
(1989) 02 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No's. 518, 519, 520, 521 and 522 of 1987

Abdul Majid

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 24-02-1989

Acts Referred:

Income Tax Act, 1961 — Section 148

Citation : (1989) 77 CTR 193 : (1989) 178 ITR 616 : (1989) 44 TAXMAN 167

Hon'ble Judges : S.K. Dubey, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : Chaphekar and Mahajan, for the Appellant; R.C. Mukati, for the Respondent

Judgement

A.G. Qureshi, J.—This order shall also govern the disposal of M. P. No. 519 of 1987 (Abdul Razzaq v. ITO) ; M. P. No. 520 of 1987 (Mohammad Munaf v. ITO) ; M. P. No. 521 of 1987 (Md. Iqbal v. ITO) and M. P. No. 522 of 1987 (Noor Mohammad v. ITO). As all the five petitioners in these separate petitions are aggrieved by the same order and the points of law and fact involved in the case are the same, all the petitions are being disposed by this common order.

2. The petitioners are regularly assessed to Income Tax for the last several years. They filed returns for the assessment years 1982-83, 1983-84 and 1984-85, which are annexures A, Al and A2 in each of the petitions. The petitioners in all the five petitions are brothers. They purchased an old house situated at 12, Daulatganj, Indore, as co-owners and each one of them had contributed 20 per cent. of the investment amount and thereafter they reconstructed the house. The share of each one of the petitioners was also 20 per cent. in the reconstruction. The purchase was disclosed by the petitioners in their respective returns for the assessment years 1975-76 and 1976-77. The reconstruction of the house started in the month of August, 1980, was completed by March, 1983. According to the petitioners, the cost of construction, including the cost of furniture and fixtures came to Rs. 7,45,000 and the contribution by

each co-owner came to Rs. 1,49,000. The year-wise detail of the cost of construction as declared by the petitioners for the assessment years 1981-82 to 1983-84 in the returns submitted before the Income Tax Officer was Rs. 24,000 for the year 1981-82, Rs. 24,000 for the year 1982-83 and Rs. 1,01,000 for the year 1983-84. Thus, each of the co-owners had shown investment of Rs. 1,49,000 in the three assessment years. Along with the returns, they also appended a valuation report of the construction, made by D.N. Nayate, approved valuer. The petitioners were duly assessed by the Income Tax Officer, F Ward, Indore, and the returns submitted by the petitioners were accepted by the Income Tax Officer including the cost of construction as shown by the assesseees. Copies of the aforesaid assessments have been filed as annexures C, C1 and C2 to the petition by each of the petitioners.

3. After the orders accepting the cost of construction were passed, respondent No. 1, Income Tax Officer, "G" Ward, Circle I, Indore, vide letter dated January 12, 1987, referred the valuation of the property to the Valuation Officer of the Income Tax Department, who gave a report. The report, along with letter dated March 10, 1987, was served on the petitioners directing them to appear before respondent No. 1 in view of the fact that the valuation by the Department Valuer and the approved valuer, whose report was appended to the returns, were different and there was a difference in valuation. Thereafter, a notice u/s 148 of the Income Tax Act, 1961 (hereinafter called "the Act"), was issued by respondent No. 1 to each of the petitioners, wherein it was stated that the Income Tax Officer had reason to believe that income which was chargeable to tax had escaped assessment within the meaning of Section 147 of the Act and the petitioners were asked to file returns for the assessment years 1982-83 to 1984-85.

4. According to the petitioners, the aforesaid notices (annexure "F") purporting to be u/s 148 of the Act are ab initio void and without jurisdiction as they do not disclose any reason for the belief of the first respondent that income chargeable to tax had escaped assessment. The petitioners aver that the Income Tax Officer had no reason to believe that there was any omission or failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment due to which income chargeable to tax has escaped assessment. The notices were issued without any definite information in the possession of respondent No. 1 which may lead him to believe that the income has escaped assessment for the assessment years in question. Therefore, the notices impugned (annexure "F") have been issued without the existence of any requirement under Clause (a) or Clause (b) of Section 147 of the Act.

5. The petitioners had, in their returns for the relevant years, placed before the Income Tax Officer all the relevant material facts necessary for assessment. Therefore, the facts already being in the knowledge of the Department, the impugned notices are not in accordance with law. On disclosure of all the material facts fully and truly, the Income Tax Officer has already accepted the

assessments of the petitioners. Therefore, merely on a change of opinion on the basis of the valuation made by the Departmental Valuer, the assessment of the petitioners could not be reopened. Therefore, a prayer has been made to issue a writ, direction or order for quashing the said impugned notices dated March 30, 1987 (annexure "F"), and also issuance of a writ of mandamus or any other appropriate writ restraining the respondents from taking any proceedings under the said notices (annexure "F") or for making any reassessment or computation in pursuance thereof in respect of the petitioners.

6. The respondents have resisted the claim of the petitioners on the ground that there is no provision of law to furnish reasons to the petitioners for issuance of a notice u/s 148 of the Act. The reasons are simply to be recorded on the case record of the petitioners and the reasons recorded have been filed as annexure "R-1".

7. According to the respondents, a search u/s 132 of the Act was conducted in the business premises and at the residential premises of the partners. During the search operation, huge unexplained stock and benami investments were found by the Officers of the Department. At the time of the search, the cost of construction of the two houses situated at 12, Daulatganj, Indore, and 96, Siyaganj, Indore, which were constructed in the recent past appeared to be higher than that was shown by the assessee. Therefore, it was deemed proper that the cost of construction of the said properties be got valued by the Departmental Valuer so as to detect if there was any concealed investment in these properties too. The Departmental Valuation Officer showed the cost of construction at Rs. 12,05,000 as against Rs. 7,26,400 declared by the assessee. Variation in the plinth area was also found. Therefore, the assessee had failed to disclose fully and truly the material facts whereby the assessee has declared the cost of construction of the properties in question at much less than the actual cost of the same. It was also pointed out by the Departmental Valuer that certain items worth about Rs. 1,01,900 were not included in the registered valuer's report. Therefore, the issuance of notices was fully justified and all the valid reasons for issuance of notices (annexure "F") are recorded by the Income Tax Officer. As such, the notices u/s 148 of the Act are not ab initio void and without jurisdiction. The case of the petitioners clearly falls u/s 147 of the Act. It has also been pleaded that the petitioners had an alternative remedy before the Income Tax Officer, the Inspecting Assistant Commissioner of Income Tax or by approaching the Central Board of Direct Taxes at Delhi and, therefore, the petitions filed by the petitioners be dismissed with costs.

8. Learned counsel for the petitioners, Shri G.M. Chaphekar, submitted that the duty of the petitioners was to place before the Income Tax Officer all the facts fully and truly pertaining to the construction of the house. The petitioners have, in their returns before the Income Tax Officer for the years 1981-82, 1982-83 and 1983-84, disclosed fully and truly the cost of construction and the investment made by them for the construction of the house in question. They

also filed the report of the approved valuer along with their returns. The Income Tax Officer had power either to accept the returns or to make such further enquiry as he may deem fit in case he found that the returns filed by the petitioners were in any way incorrect or that further enquiry in the matter was required. The Income Tax Officer who assessed the tax for the years 1981-82, 1982-83 and 1983-84 accepted those returns. Therefore, the impugned notices could not be issued merely because of the difference of opinion between the two valuers. It has also been strenuously argued that there was no material before the respondent, the Income Tax Officer, for issuing the notice u/s 148 of the Income Tax Act as the information needed for satisfaction u/s 147 of the Act was not with the Income Tax Officer. Merely because a raid was conducted on the premises coupled with the report of the valuer would not by itself be sufficient to give jurisdiction to the Income Tax Officer to issue a notice u/s 148 of the Act. Shri Chaphekar, in support of his arguments, has placed reliance on the decisions of the Supreme Court and this court, with which we shall presently deal.

9. On the other hand, learned counsel for the Revenue, Shri Mukati, submits that in the report of the Departmental Valuer, it has been stated that the measurement of the plinth area was not correctly made and that some items were not shown in the returns. Therefore, it cannot be said that the facts were stated truly and fully by the petitioners. As such, the Department was fully justified in issuing notices u/s 148 of the Act. Shri Mukati further submits that the information with the Income Tax Officer was sufficient to satisfy him that a notice u/s 148 of the Act should be issued. As such, the notice is neither ab initio void nor without jurisdiction. He has also placed reliance, in support of his arguments, on some High Court authorities with which we shall deal hereinafter.

10. In the Supreme Court case, which is often cited on this point, Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, it has been held as under (headnote) :

"The reasons for the formation of the belief contemplated by Section 147(a) of the Income Tax Act, 1961, for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening the assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time

before its amendment in 1948 are not there in Section 147 of the Act of 1961 would riot lead to the conclusion that action can now be taken for reopening the assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence."

11. As such, it is clear from the aforesaid judgment that in respect of an assessment, when a notice u/s 148 of the Act is contemplated, the Income-tax Officer must have reasons to believe that income chargeable to tax has escaped assessment and that there was some omission or failure on the part of the assessee to make a return or to disclose fully and truly material facts necessary for his assessment for that year. The duty of the assessee, while filing the return, is to place all the primary facts before the Income Tax Officer and it is thereafter for the Income Tax Officer to draw inference from the primary facts. If the Income Tax Officer draws an inference which subsequently appears to be erroneous, then a mere change of opinion with regard to that inference would not justify initiation of action for reopening the assessment. The grounds which lead to the formation of the belief that income has escaped assessment should be based on some material which has a direct nexus between the material coming to the notice of the Income Tax Officer and the formation of that belief. Although the court cannot go into the sufficiency or adequacy of the material which may be in the possession of the Income Tax Officer and the court should not substitute its own opinion, it should see that any vague, indefinite, distant or remote material would not warrant the formation of the belief relating to escapement of income from, assessment of the taxable income. The formation of the belief should also be in good faith and should not be a mere pretence.

12. In the light of the aforesaid decision of the Supreme Court, it has to be seen in the instant case as to whether the learned Income Tax Officer was in possession of such facts which were sufficient for the formation of the belief that taxable income has escaped assessment. The reasons in annexure "R-1" for the formation of the belief are the raid conducted on the house and business premises of the petitioners and thereafter the report of the Departmental Valuer. As a matter of fact, the raid led to a doubt in the mind of the Income Tax Officer that income might have escaped assessment and, therefore, he got the property of the petitioners valued by a Departmental Valuer. Therefore, the question which follows for determination is whether the report of the Departmental Valuer can be the basis for the formation of the belief of the Income Tax Officer.

13. This court, in *Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another*, while interpreting an analogous provision in the Wealth-tax Act has held that the Revenue cannot reopen an assessment even though by over-sight, carelessness or inefficiency on the part of its officer, proper investigation was not carried out, though all the primary facts which the assessee was required to place before him had been so placed. When, in the early years, the petitioner had disclosed the value of her lands on the basis of the report of the approved

valuer and the same was accepted by the Wealth-tax Officer and in the subsequent year a declaration was made by the petitioner and accepted by the Wealth-tax Officer, then in that case it was held that the petitioner had disclosed the valuation of her lands on the basis of her earlier valuation. If the Wealth-tax Officer doubted the correctness of the valuation, it was open to the Department to have got the same valued by its own valuer or to have recorded evidence about the real market value of the lands on the valuation date. As the petitioner had placed all the primary facts before the Wealth-tax Officer for the relevant assessment years with regard to the value of the agricultural lands, there was no failure on the part of the petitioner which would give jurisdiction to the Wealth-tax Officer to reopen the assessment. The notices issued by the Wealth-tax Officer were, therefore, held to be invalid.

14. In another case, Lokendra Singh Rathore Vs. Wealth-tax Officer, "A" Ward and Another, the same principle which was followed in Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another, was followed. In that case also, a question was raised that there was failure and omission on the part of the petitioner in disclosing the value of the agricultural lands fully and truly. The court, after considering the earlier decision of this court, has held that when the petitioner disclosed the value of the lands on the basis of the report of the approved valuer and the same was accepted by the Wealth-tax Officer, it cannot be said that the assessee had not placed all the primary facts before the Wealth-tax Officer for the assessment years in question with regard to the value of the agricultural lands. Therefore, there being no failure on the part of the assessee to place all the primary facts before the Wealth-tax Officer, the notices issued by the respondent for reopening the assessment were not valid.

15. Another Division Bench of this High Court in Haji Abdul Gaffar Vs. Income Tax Officer, "E"-Ward and Others, has held that the Income Tax Officer must have reason to believe that income chargeable to tax has escaped assessment by reason of omission or failure on the part of the assessee and that he has not fully and truly placed all the material facts necessary for assessment for that year. Reasonable belief that income has escaped assessment is the sine qua non for initiation of reassessment proceedings. The belief should be based on reasonable grounds which may be inferred from direct or circumstantial evidence, but not on mere suspicion, gossip or rumour. In that case also, the notice was issued u/s 148 of the Act on the basis of the report of the Departmental Valuer who showed a higher investment than that in the valuation report submitted by the assessee. It was also held that there being no evidence that the assessee had failed to disclose fully and truly material facts necessary for assessment, the sole basis for issue of the notice u/s 148 was the report of the Departmental valuer regarding the renovation work. This report was just an estimate and had been obtained more than three years after the work had been completed. It could be said to be only the opinion of the valuer and on that basis, the Income Tax Officer could not acquire jurisdiction to issue the notice u/s 148. Therefore, the notice of reassessment was quashed by the court.

16. Therefore, in the light of the above decisions, it is manifest that the duty is that of the assessee to place all the material facts fully and truly before the Income Tax Officer while filing the returns for assessment. Once he has done so and the Income Tax Officer has accepted those returns, then the reopening of an assessment can be made only on the reasonable belief by the Income Tax Officer that taxable income has escaped assessment based on some material which should have a direct and live link with the fact of the escapement of income from assessment. Merely on the basis of suspicion, gossip or vague or indefinite information, such a belief cannot be formed.

17. Learned counsel for the Revenue, Shri Mukati, contends that it was not obligatory for the Income Tax Officer to disclose the material on which he formed the belief that taxable income has escaped assessment and in support of that contention he has cited the case of *Thanthi Trust Vs. Income Tax Officer*, wherein it has been held that reasons for reopening of assessment need not be disclosed to the assessee. We are in respectful agreement with the aforesaid decision and are also of the view that disclosure of entertaining prima facie belief that taxable income has escaped assessment need not be disclosed to the assessee especially when the material leading to such belief has been filed in the court. Therefore, for this reason that with the notice u/s 148 of the Act, the reasons for entertaining a belief about the escapement of income from assessment have not been given to the assessee, the notice cannot be held to be invalid. It has further been urged by Shri Mukati that, in the instant case, the disclosure made by the assessee was not full and true. Therefore, the Income Tax Officer was justified in forming a belief on the basis of the report of the Departmental Valuer that taxable income has escaped assessment. Shri Mukati has pointed out the difference in the two valuation reports, one by the approved valuer and the other by the Departmental Valuer. In support of his argument, Shri Mukati has placed reliance on *Biswanath Pasari Vs. Income Tax Officer, "B" Ward and Others*, wherein a single judge of the Calcutta High Court has held that mere disclosure of certain alleged facts will not absolve the assessee of the responsibility to disclose fully and truly the primary and material facts. If the assessee has placed reliance on certain transactions which in reality did not exist, then, subsequent discovery and the objective belief of the Income Tax Officer that, in the earlier assessment, taxable income has escaped assessment for non-disclosure of genuine facts would give the Income Tax Officer jurisdiction to issue a notice for reassessment. In the same authority, it has also been held that because a transaction is held fictitious in a subsequent assessment proceeding, a similar transaction in an earlier assessment order cannot ipso facto be held fictitious and on that score, a reopening proceeding as contemplated by Section 147 of the Act cannot be made.

18. A Division Bench of the Punjab and Haryana High Court in *Ranbir Engineering Mills Store Vs. Income Tax Officer*, has also been relied upon by Shri Mukati in support of his argument, wherein it has been held that if an assessee, in his return, submits a list with the names of persons from whom loans had been

taken and to whom interest had been paid, but, subsequently, it was found that the loans in the assessee's books were fictitious, then such information was sufficient for the issuance of a notice by the Income Tax Officer u/s 148 of the Act.

19. Shri Mukati has also placed reliance on the decision in Commissioner of Wealth-tax, Gujarat-III Vs. Chhatrshal Sinhji D. Zala, wherein the court has held that when once the assessee in his return disclosed the property as his asset and offered its value for wealth-tax and the Wealth-tax Officer accepted the valuation declared by the assessee, it could not be said that the assessee had omitted or failed to disclose fully and truly all material facts necessary for the assessment of his net wealth and the reopening of the assessment was not valid. However, since the assessee himself submitted a revised valuer's report, that was information on the basis of which the assessment could be reopened.

20. In our opinion, the aforesaid decisions do not take a contrary view from what has been taken by the Madhya Pradesh High Court in the cases referred to above. On the other hand, the view taken by the Gujarat High Court in Commissioner of Wealth-tax, Gujarat-III Vs. Chhatrshal Sinhji D. Zala, takes the same view that the Madhya Pradesh High Court has consistently taken in respect of the duty of the assessee to disclose fully and truly all the material facts necessary for assessment at the time of filing the returns. The contention of Shri Mukati that as there is a difference between the valuation made by the Departmental Valuer and the approved valuer, it can form the basis for the reopening of the assessment, has to be rejected for the simple reason that this court has consistently taken the view that once the assessee places before the Income Tax Officer all the material facts fully and truly with the report of the approved valuer, then in case of a mere change of opinion by another valuer, the assessment cannot be reopened.

21. According to Shri Mukati, the plinth area shown by the Departmental Valuer is also in excess of what has been shown by the approved valuer and this should be construed as non-disclosure of material facts fully and truly. In our opinion, this argument also cannot be accepted for the simple reason that the assessee had placed all the facts before the Income Tax Officer, i.e., the reconstruction of the house, the cost of the house, the source of the income and the report of the approved valuer. In valuation there may always be a difference, but the stage for examining that material is the stage of assessment. The Income Tax Officer is not bound by the report of the approved valuer and he could either accept or reject it or get the valuation of the house made by the Departmental Valuer before making the assessment. If the Income Tax Officer failed to get the report of the approved valuer verified by the Departmental Valuer, then failure on his part would not make the assessee responsible for non-disclosure of the material facts fully and truly. There can always be a difference of opinion between the reports of the valuers and the mode of measurement may also differ.

22. Now, if we look at the valuation reports, we find that different modes have

been adopted by the two valuers for measurement. The approved valuer has measured the plinth area of the ground floor at 183.48 sq. metres, equivalent to 1,975 sq. ft. whereas, according to the Departmental Valuer, the plinth area is 226.18 sq. metres. The approved valuer has further mentioned at page 5 of his report at item (i) a constructed portion of covered passage at the ground floor which is 510 sq. ft. As such, according to the approved valuer, the measurement of the ground floor of the constructed area would come to 2,485 sq. ft. whereas, according to the Departmental Valuer, it is 226.18 sq. metres, which is less than what has been shown by the approved valuer. This example itself shows that different modes may be adopted by different valuers and merely because one valuer takes a view different from that of the other valuer, it cannot be said that the assessee has not disclosed the material facts for the purposes of assessment fully and truly. It has been the consistent view of this court in *Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another*, ; *Lokendra Singh Rathore Vs. Wealth-tax Officer, "A" Ward and Another*, and *Haji Abdul Gaffar Vs. Income Tax Officer, "E"-Ward and Others*, that once the assessee places the cost of his property, the source of the income along with the valuation report by an approved valuer, then it is for the assessing authority to take a decision based on the information so submitted and if such information is placed before the assessing authority, it will be deemed to be a disclosure of all the primary facts which an assessee is required to place before the authority truly and fully. If the assessing officer without getting it verified by the Departmental Valuer at the time of the assessment, accepts the return, then a subsequent opinion of a Departmental Valuer being different from that of the approved valuer, cannot form the basis for the reopening of the assessment.

23. We may also refer to the decision of the Karnataka High Court in *K.M. Vishnudas Prabhu, K.M. Ramdas Prabhu and K.M. Shankar Prabhu (HUF) Vs. First Wealth Tax Officer and Another*, wherein it has been held that Section 16A(1) of the Wealth-tax Act, 1957, empowers the Wealth-tax Officer to make a reference of the valuation of the property to the Valuation Officer only when an assessment is pending before him. On such a reference, the Valuation Officer is competent to determine the valuation of such property and furnish the same to the Wealth-tax Officer which is made binding on him. Before making the assessment the Wealth-tax Officer is not bound to accept the valuation furnished by the assessee in his return and is free to refer that question to the Valuation Officer. But once the assessment is completed, such a reference cannot be made in respect of a completed assessment. Such a reference will be without jurisdiction and will not be valid. This judgment has been passed by the Karnataka High Court following the decisions of the High Courts of Calcutta, Madhya Pradesh and Rajasthan.

24. In the result, the aforesaid discussion leads us to hold that, in the instant case, the petitioners can, in no way, be held responsible for not disclosing the material facts fully and truly to the Assessing Officer, when they filed their respective returns before the Income Tax Officer. The Income Tax Officer accepted the valuation report filed along with the returns. Therefore, the

assessments already made by the Income Tax Officer cannot be reopened merely because another Income Tax Officer had some suspicion in his mind about the concealment of some income and the report of the Departmental Valuer being different from the report of the approved valuer. Therefore, the Income Tax Officer could not issue the impugned notices for reopening the assessments on the basis of the report of the Departmental Valuer and the suspicion about the escapement of taxable income from assessment.

25. The petitions filed by the petitioners are accordingly allowed and the notices (annexure "F") issued by the Income Tax Officer are quashed. In the circumstances of the case, the parties shall bear their own costs as incurred. The amount of security deposit shall be refunded to the petitioners after verification.