

(1983) 02 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No"s. 397 and 398 of 1981

Arvind Kumar and Another

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 23-02-1983

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1984) 41 CTR 116 : (1984) 146 ITR 437 : (1983) 13 TAXMAN 291

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : S.C. Bagdiya, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Sohani, J.—The order in this case will also govern the disposal of Miscellaneous Petition No. 398 of 1981. By these petitions under Article 226 of the Constitution of India, the petitioners have prayed that notices issued to the petitioners by the respondent, ITO, Dewas, u/s 148 of the I.T. Act, 1961 (hereinafter referred to as "the Act") be quashed.

2. The material facts giving rise to these petitions, briefly, are as follows:

Petitioner No. 2 is a registered partnership firm carrying on business of manufacture and sale of khandsari sugar at village Mahukhedi Nevri, in the district, Dewas. Petitioner No. 1 is one of the partners of petitioner No. 2. For the assessment years 1976-77 and 1977-78, for which the relevant accounting years of the petitioner-firm ended on 30th June, 1975, and 30th June, 1976, respectively, petitioner No. 2 filed its returns. In the relevant years, petitioner No. 2 had paid interest to its partners and to three HUFs, Mohanlal Badrilalji, Sureshchandra Badrilalji and Nandkishore Badrilalji, of which Shri Mohanlalji, Sureshchandraji and Nandkishoreji, partners of petitioner No. 2, were respectively the kartas. The petitioners contend that during the course of assessment, the assessee-firm had disclosed the fact that it had paid interest to its individual partners as well as to the aforesaid three HUFs, on the amounts

deposited by them with the firm. The respondent, while framing assessment for those years, disallowed the amount of interest paid by the petitioner-firm to its partners but did not deduct the amount of interest paid to the aforesaid three HUFs in computing income exigible to tax. Subsequently, on November 14, 1980, the respondent served notices to the petitioner-firm u/s 148 of the Act stating that income chargeable to tax had escaped assessment for the assessment years 1976-77 and 1977-78. The petitioners contend that the respondent had no jurisdiction to issue these notices as the petitioners had not omitted or failed to disclose fully and truly all material facts necessary for assessment. The petitioners have, therefore, filed these petitions for quashing those notices issued by the respondent u/s 148 of the Act.

3. In the return filed on behalf of the respondent, it is denied that the petitioner-firm had given complete details in respect of interest paid to the three HUFs in question. It was averred that the petitioner-firm had failed to disclose the fact of payment of interest to these HUFs. It was also averred that the respondent had information in his possession on the basis of which he had reason to believe that income chargeable to tax had escaped assessment and that the reasons recorded by the respondent u/s 148(2) of the Act were as follows :

"During the previous years relevant to the assessment years 1976-77 & 1977-78, the assessee had paid interest to HUFs styled as S/Shri Mohanlal, Nandkishore and Sureshchand. This interest was not allowable deduction u/s 40(b) in view of Commissioner of Income Tax Vs. London Machinery Co., . The assessee also failed to disclose that interest was paid to the aforesaid three HUFs. Thus, the assessee failed to disclose fully and truly all material facts necessary for its assessments for the aforesaid two assessment years and thus the income chargeable to tax has escaped assessment for assessment years 1976-77 & 1977-78. The assessment for A.Y. 1978-79 was referred to the IAC u/s 144B. The IAC also observed that the interest payment to the aforesaid three HUFs should have been disallowed in assessment years 1976-77 & 1977-78. He, therefore, directed in his letter of 29th January, 1980, that the payments of interest to the HUFs should be disallowed in assessment years 1976-77 & 1977-78 by reopening the assessments. On the basis of this information (which is in my possession), I have reason to believe that income chargeable to tax has escaped assessment for assessment years 1976-77 & 1977-78. Therefore, notices u/s 148 read with Section 147 (a)/(b) may be issued."

4. It was, therefore, contended that the respondent had not issued the impugned notices mechanically but after "application of mind and that the petitioners were not entitled to any relief.

5. As held by the Supreme Court in Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, , in proceedings under Article 226 of the Constitution of India challenging the jurisdiction of the ITO to issue a notice u/s 148 of the Act, the High Court is only concerned to decide whether the conditions, which invested the ITO with power to reopen the assessment, did

exist. It is also well settled that though the sufficiency of the grounds, which induced the ITO to act, is not a justiciable issue, it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of Section 147 of the Act.

6. Now, on the question as to whether the petitioner-firm had disclosed that it paid interest to the three HUFs in question during the relevant assessment years, there are conflicting versions. The case of the petitioners is that the petitioner-firm had submitted its interest account from which it was clear that the petitioner-firm had paid interest to Mohanlal Badrilalji, Sureshchandra Badrilalji and Nandkishore Badrilalji. The case of the Revenue is that interest account was not filed by the petitioner-firm for the assessment year 1976-77 and the interest account filed for the assessment year 1977-78 did not show that interest was paid to the three HUFs. The contention advanced on behalf of the petitioners was that the petitioner-firm had claimed deduction of interest paid by it while computing its income and the fact that the ITO had disallowed the amount of interest to the partners, was indicative of the fact that the interest account was before the ITO. It was, therefore, urged that there was a full and true disclosure of facts by the petitioner-firm and hence the ITO had no jurisdiction to reopen the assessment u/s 147(a) of the Act. It is, however, not necessary to deal with this aspect any further because having heard learned counsel for the parties, we have come to the conclusion that, in the circumstances of the case, even if Clause (a) of Section 147 of the Act was not attracted, the ITO had jurisdiction u/s 147(b) of the Act to reopen the assessment. From the orders of assessment passed by the ITO, it is clear that the ITO had not at all considered the question as to whether any interest was paid by the assessee-firm to an HUF, of which the karta was a partner of the assessee-firm. It is, therefore, not a case of change of opinion, as urged on behalf of the petitioners. The ITO received the relevant information from the letter dated 29th January, 1980, sent by the IAC. At this stage, it cannot be held that the ITO merely acted as dictated by the IAC, because the ITO has averred and has also mentioned in the reasons, which he has recorded before issuing notices u/s 148 of the Act, that it was on the basis of the information contained in the letter received from the IAC, that he had reason to believe that income chargeable to tax had escaped assessment for the assessment years 1976-77 and 1977-78. In these circumstances, the ITO had jurisdiction to issue notice u/s 148 of the Act for starting reassessment proceedings u/s 147(b) of the Act. In this connection, we may usefully refer to the following observations of a Division Bench of this court in *Commissioner of Income Tax Vs. Anand Transport Co. Pvt. Ltd.*, :

"The provisions of Section 147 of the I.T. Act, 1961, depart from the normal rule that there should be, subject to any right of appeal and revision that may be available, finality of orders made in judicial and quasi-judicial proceedings: [*Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*,]. Section 147(b) authorises the ITO to start reassessment proceedings if he had, "in

consequence of information in his possession, reason to believe that income chargeable to tax has escaped assessment for any assessment year", This section has been construed in a number of cases by the Supreme Court. The word "information", as occurring here, means not only facts or factual material but includes also information as to the true and correct state of law and, therefore, information as to relevant judicial decisions. The word has been denoted to connote "instruction or knowledge derived from an external source concerning facts or particulars, or as to law, relating to a matter bearing on the assessment". But the information as to law, to fall within Section 147(b), must be from a formal source, i.e., a competent Legislature or a competent judicial or quasi-judicial authority: [Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi,]. Decisions of superior authorities under, the I.T, Act constitute information relating to law for reopening an assessment u/s 147(b): [Commissioner of Income Tax, U.P. Vs. Gurbux Rai Harbux Rai,]."

7. We respectfully agree with the aforesaid observations. Under the circumstances, the contention that the ITO had no jurisdiction to issue notices u/s 148 of the Act cannot be upheld.

8. For all these reasons, these petitions fail and are accordingly dismissed. In the circumstances, parties shall bear their own costs. Security deposit, if any, shall be refunded to the petitioners.