
(1996) 08 P&H CK 0082
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1411 of 1981

Babu Ram Nagar Mal

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 12-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 139(1), 147, 148

Citation : (1996) 222 ITR 450

Hon'ble Judges : N.K. Agrawal, J

Bench : Single Bench

Advocate : None, for the Appellant; R.P. Sawhney and Sanjay Goyal, for the Respondent

Judgement

N.K. Agrawal, J. 1. The petitioner-firm has challenged the issuance of notice by the Income Tax Officer by way of this petition under articles 226 and 227 of the Constitution of India.

2. The petitioner-firm carried on business in fruits and vegetables as a commission agent as well as on its own account. Assessment was completed by the Income Tax Officer for the assessment year 1972-73, vide order dated March 29, 1975, on the basis of the returns filed u/s 139(1) of the Income Tax Act, 1961 (for short, "the Act"). The assessee had shown income by way of commission at Rs. 51,661. An addition of Rs. 25,000 to the assessee's income was, however, made by the Income Tax Officer on the ground that quantitative details regarding the sales had not been shown and, therefore, addition was required to be made in the trading account. This addition was, however, deleted in appeal, vide order dated January 22, 1977.

3. The Income Tax Officer, while processing the case of the assessee during the assessment proceedings for the assessment year 1978-79, noticed that commission had been charged by the assessee at more than four per cent., whereas the usual rate of commission was four per cent. only. An inference was,

therefore, drawn that the assessee had charged excess commission on certain excess sales not shown in the books of account. Certain addition was, therefore, made for the assessment year 1978-79. The Income Tax Officer, thereafter, recorded reasons for issuance of notice u/s 147/148 of the Act, for the assessment year 1972-73, on the ground that the assessee had not disclosed fully and truly all the material facts during the regular assessment proceedings for that year. The Income Tax Officer was of the view that the assessee had charged commission in excess of the usual rate of four per cent. and the amount was worked out in respect of the excess commission at Rs. 2,000. On the basis of this excess amount of commission, sales not recorded in the regular books of account, were worked out at Rs. 50,000 after recording reasons that income to the extent of Rs. 50,000 had escaped assessment and a notice came to be issued u/s 147/148 of the Act. The petitioner has not appeared at the time of hearing of the present petition, though a notice by registered post acknowledgment due was sent at the given address of the petitioner after noticing that counsel for the petitioner, Mr. Bhagirath Dass, has since expired.

4. The case of the petitioner is that the regular assessment had been completed by the Income Tax Officer, vide order dated March 29, 1975, and all the facts had been declared at that time. Therefore, the assessee could not be charged with the suppression of any material facts regarding income by way of commission. It is also stated that the period of limitation was four years in a case where notice was issued under Clause (b) of Section 147 of the Act. The said clause empowers the Assessing Officer to issue a notice to an assessee where, in consequence of information in his possession, the Income Tax Officer has reason to believe that income chargeable to Income Tax had escaped assessment for any assessment year. It is stated that the case of the assessee did not also fall under Clause (a) of Section 147 of the Act because the assessee had disclosed all the relevant and material facts at the time of regular assessment and, therefore, it cannot be assumed or alleged that the assessee had omitted or failed to fully and truly disclose all the material facts. Therefore, it is Clause (b) of Section 147 which could be invoked if the Assessing Officer had in his possession certain information leading to the belief that certain income had escaped assessment.

5. The respondents have challenged the petitioner's plea on both the counts. It is stated that certain facts came to the notice of the Assessing Officer at the time of assessment proceedings relating to the assessment year 1978-79 and that it was found that the assessee adopted a modus operandi whereby sales had been suppressed. This led to the conclusion that, in the earlier years too, the assessee had, by adopting this modus operandi, suppressed certain sales and income. It amounted to the nondisclosure of material facts. As per the respondents, the facts brought the case within the purview of Clause (a) of Section 147 and not under Clause (b), as claimed by the petitioner. Since the assessment year was 1972-73, the period of limitation started from April 1, 1973, and expired on March 31, 1981. Notice was, however, issued on March 24, 1981, and, thus, was within time. It has been argued that the assessee had charged commission at

more than four per cent. and the excess commission so charged represented the undisclosed and suppressed sales. Therefore, it made out a case for the reopening of the assessment. It is also contended by Mr. R.P. Sawhney, Senior Advocate, standing counsel for the respondents, that the assessee had no reason to invoke the extraordinary jurisdiction of this court and had an opportunity to appear before the Assessing Officer and to show that he had not suppressed any sales. The plea of the assessee that sometimes commission in excess of the usual rate of four per cent. had also been charged for rendering certain other services to the principals, can be examined by the Income Tax Officer at the time of reassessment. Therefore, the entire question is open to detailed examination during the assessment proceedings and, for that reason, the writ petition must be rejected.

6. The case put forward by the petitioner does not make out a case in its favour. Whatever was detected during the assessment proceedings relating to the assessment year 1978-79, that revelation prompted the Assessing Officer to reach the conclusion that the assessee had not been disclosing fully and truly all the material facts in the earlier years also. Therefore, the Income Tax Officer proceeded to record the reasons and issued a notice u/s 147/148 of the Act for reopening the assessment for the year 1972-73. The reasons recorded by the Income Tax Officer do not bring out any invalidity and it leads one to believe that certain income had escaped assessment. If the assessee had anything against the belief entertained by the Income Tax Officer, it was open to the assessee to put forward his case during the reopened proceedings. Other remedies under the Act are also available. So far as the plea regarding the period of limitation is concerned, this plea is also not found to be acceptable.

7. In *Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another*, this court had an occasion to examine a matter where a notice u/s 147(a) of the Act had been issued to an assessee. In the facts of that case, it was found that the Income Tax Officer had reason to believe that primary facts had not been truly disclosed at the time of original assessment. It was, therefore, held that the Income Tax Officer may reopen the assessment. The Income Tax Officer could do so because certain fresh facts came to light, which were not previously disclosed or because new light was thrown on facts previously disclosed, exposing the untruthfulness of such facts. In the present case also, the Income Tax Officer entertained a belief that the assessee had adopted a modus operandi to suppress the excess sales made in the course of business on own account. Commission was chargeable at the rate of four per cent. but, since excess commission had been shown, it led to a belief that the assessee had done certain business outside the books of account. In *State Bank of Patiala Vs. Central Board of Direct Taxes and Others*, this court had again an occasion to examine a matter regarding the issuance of notice u/s 147(a) of the Act. It has been observed therein that where proceedings for reassessment are initiated u/s 147(a) of the Act, there must be material to come to the conclusion that there was omission or failure to disclose fully and truly all material facts necessary for the assessment

of the year. The section postulates a duty on every assessee to disclose fully and truly all material facts necessary for the assessment. The obligation is to disclose facts. The facts must be material and the disclosure must be full and true. All the facts material and necessary for assessment will differ from case to case.

8. From the facts of the present petition, it appears that the petitioner, instead of putting forward full facts before the Income Tax Officer, has challenged the issuance of notice without sufficient and cogent reasons. The reasons recorded by the Income Tax Officer cannot be said to be such on the basis of which the Income Tax Officer cannot form an opinion that the assessee had failed to disclose fully and truly all material facts during the assessment for the assessment year 1972-73. If this opinion or belief recorded in the reasons was not based on correct facts, the assessee could explain all the facts in order to make out a case that all material facts had been disclosed earlier during the proceedings whereunder assessment had been made in the year, 1975. The matter needed examination and it would not be appropriate to reach a conclusion without looking to the nature of income and the nature of business of the assessee. The plea of the petitioner that commission in excess of the usual rate of four per cent. was also charged, needed examination. It is, therefore, open to the petitioner to explain that whatever income had been shown by way of commission, that was based on the disclosure of material facts fully and truly and the presumption that the excess commission charged represented the excess sales not disclosed in the books of account was not well-founded. The plea of the petitioner that the notice could not be issued under Clause (a) of Section 147 also does not appear to be correct in the light of above facts. Prima facie, the Income Tax Officer had reason to believe and to form an opinion that the assessee had not disclosed fully and truly all the material facts. Therefore, the period of limitation would be eight years from the end of the assessment year 1972-73.

9. In the result, the writ petition has no force and the same is dismissed.