

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

Dated this the 4th day of January, 2010

PRESENT

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR JUSTICE N ANANDA

Income Tax Appeal No. 451 of 2004

C/w

Income Tax Appeal Nos. 449, 448 & 450 of 2004

In ITA No. 451 of 2004

Between:

1. THE COMMISSIONER OF INCOME TAX
55/1, SHILPASHREE
VIDHYARANYA COMPLEX
VISHVESHWARANAGAR
MYSORE - 570 008
2. THE INCOME TAX OFFICER
WARD-2, CAUVERY PARK ROAD
MANDYA. ... APPELLANTS

[By Sri. M V Seshachala, Adv.]

AND

SRI ASLAM ULLA KHAN
S/O MEHBOOB KHAN @ SABJAN
#59, MC ROAD, ACETATE TOWN
MANDYA. ... RESPONDENT

[By Sri A Shankar, Sri M Lava, Sri S Annamalai
and Sri M R Shailendra, Advs.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE THE ORDER DATED 27.02.2004 PASSED IN ITA NO. 1264/BANG/2002 FOR THE ASSESSMENT YEAR 1991-92 AND ETC.,

In ITA No. 449 of 2004

Between:

1. THE COMMISSIONER OF INCOME TAX
55/1, SHILPASHREE
VIDHYARANYA COMPLEX
VISHVESHWARANAGAR
MYSORE - 570 008
2. THE INCOME TAX OFFICER
WARD-2, CAUVERY PARK ROAD
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SRI ASLAM ULLA KHAN
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#59, MC ROAD, ACETATE TOWN
MANDYA. ... RESPONDENT

[By Sri A Shankar, Sri M Lava, Sri S Annamalai
and Sri M R Shailendra, Advs.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE THE ORDER DATED 27.02.2004 PASSED IN ITA NO. 1266/BANG/2002 FOR THE ASSESSMENT YEAR 1997-98 AND ETC.,

In ITA No. 448 of 2004

Between:

1. THE COMMISSIONER OF INCOME TAX
55/1, SHILPASHREE
VIDHYARANYA COMPLEX
VISHVESHWARANAGAR
MYSORE - 570 008

2. THE INCOME TAX OFFICER
WARD-2,
CAUVERY PARK ROAD
MANDYA. ... APPELLANTS

[By Sri. M V Seshachala, Adv.]

AND

- SRI ASLAM ULLA KHAN
S/O MEHBOOB KHAN @ SABJAN
#59, MC ROAD, ACETATE TOWN
MANDYA. ... RESPONDENT

[By Sri A Shankar, Sri M Lava, Sri S Annamalai
and Sri M R Shailendra, Advs.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE
INCOME TAX ACT, 1961, PRAYING TO SET ASIDE THE ORDER
DATED 27.02.2004 PASSED IN ITA NO. 1263/BANG/2002 FOR
THE ASSESSMENT YEAR 1990-91 AND ETC.,

In ITA No. 450 of 2004

Between:

1. THE COMMISSIONER OF INCOME TAX
55/1, SHILPASHREE
VIDHYARANYA COMPLEX
VISHVESHWARANAGAR
MYSORE - 570 008
2. THE INCOME TAX OFFICER
WARD-2, CAUVERY PARK ROAD
MANDYA. ... APPELLANTS

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- SRI ASLAM ULLA KHAN
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#59, MC ROAD, ACETATE TOWN
MANDYA. ... RESPONDENT

[By Sri A Shankar, Sri M Lava, Sri S Annamalai
and Sri M R Shailendra, Advs.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE THE ORDER DATED 27.02.2004 PASSED IN ITA NO. 1265/BANG/2002 FOR THE ASSESSMENT YEAR 1996-97 AND ETC.,

THESE APPEALS ARE COMING ON FOR HEARING THIS DAY, **SHYLENDRA KUMAR J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

RE: ITA No 451 OF 2004:

Appeal by the revenue under section 260-A of the Income Tax Act, 1961 [for short the Act]. The assessee is an individual and the assessment year is 1991-92. The assessment in question is one after reopening by issue of notice under Section 148 of the Act and concluded in terms of Section 147 of the Act.

2. The income determined is at Rs 1.30 lakh, which is the same amount as had been declared by the assessee under the voluntary disclosure of income scheme, 1997, disclosing this amount as undisclosed income for the assessment year in question.



3. However, the income tax authorities had declined to accept the declaration under the scheme for the reason that the assessee while declared this income for the assessment year as on 31-12-1997 had not paid the tax payable as per the declaration either on that date or within three months therefrom i.e. by or before 30-3-1998, but had in fact paid the tax due on the declaration only on 31-3-1998.

4. The assessing authority, however, it appears, sent a proposal to the commissioner seeking for permission to reopen the concluded assessment basing on the information furnished by the assessee in his declaration filed under the scheme. The proposal elicited approval of the commissioner and thereafter a notice under Section 148 of the Act was issued, proposing to reopen the concluded assessment for the year 1991-92.

5. The assessee objected to it, but the same was overruled by the assessing authority and the assessment was concluded in terms of Section 147 coupled with the

other relevant provisions of the Act, resulting in the tax liability on a sum of Rs 1.30 lakh along with levy of interest and penalty for delayed payment.

6. Aggrieved assessee appealed to the commissioner of income tax [appeals] but without success. However, further appeal to the income tax appellate tribunal met with success, as the tribunal found fault with the reopening, particularly, the procedure followed for reopening being not fully in consonance with the guidelines that had been issued and provided for by the Supreme Court, which in turn had been applied by this court in several other cases. The tribunal was also of the opinion that the reason assigned for reopening and recorded in the books of the department, which reads as under:

As the tax and interest on the amount declared under VDIS was paid beyond the due date, as per the directions of the CIT, the assessment have been reopened to bring to tax the income escaped assessment. Hence, I have reason to believe that income chargeable to tax has escaped assmt.



was more in the nature of change of opinion by the assessing authority without due application of mind and the reopening was not sustainable. In this view of the matter, the tribunal allowed the appeal, set aside the order passed by the assessing authority and the affirming order passed by the first appellate authority.

7. It is aggrieved by this order of the tribunal, the revenue is in appeal.

8. The appeal had been admitted to examine the following question of law :

- (1) *Whether, the Tribunal was correct in holding that the Assessing officer had to record his reasons and based on those reasons form his opinion that the income has escaped assessment by relying on two judgments of this Hon'ble Court in 133 ITR 199 and 155 ITR 748 before re-opening assessments when Section 147 has been amended by Direct Tax Laws Amendment Act, 1989, w.e.f. from 1.4.1989 by substituting the words "for reasons to be recorded by him in writing is of the opinion" with the words "has reason to believe".*



- (2) *Whether the Assessing officer was correct in taking into account the declaration filed by the assessee under the VDIS Scheme and had reasons to believe that the income chargeable to tax had escaped assessment and correctly brought to tax the said amount declared under the scheme, by re-opening assessment.*
- (3) *Whether the Tribunal was correct in holding that any declaration which has been filed under the VDIS scheme cannot be used as admissible evidence for the purpose of this Act, especially when the scheme has been held to be not applicable.*

9. We have heard Sri M V Sheshachala, learned standing counsel for the revenue-appellants and Sri A Shankar, learned counsel for the assessee-respondent.

10. Appearing for the appellant-revenue, Sri Seshachala, learned standing counsel for the revenue, submits that the tribunal has committed an error in interfering with the matter and setting aside a well considered order passed by the assessing authority and affirmed by the first appellate authority. Learned counsel would submit that reopening was well within the



scope of Section 147 of the Act; that the declaration filed by the assessee definitely can constitute information within the meaning of Section 147 of the Act and in support of this submission, reliance is placed on a Division Bench decision of the Punjab & Haryana High Court in the case of **SAT NARAIN vs COMMISSIONER OF INCOME TAX [(2009) 183 TAXMANN 40]**.

11. While the question as to whether a declaration filed by the assessee under the voluntary disclosure scheme can constitute information for the purpose of reopening under Section 147 may be a debatable point and either way may be the position, it is not open for this court to consider the matter now, as the tribunal has recorded a finding that there was no application of mind on the part of the assessing authority for reopening, particularly, if on perusing the actual reasoning as recorded in the proposition for reopening, which we have already extracted above, we are in full agreement with this view that the assessing authority cannot act on the dictates of



the commissioner, who had directed him to reopen the concluded assessment for the year 1991-92, that, in our view also, does not constitute an information within the scope of Section 147 of the Act.

12. Apart from this, Sri Shankar, learned counsel for the respondent-assessee also points out that the sanction itself was defective, for the reason that the sanction was from the commissioner of income tax, whereas the authorized authority for sanction was only the joint commissioner, particularly, as the commissioner will have to act as the appellate authority against the orders passed by the assessing authority.

13. This submission is only reiterating the circumstance that the reopening was bad in law and therefore we cannot accept this submission made on behalf of the appellant-revenue.

14. In the result, this appeal is dismissed, answering the first substantial question of law in the negative,



against the appellant-revenue and leaving open the other two questions, as they become virtually academic and accordingly they are not answered.

RE: ITA No 449, 448 & 450 OF 2004:

15. In these appeals, except for the fact that the assessment years in question and the amounts of income, all other facts and circumstances are identical with the facts and circumstances that existed in the earlier appeal [ITA No 451 of 2004] and therefore, for the very reasons mentioned by us while disposing the said appeal, these appeals are also dismissed on identical terms.

Sd/-
JUDGE

Sd/-
JUDGE

*pjk