws is another of their Worst feature. The laws are riddled with uncertainities and statutory amendments are as unpredictable as they are frequent. Surely, aftere more than half a century of the working of the Income-tax Acts of 1922 and 1961, it should be possible to have an enduring tax structure. In making our reports, we have proceeded on the basis that once the charges we have recommended are made, it should not be necessary to make any significant changes in the law for many

years to come.stability in the rates of tax is equally essential and, therefore, we have recommended that the rates once fixec should continue for atleast five years. These recommendations, however, fell on deaf ears and prompted Mr. N.A. Palkhiwala to write ten years latter;" The Income -Tax Act Should provide enduring structure for levy and collection. while the changing rates would be preseribed by the annual Finance Acts. But even the provisions f the Income Tax Act nowadays are like a railway ticket - good only for one journey in time from ist April of one year to 3ist march of the next, and sometimes not even for the whole of that journey."

Since 1961 onwards, fiscal instability further heloed to complicate the overall tax structure. Mr. Palkiwala further observed:

" Stable fiscal policy is to a nation what a stable family life is to an individual, but stability is anathema to the North Block. The obsesive attitude with the exercise of power must take form of churning out new laws.

Stability, simolicity and certainly should be the soul of the fiscal legislation. As such, Mr.Palkhiwala is rightly justified when he attacks the governments oreoccupation with frequent amendments to tax laws as;

"Today, the Income-Tax Act, 1961 is a national disgrace, (emphasis added). There is no other instance in the Indian jurisprudence of an Act mutilated with more than 3300 amendments in less than 30 years . Simple provisions like section 11 anc 13 have suffered not less than 50 amendments".

The amendments introduced without careful consideration, enhance administrative work load, confuse the taxpayers and open the floodgates for litigation. The same thing applies to the retrospective operation and the amendments through the Finance Acts.

There should be sincere efforts in the direction of minimizing tax litigation, which would further curb the malpractices and make tax administration more effective, consequently resulting into attaining the fiscal objectives for which puroose the laws themselves were originally framed. To quote Mr. Palkhiwala further.

"In the United Kingdom, there are 29 million Income-tax payers, but the number of references filed in the High Court is only around 30 in a year In India there are only 7 million taxpayers byut the number of references filied in the High Court is over 6000; in addition to more than 1000 writ petitions in a year. These figures reflect the tremendous oublic dissatis faction with the failure of the law and the fiscal administration".

It can thus be concluded here that a definite scheme conferring stability on the fiscal laws has to be worked out It is suggested that the law making authorities should, in our opinion , scrap the existing laws totally and reframe and reword the existing laws to suit the present socio - economic conditions and also take into consideration the aspect of periodic review of the laws thus made .

CONCLUSION :

We have discussed above the speciman cases of Direct Taxes. These cases were dealing with different aspects of taxation like panalty, Registration of partnership firm, and so on. Also we have examined the reasons of disputes and decisions of final authority i.e. Supreme Court of India.