
(1974) 03 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 704 of 1970

Bhadarmal Hazarimal

APPELLANT

Vs

Income Tax Officer, "A" Ward

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (1975) 100 ITR 160

Hon'ble Judges : M.C. Pathak, C.J.;B.N. Sharma, J

Bench : Division Bench

Advocate : S.K. Sen, K.N. Saikia and D.R. Guha, for the Appellant; G.K. Talukdar, Sr. Govt. Advocate, for the Respondent

Judgement

M.C. Pathak, C.J.—By this application under Article 226 of the Constitution of India the petitioner has challenged the notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the 1961 Act"), issued by the Income Tax Officer, " A " Ward, Jorhat, to the petitioner-firm. The petitioner submitted its return of income for the assessment year 1958-59, corresponding to the accounting year R. N. 2014, along with statements of accounts such as trading account, profit and loss account, balance-sheet, interest account, salary account, partners" account, accounts of various parties from whom goods were purchased and loans were taken or paid and those statements formed part of the said return. On the basis of the said return assessment proceedings for the assessment year 1958-59 were completed by the Income Tax Officer, Jorhat, u/s 23(5)(a) of the Indian Income Tax Act, 1922, on October 30, 1958. The Income Tax Officer estimated the income of the-petitioner-firm at Rs. 22,863. The partners of the firm paid tax separately on the share of income of the firm.

2. The petitioner-firm thereafter received a letter No. B-312/58-59 dated July 12, 1968, from the respondent, Income Tax Officer, " A "-Ward, Jorhat, by which he asked the petitioner-firm to produce evidence on July 23, 1968, in respect of the loans obtained from the following parties relating to the assessment year

1958-59:

Rs.

1. M/s. Narayandas D. K., 35, Upper Chitpur Road, Calcutta 25,000
- 2 M/s, Bhagwandas Purshottomdas, 2/1, Dinanath Mathura Lane, Calcutta 10,000
3. M/s. Bhagwan Singh Srichand, 40, Bijoytiatola, Calcutta 20,000
4. M/s. Nandalal Ramchandra, 48, Vivekananda Road, Calcutta 15,000
70,000

3. As it was a very old matter the petitioner-firm applied for time to produce evidence in respect of the aforesaid loans. By a letter dated August 13, 1968, the petitioner stated that the said loans were genuine and the transactions were in the course of business and that the loans were taken against hundis and after repayment of the loans the discharged hundis were taken back and the same were still in possession of the petitioner and those were already shown in the statement filed and examined by the Income Tax Officer while passing the assessment order. The petitioner further states that it obtained loans by drawing hundis through another party, namely, M/s. Shanthi Textiles of 161/1, Mahatma Gandhi Road, Calcutta-7, and the repayment was also made through the said firm. Thereafter, the respondent issued the impugned notice No. B-312/158 dated May 12, 1969, u/s 148 of the 1961 Act and asked the petitioner to furnish return for the assessment year 1958-59, within 30 days from the date of service thereof. But no form was sent along with the said notice and subsequently by letter No. B-312/58-59/336 dated May 21, 1969, the form was sent to the petitioner. The petitioner furnished a return again for the assessment year 1958-59, under protest, disclosing an income of Rs. 9,226-9-6 (Rs. 7,426-9-6 as in original return plus Rs. 1,800 towards inadmissible expenses). Subsequently, the petitioner furnished the discharged huadis again for satisfaction of the respondent.

4. The learned counsel for the petitioner submits that the impugned notice u/s 148 of the 1961 Act is bad in law and without jurisdiction and, therefore, it is liable to be quashed. The learned counsel submits that the present case does not come u/s 147(a) of the 1961 Act and even assuming that the present case is covered by Section 147(b) of the 1961 Act, the proposed assessment is barred u/s 153(2) of the 1961 Act.

5. The respondent has filed an affidavit-in-opposition wherein it has been asserted that the petitioner failed to disclosed fully and truly all material facts necessary for the purpose of assessment and that due to non-disclosure of all facts, income chargeable to tax for the assessment year in question had escaped assessment and, therefore, the Income Tax Officer had jurisdiction to issue the notice u/s 148 of the 1961 Act. It has been stated in the affidavit-in-opposition

that the alleged loans from the four parties described hereinabove were from bogus name-lenders and were not genuine loans at all and that the petitioner introduced their secret profits in the names of those lenders.

6. We have heard the arguments of both the parties. The point that arises for consideration in the instant case is whether the conditions precedent laid down in Section 147(a) of the 1961 Act are existent in the instant case for issue of notice u/s 148 of the 1961 Act.

7. Sections 147 and 148 of the 1961 Act are quoted below:

" 147. Income escaping assessment.--If-

(a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153 assess or re-assess such income or re-compute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereinafter in Sections 148 to 153 referred to as the relevant assessment year).

Explanation 1.--For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely-

(a) where income chargeable to tax has been under-assessed; or

(b) where such income has been assessed at too low a rate; or

(c) where such income has been made the subject of excessive relief under this Act or under the Indian Income Tax Act, 1922(11 of 1922); or

(d) where excessive loss or depreciation allowance has been computed.

Explanation 2.--Production before the Income Tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income Tax Officer will not necessarily amount to disclosure within the meaning of this section."

" 148. Issue of notice where income has escaped assessment.--(1) Before making the assessment, reassessment or recomputation u/s 147, the Income Tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 139 ; and the provisions of this Act shall, so far as may be, apply accordingly as

if the notice were a notice issued under that subsection .

(2) The Income Tax Officer shall, before issuing any notice under this section, record his reasons for doing so. "

8. Section 153(2) of the 1961 Act is reproduced below :

" 153. Time limit for completion of assessments and reassessments.-

(1).....

(2) No order of assessment, reassessment or recomputation shall be made u/s 147-

(a) where the assessment or reassessment or recomputation is to be made under Clause (a) of that section, after the expiry of four years from the end of the assessment year in which the notice u/s 148 was served;

(b) where the assessment, reassessment or recomputation is to be made under Clause (b) of that section, after-

(i) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(ii) the expiry of one year from the date of service of the notice u/s 148, whichever is later."

9. Section 147(a) of the 1961 Act is substantially in similar terms with Section 34(1)(a) of the Indian Income Tax Act, 1922.

10. u/s 147(a) of the 1961 Act the Income Tax Officer may subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned if the Income Tax Officer has reason to believe that income chargeable to tax has escaped assessment for that assessment year by reason of the omission or failure on the part of an assessee to make a return u/s 139 for that assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year. u/s 148 of the 1961 Act, before making the assessment, reassessment or recomputation u/s 147, the Income Tax Officer has to serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 139; and the Income Tax Officer before issuing any notice u/s 148 has to record reasons for doing so. In the instant case the assessee submitted his return for the assessment year 1958-59. The impugned notice u/s 148 is dated May 12, 1969, and thus the notice u/s 148 was issued after the expiry of 8 years from the end of the relevant assessment year. So satisfaction of the Commissioner as well as of the Board to the effect that it was a fit case for the issue of such notice on the reasons recorded by the Income Tax Officer was necessary. The reasons for issuing the notice have been stated in the report of the Income Tax Officer which is at annexure " I " to the affidavit-in-opposition.

The Board and the Commissioner have stated that they were satisfied that it was a fit case for the issue of notice u/s 148. The Income Tax Officer gave the reasons as follows ;

" The assessee, M/s. Bhadarmal Hazarimal, is a partnership-firm, consisting of two partners, Shri Chandmal Agarwalla and Shri Prahladrai Agarwalla. It carried on business in cloth.

During the previous year 2014 R. N., relevant to the assessment year 1958-59, it introduced cash in the books in the names of the following parties:

Rs.

1. M/s. Narayandas D.K., 35, Upper Chitpur Road, Calcutta. 25,000
 2. M/s. Bhagawandas Purshottomdas, 64, Vivekananda Road, Calcutta. 10,000
 3. M/s. Bhagawan Singh Srichand, 40, Bijotiatola, Calcutta. 20,000
 4. M/s. Nandalal Ramchandra, 48, Vivekananda Road, Calcutta. 15,000
- 70,000

All these loans were repaid in cash during the year when a corresponding sum of Rs. 70,000 was introduced in the name of one M/s. Shanti Textiles of 161/1, Mahatma Gandhi Road, Calcutta. I now find that all these parties are included in the list of bogus lenders, since compiled by the department. The assessee was confronted with the information and was asked to produce the books but it did not comply. From the circumstances of the case, I have reason to believe that secret incomes of the assessee were introduced in the books in the names of bogus lenders and for failure of the assessee to disclose fully and truly all material facts necessary for its assessment, income chargeable to tax had escaped assessment and accordingly proceedings u/s 147(a) are required to be initiated for the assessment year 1958-59. I, therefore, solicit the approval of the Central Board of Direct Taxes for doing so."

11. The point that arises for consideration is whether in the facts and circumstances of the case it can be said that the Income Tax Officer had reason to believe that by reason of the 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 in question, income chargeable to tax had escaped assessment for that year.

12. In Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, while considering Section 34(1)(a) of the Indian Income Tax Act, 1922, the Supreme Court has observed as follows:

" Before we proceed to consider the materials on record to see whether the appellant has succeeded in showing that the Income Tax Officer could have no reason, on the materials before him, to believe that there had been any omission to disclose material facts, as mentioned in the section, it is necessary to examine

the precise scope of disclosure which the section demands. 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. Thus, when a question arises whether certain income received by an assessee is capital receipt or revenue receipt, the assessing authority has to find out what primary facts have been proved, what other facts can be inferred from them, and, taking all these together, to decide what the legal inference should be.

There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered, the legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example--" I have produced the account books and the documents : You, the assessing officer examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account books and the documents." His omission to bring to the assessing authority's attention those particular items in the account books, or the particular portions of the documents, which are relevant, will amount to "omission to disclose fully and truly all material facts necessary for his assessment". Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them--including particular entries in account books, particular portions of documents, and documents and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.

Does the duty, however, extend beyond the full and truthful disclosure of all primary facts ? In our opinion the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he

requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else--far less the assessee--to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences--whether of facts or law--he would draw from the primary facts.....

It may be pointed out that the Explanation to the sub-section has nothing to do with " inferences " and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income Tax Officer could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose " inferences "--to draw the proper inferences being the duty imposed on the Income Tax Officer.

We have, therefore, come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this.

The position, therefore, is that if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any primary fact, which could have a material bearing on the question of "underassessment", that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notices u/s 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a non-disclosure of material facts would not be open for the court's investigation. In other words, all that is necessary to give this special jurisdiction is that the Income Tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material facts.

Clearly, it is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that the Income Tax Officer had no material at all before him for believing that there had been such nondisclosure.....

The expression "reason to believe" postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer : the forum of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under-assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justiciable. The expression, therefore, predicates that the Income Tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is

founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on information at his disposal believe that income has been under-assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion; it must be founded upon information If the conditions precedent do not exist, the jurisdiction of the High Court to issue high prerogative writs under Article 226 of the Constitution to prohibit action under the notice may be exercised. But if the existence of the conditions is asserted by the authority entrusted with the power and the materials on the record prima facie support the existence of such conditions, an enquiry whether the authority could not have reasonably held the belief which he says he had reason to hold and he did hold, is, in my judgment, barred."

13. In *The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd.*, the Supreme Court has held as follows :

" We are of the view that u/s 34(1)(a) if the assessee has disclosed primary facts relevant to the assessment, he is under no obligation to instruct the Income Tax Officer about the inference which the Income Tax Officer may raise from those facts. The terms of the Explanation to Section 34(1) also do not impose a more onerous obligation. Mere production of the books of account or other evidence from which material facts could with due diligence have been discovered does not necessarily amount to disclosure within the meaning of Section 34(1), but where on the evidence and the materials produced the Income Tax Officer could have reached a conclusion other than the one which he has reached, a proceeding u/s 34(1)(a) will not lie merely on the ground that the Income Tax Officer has raised an inference which he may later regard as erroneous."

14. Let us examine the facts of this case keeping in view the language of Section 147 and the observations made by the Supreme Court as quoted above.

15. The assessee in its account books for the relevant assessment year showed loans of Rs. 70,000 from four persons as stated hereinabove and those loans were also shown as repaid in cash during the relevant year when a corresponding sum of Rs. 70,000 was introduced in the name of one, M/s. Shanti Textiles. On that basis the Income Tax Officer made the assessment for the relevant year. Subsequently, however, the Income Tax Officer found that all the aforesaid parties from whom loans were stated to have been taken and to whom paid were in the list of bogus lenders which has been compiled by the department subsequently. On having the information subsequently that these parties were bogus lenders, the Income Tax Officer stated that he had reason to believe that secret income of the assessee was introduced in the books in the names of bogus lenders and thus there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment and consequently income chargeable to tax had escaped assessment.

16. The precise question is whether, on the facts and circumstances of the case,

the assessee can be said to have disclosed fully and truly all material facts necessary for its assessment for the assessment year in question. The assessee included the aforesaid cash of Rs. 70,000 as loans from the parties mentioned above and these were some of the material primary facts on which the Income Tax Officer made the assessment for the relevant year. On subsequent investigation it transpired that the aforesaid parties were bogus lenders, that is to say, the names of these non-existent parties were shown falsely in the accounts. The assessee is legally bound to disclose fully and truly all material facts necessary for its assessment. In other words, if the assessee discloses all the primary facts necessary for its assessment and the Income Tax Officer draws some inferences therefrom then, even if subsequently some other facts come to light and a different set of inferences may be drawn from the primary facts already disclosed, such a case may not attract Section 147(a). Similarly, if the primary facts are fully and truly disclosed and the authority draws some inferences therefrom, then the same authority or its successor cannot change its inferences from the same set of primary facts by changing its earlier opinion and resort to Section 147(a). But if facts which may be considered as primary facts disclosed by the assessee are found to be false and non-existent on subsequent inquiry or if some of the material primary facts disclosed by the assessee are found to be false or non-existent on subsequent enquiry, can it be said that the assessee has discharged its duty to disclose fully and truly all material facts necessary for its assessment for the relevant year ? In our opinion, if the material facts or primary facts necessary for its assessment, as disclosed by the assessee, are subsequently on investigation found to be false or non-existent, it cannot be said that the assessee disclosed fully and truly all material facts necessary for its assessment. If, on subsequent enquiry or investigation the Income Tax Officer has reason to believe that the material facts or primary facts disclosed by the assessee were false or non-existent, then the Income Tax Officer gets jurisdiction to issue a notice u/s 148 inasmuch as such a case will be covered by Section 147(a). The words "to disclose fully and truly all material facts " cannot mean to disclose some material facts which are false or non-existent. To disclose fully and truly cannot mean to disclose fully and falsely.

17. In the instant case the authority which is entrusted with the power to issue the impugned notice has asserted that he has reason to believe that some of the material facts asserted by the assessee are false or non-existent and he has come to this conclusion on the basis of a report compiled by the department subsequently wherein the parties from whom the assessee is shown to have taken the loans in question are shown as bogus lenders. The conclusion of the authority that it has reason to believe that income chargeable to tax had escaped assessment because the assessee failed to disclose fully and truly all material facts is based on the materials collected.

18. In view of the facts and circumstances of the case and in the light of the observations of the Supreme Court as quoted hereinabove, we are clearly of opinion that in the instant case the authority has jurisdiction to issue the

impugned notice u/s 148 of the Income Tax Act. In the result, we find that this petition has no merits.

19. The petition is accordingly rejected. The rule is discharged. We, however, make no order as to costs. The stay order stands vacated,

B.N. Sarma, J.

20. I agree.