
(1994) 12 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1524 of 1982

ADITYA MILLS LTD.

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 08-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 131, 147, 148, 149, 150

Citation : (1995) 128 CTR 419 : (1995) 214 ITR 669

Hon'ble Judges : V. K. Singhal, J

Bench : Division Bench

Judgement

JAIPUR BENCH

V. K. SINGHAL J. - In this writ petition under article 226 of the Constitution of India, the petitioner has challenged the notice dated April 22, 1978, u/s 147 of the Income Tax Act, 1961, on the ground that no reason has been recorded as contemplated u/s 148 and the said reasons are arbitrary, illusory and fanciful.

The facts of the case are that after initiation of the proceedings u/s 147, the petitioner received a letter dated September 1, 1982, from which it transpires that reopening of the proceedings is sought on the basis of the amount of commission which was paid to its sole-selling agent. It is submitted that the said amount is disclosed in the balance-sheet which was submitted to the assessing authority in the course of the assessment proceedings. It was further submitted by learned counsel that the material facts which were necessary having already been disclosed, the action of the Income Tax Officer is entirely illegal and arbitrary. The payment of the said commission to the sole selling agent has always been allowed from the years 1969-70 to 1975-76 and as such the action being without jurisdiction, it has been prayed that the notice dated April 22, 1978, may be quashed and the respondents be restrained from proceeding further in consequence of the said notice.

No one has appeared on behalf of the respondents. When Mr. Bapna who is

standing counsel for the Income Tax Department, was called, it was stated that he has informed the Department, but no care has been taken by the Department for making preparation of the case. A copy of this order be sent to the Chairman, Central Board of Direct Taxes, New Delhi, and the Chief Commissioner of Income Tax, Rajasthan, Jaipur, to show the manner in which the cases are being taken care of by the Department. In all other writ matters, an officer-in-charge is appointed who is supposed not only to assist the advocate/standing counsel/panel lawyer, but also he has to be present in the court. In respect of the Income Tax Department, no care is taken by the authorities to assist either the standing counsel or to depute somebody to be present in the court when the case is called for hearing, Necessary arrangements should be made so that an officer is deputed by the Commissioner of Income Tax who must take care to come to this court and not only to assist standing counsel, but also to assist the court and relevant material may be produced whenever the matter is considered on the merits.

The submission of learned counsel for the petitioner is that in this case, the matter with regard to the assessment year 1972-73 was considered by the Division Bench of this court in Special Appeal No. 236 of 1984 decided on December 11, 1986, wherein it was observed that :

"The facts mentioned hereinabove, show that the assessee had made necessary disclosure of all the relevant facts and the Income Tax Officer had himself sought clarification, examined witnesses and after full investigation, was satisfied and then only, he had allowed the payment of commission to its sole-selling agents as deductible expenditure. The assessee on his part had disclosed fully and truly all material facts necessary for the purpose of assessment and it was only a case of change of opinion by the assessing authority which cannot form a legal base for reassessment. It is not a case of non-disclosure of true and material facts by the assessee. The Income Tax Officer had no reason to believe that some income of the assessee escaped assessment and, therefore, the question of escapement by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for the relevant year, does not arise. In the present case, the Income Tax Officer had examined Mr. P. D. Podar and Mr. R. K. Pareek and if he was not satisfied he could have made further investigation or made some more enquiries from the assessee, but since he was satisfied by the record and the investigation made by him, he allowed the amount as deductible expenditure and, therefore, in our opinion, the Income Tax Officer had no jurisdiction to issue the notice (annexure 9) dated April 22, 1978, u/s 148 of the Act as well as annexure 11, and the same are hereby quashed. The reassessment proceedings taken in pursuance of this notice was also void."

In the reply filed by the respondents, an objection has been taken that the writ petition has been filed on September 29, 1982, challenging the notice dated April 22, 1978, and as such it suffers from laches and delay. A copy of the statement of Shri P. D. Podar, dated March 15, 1975, and that of Shri R. K. Pareek, dated

February 26, 1975, has also been submitted as annexures R-1 and R-2. Copy of the form for recording reasons for initiating proceedings u/s 148 has also been submitted as annexure R-3 in which the reasons have been explained as under :

"Aditya Mills Ltd., Kishangarh, is a company running a textile mill at Kishangarh in Rajasthan. This company is a unit of well-known industrial group of Kanorias at Calcutta. Traders and Miners Ltd., Jaipur, is another company of the same group. Aditya Mills Ltd. appointed Traders and Miners as its selling agents and it paid selling agency commission to Traders and Miners Ltd. in the various assessment years as per details given below :

Assessment year

Amount (Rs.)

1970-71

5,62,983

1971-72

6,48,533

1972-73

7,80,952

1973-74

9,67,487

In its own turn, the company, Traders and Miners Ltd., while showing the receipt of the above amount, claimed huge bogus losses in fictitious transactions of paper, shares, cloth, etc., so as to wipe out the above income. This is part of the scheme of tax evasion adopted by this group. The amounts of commission shown as paid by Aditya Mills Ltd. to Traders and Miners Ltd. did not represent the expenditure incurred for purposes of the business of Aditya Mills Ltd. I have, therefore, reasons to believe that by reasons of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year 1970-71, the aforesaid amount of Rs. 5,62,983 shown as paid by the assessee to Traders and Miners Ltd. escaped assessment. As such a proposal u/s 147(1) of the Income Tax Act, 1961, is submitted herewith to the Commissioner of Income Tax, Jaipur, for the above assessment year for necessary sanction."

Section 147 empowers the Income Tax Officer to assess or reassess the income escaping assessment if he has reason to believe that the income escaped assessment.

From a perusal of the provisions of section 147(a), it is evident that the Income Tax Officer must have reason to believe that the income had escaped

assessment. (i) The belief must be in good faith and reasonableness and it cannot be a mere pretence. It should not be a pure subjective satisfaction of the Income Tax Officer; (ii) the reasons for such belief should be recorded so that it could be considered that there was material in possession of the Income Tax Officer to form such opinion or belief; (iii) escapement must be on account of omission on the part of the assessee; (iv) failure on the part of the assessee should be to disclose fully and truly all material facts necessary for assessment; (v) the sanction of the appropriate authority in accordance with the provisions of section 151 has to be obtained before initiation of the proceedings; and (vi) the notice must be issued within the time-limit prescribed u/s 149 read with section 150.

The dispute in the present case is with regard to the disclosure on the ground of material facts which are necessary for assessment and were required to be disclosed fully and truly. What are the material facts depends on the facts of each case. The material facts which are required to be disclosed are the primary facts which are relevant to decide the question before the Income Tax Officer. In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, it was held that the responsibility of the assessee is to disclose primary facts, but once he has disclosed all the primary facts his duty ends and it is for the assessing authority to draw a proper conclusion from it. If a wrong conclusion has been drawn, it cannot be a ground for reopening. The proceedings cannot be initiated on that ground. In a petition under article 226 of the Constitution of India where the validity of the notice is challenged the court has to see whether the condition precedent for initiation of the proceedings exists or not. The existence of any reason and not the sufficiency thereof has to be seen. Thus, there must be some material and not the imagination or suspicion. The belief of the Income Tax Officer with regard to the escapement of the income must have a live link having rational connection and it must be borne out from the record that there was application of mind of the Income Tax Officer to the material on record on the basis of which he has reason to believe and the inference which has been drawn must be based on the reasons which are to be recorded. The Division Bench has found that when P. D. Podar and R. K. Pareek were examined by the Income Tax Officer and if he was not satisfied, he could have made further investigation, but if he was satisfied by the record and investigation was made by him then he has no jurisdiction to issue notice on April 22, 1978. It may be considered in this case that the assessment for the assessment year 1970-71 was completed on March 26, 1973, by the Income Tax Officer, Ajmer. The statements were recorded on March 15, 1975, by the Income Tax Officer, Special Ward IV, Jaipur, u/s 131 of P. D. Podar and on February 26, 1975, of R. K. Pareek. The statements which have been recorded by different authority who was not the assessing authority led to the belief that the full and true disclosure of the material facts has not been made by the assessee. Normally, a decision given by a Division Bench of this court is binding and no other view is possible unless the matter is referred to the larger Bench. I do not

consider it proper to refer it to the larger Bench because the writ petition suffers from delay and laches and no reasonable explanation has been given for filing the writ petition after four years. Besides this, even on the merits the apex court in the case of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, has held that (at page 477) :

"From a combined review of the judgments of this court, it follows that an Income Tax Officer acquires jurisdiction to reopen an assessment u/s 147(a) read with section 148 of the Income Tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to Income Tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief is not for the court to judge, but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer, at the time of making the original assessment, could or could not have found by further enquiry or investigation, whether the transaction was genuine or not if, on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and, therefore, income chargeable to tax had escaped assessment."

In the present case, the Division Bench has proceeded that it is not a case of non-disclosure of true and material facts by the assessee and all material facts necessary for assessment were disclosed. Reference has been made in this regard to the statement of Podar and "Pareek" and observations were made that more enquiry should have been made from them. In the present case when the assessment was made the statements were not before the Income Tax Officer. The statements were recorded subsequently and information which has come to the knowledge of the Income Tax Officer could not be said to be existing on the date when the assessment was made. The dispute is that the payment has been

shown fictitiously and the commission shown to have been paid was in the end of the year to reduce the profit. In the statement of R. K. Pareek, it was stated that there is no such record available to indicate the services rendered by Traders and Miners Ltd. to Aditya Mills Ltd. Besides the fact that the staff of Aditya Mills Ltd. was given a loan and reimbursement of expenses were without any agreement. The name of the sole-selling agent was not disclosed even. When the dispute with regard to the payment has been made the investigation has to be made by the Income Tax Officer and the primary facts which were necessary to be disclosed have not been disclosed. The judgment given in the case of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, also laid stress on the disclosure fully and truly of all material facts necessary for assessment. The sufficiency of evidence or reasons is not to be adjudged at this stage. The statements of the two persons as aforesaid were fresh information which is specific in nature and was relating to the assessment which exposed falsity of the claim of the petitioner at the time of original assessment. The inference which was drawn was not correct. The true facts which are required to be disclosed with regard to the payment of commission cannot be said to have been disclosed by the assessee as the only disclosure in the balance-sheet and the reply submitted was the sole-selling agents commission at two per cent. on Rs. 2,81,49,152 comes to Rs. 5,62,983 which was disclosed and, therefore, the basic conditions which are required for initiation of the proceedings u/s 147(a) exist in the present case. The view taken by the Division Bench in this case is contrary to the law laid down by the apex court in the case of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, In the case of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, the apex court observed (at page 478) :

"We are not persuaded to accept the argument of Mr. Sharma that the question regarding the truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology of sections 147(a) and 148 by the Act and is against the settled law laid down by this court. We have to look to the purpose and intent of the provisions. One of the purposes of section 147 appears to us to be to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say you accepted my lie, now your hands are tied and you can do nothing. It would be a travesty of justice to allow the assessee that latitude."

In the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, the dispute was with regard to deletion of interest to certain creditors, which was allowed by the Income Tax Officer initially and subsequently an information was received that the creditors were only name-lenders. It was observed that there is no indication that the information related to loans taken by the assessee. In these circumstances, it was considered that there is no live link between the

material and belief and nexus does not exist. It was observed that the reasons for formation of belief contemplated by section 147(a) for reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. In *Gemini Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others*, it was held that if all the material facts have been mentioned by the assessee, the failure to draw inference by oversight would not enable the Income Tax Officer to take recourse to section 147(a). In the case of *Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta*, where the interest was allowed in the original assessment and subsequently it was found that the loan was fictitious, the grounds were not disclosed because it would cause prejudice to the Revenue, it was held that the mere disclosure of belief without setting out the material on the basis of which the belief was arrived at is not sufficient to invoke the provisions of section 147(a) of the Income Tax Act.

In view of the above decisions, I do not find that it is a fit case for invoking the extraordinary writ jurisdiction of this court under article 226 of the Constitution of India to quash the notice. A copy of this order may be sent to the Income Tax Officer to complete the proceedings after giving due opportunity to the assessee within a period of three months.

Consequently, the writ petition is dismissed with the above observations.