(1972) 05 GAU CK 0004

In the Gauhati High Court

Case No : Civil Rule No. 281 of 1966

Agarwal and Agarwal (Private) Ltd. and Another APPELLANT

Vs

K.J. Mukherjee, Income Tax Officer and Another RESPONDENT

Date of Decision : 31-05-1972

Acts Referred:
Income Tax Act, 1961 — Section 147, 148

Citation : (1973) 92 ITR 282

Hon'ble Judges : P.K. Goswami, C.J;Baharul Islam, J

Bench : Division Bench

Advocate : P. Chaudhuri, R.L. Rara and S.C. Tibrewal, for the Appellant; G.K. Talukdar, Senior Government Advocate, for the Respondent

Judgement

Goswami, C.J.—This application under Article 226 of the Constitution is directed against a notice dated 12th March, 1963, issued by the Income Tax Officer, Dibrugarh, u/s 148 of the Income Tax Act, 1961 (hereinafter called "the Act"), as it is alleged that the assessee''s income chargeable to tax for the assessment year 1954-55 had escaped assessment within the meaning of Section 147 of the Act. It is stated in the notice that necessary satisfaction of the Commissioner of Income Tax, Assam, Tripura & Manipur, was obtained.

2. The petitioner No. 1 is a private limited company with its principal place of business at Dibrugarh (hereinafter referred to as "the assessee") and the petitioner No. 2 is the director of the said company.

3. On 10th May, 1963, and again on 18th May, 1963, the assessee objected to the issue of the notice on various grounds relating to the jurisdiction of the officer. It appears that the Income Tax Officer answered the above letters of the assessee on 20th April, 1966, declining to accede to the objections. On 21st April, 1966, the petitioner was asked to furnish some information specified therein with regard to the proceedings on or before 19th March, 1966. The assessee obtained the present rule on 27th June, 1966, and the proceedings were stayed by this court.

4. The relevant assessment year in which income is said to have escaped assessment is 1954-55 and the original assessment of that year was completed on March 23, 1959. It is submitted by Mr. Chaudhuri that the Income Tax Officer had no jurisdiction to issue the impugned notice. The grounds which prompted the Income Tax Officer to issue the notice may be given in his own words submitted by the learned Senior Government Advocate during the hearing :

"The assessee-company has shown purchases of disposal goods worth Rs. 74,500 and Rs. 76,825 from Ashoka Trader Co., Dibrugarh, and Ashoka Trader, Moran Depot, respectively. But enquiries reveal that there was no such firm in existence. Assessee-company thus has furnished inaccurate particulars as a result of which there has been under-assessment. I, therefore, propose to initiate proceedings u/s 147 in this case."

5. These grounds appear in the original report of the Income Tax Officer of 8th March, 1963, to the Commissioner, who recorded "yes" to the institution of the proceedings on the same day.

6. For the purpose of this writ application, we will assume the grounds given by the officer as correct. It will not matter now if during the enquiry the assessee can establish that the grounds given by the officer are wrong or incorrect. The Income Tax Officer in his affidavit stated, inter alia, as follows :

"The Income Tax Officer had reason to. believe that income chargeable to tax had escaped assessment by reason of the failure of the assessee to disclose fully and truly all the material facts necessary for its assessment for the assessment year 1954-55, as stated below :

(a) After the completion of the regular assessment for the year 1954-55 and in the course of the assessment proceedings for the subsequent years, information came into possession of the Income Tax Officer upon enquiry that the purchases of disposal goods to the extent of Rs. 1,51,325 shown in the accounts of the assessee for the accounting year 1953-54 were bogus as the suppliers from whom the alleged purchases were shown to have been made were fictitious .... Thereafter, further information came into the possession of the Income Tax Officer upon enquiry on the basis of which it was found that the alleged loans amounting to Rs. 2,00,000 were bogus."

7. In the forefront of his argument, Mr. Chaudhuri relied upon a Division Bench decision of this court in BAJRANGLAL BERIA Vs. Income Tax OFFICER, "B" WARD, COMPANIES CIRCLE, DIBRUGARH, AND OTHERS., to which I was a party. But the facts of that case are clearly distinguishable as will be clear from the following passage at page 339 :

"The learned counsel for the department could not show from the records before us that the assessee did not show in his accounts the investment of any particular house. The dispute is with regard to the quantum spent on the house in question. While the assessee gives in his accounts a certain sum, the Income

Tax Officer after subsequent enquiry came to the compulsion that the amount shown in the account books is less than what it should be according to his valuation. Besides, there is no obligation on the assessee in submitting his return to furnish the particulars of the house properties, unless there was income from the same. It is not the case of the department that any income from the house properties has not been shown."

8. It was further observed as follows :

"From the new discovery of facts in the course of subsequent enquiry, there is an inferential non-disclosure in the assessee''s accounts in the opinion of the Income Tax Officer."

9. This was, therefore, a case of change of opinion of the officer concerned which does not give the officer the necessary jurisdiction to initiate proceedings u/s 147 of the Act. This case is of no assistance to the learned counsel.

10. We are satisfied in this case that from the grounds furnished by the department in initiation of proceedings, it is clear that it is a case which comes u/s 147(a) of the Act, viz., that according to the opinion of the officer, there is reason to believe that income had escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

11. As observed by the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another,

"The words used are ''omission or failure to disclose fully and truly all material facts necessary for his assessment for that year ''. It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable."

12. From the reasons disclosed, it is clear that the assessee showed in his accounts false and fictitious purchases and if this is assumed to be true, there is no lack of jurisdiction in the officer having reason to believe that income has escaped assessment by reason of the assessee not fully and truly disclosing all material facts necessary for his assessment.

13. Mr. Chaudhuri also relied upon another Division Bench decision of this court in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., . Even this

case is of no assistance to Mr. Chaudhuri as we find a very significant observation in that decision to the following effect:

"Without much repetition we may say that the Income Tax Officer had in his mind the provisions of Section 147(b), as otherwise he would have specifically stated in his affidavit-in-opposition that the petitioner was out to dodge the tax authorities by making false and frivolous statements in the matter of interest which he had deposited with the hundi bankers. Such a statement is absolutely absent in the affidavit-in-opposition of the Income Tax Officer . . . ."

14. In the present case, even the reasons given by the Income Tax Officer clearly show that the purchases recorded in the account books which were relied upon for the purpose of computing the income were found to be bogus. The above decision, therefore, does not come to the aid of the learned counsel.

15. Mr. Chaudhuri relied upon another decision of the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, This decision reiterated the earlier decision of the Supreme Court in Calcutta Discount Company''s case. The following observations in the decision would clearly show that this decision does not support the assessee''s case :

"The assessee had disclosed his books of account and evidence from which material facts could be discovered : it was under no obligation to inform the Income Tax Officer about the possible inferences which may be raised against him."

16. The present case is not one of that type which the Supreme Court had to deal with in the aforesaid decision.

17. Mr. Chaudhuri lastly submitted that from the report of the Income Tax Officer and the satisfaction recorded by the Commissioner therein by putting his signature below the remark "yes" against the appropriate column, the Commissioner has not performed the duty imposed on him u/s 151(2) of the Act. He strenuously relied upon a decision of the Supreme Court in Chhugamal Rajpal v. S. P. Chaliha. Their Lordships found in that case that:

"From the report submitted by the Income Tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee''s omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year ;. . . . We are not satisfied that the Income Tax Officer had any material before him which could satisfy the requirements of either Clause (a) or Clause (b) of Section 147. Therefore, he could not have issued a notice u/s 148."

18. This is not the same position in the present case where we clearly find the reasons given in the report and which according to us can legitimately furnish the basis for an opinion that there was absence of disclosure of true and full material facts. Their Lordships referred to the sanctioning order of the

Commissioner as casual because if he had applied his mind to the reasons given by the Income Tax Officer in his report, he could never have come to the conclusion on the material before him that that was a fit case to issue notice u/s 148. This decision, therefore, is of no help to the assessee.

19. All the submissions of the learned counsel fail. The petition is, therefore, dismissed. Rule nisi is discharged. The stay order of 27th June, 1966, stands vacated. We will, however, make no order as to costs.

Baharul Islam, J.

20. I agree.

