
(1974) 06 CAL CK 0004
In the Calcutta High Court
Case No : Civil Rule No. 2882 (W) of 1966

Biju Patnaik

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 26-06-1974

Acts Referred:

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

Citation : (1976) 102 ITR 96

Hon'ble Judges : Rabindra Nath Pyne, J; Amarendra Nath Sen, J

Bench : Division Bench

Advocate : D. Pal, P.K. Pal and R.N. Dutta, for the Appellant; B.L. Pal and S.N. Dutta, for the Respondent

Judgement

A.N. Sen, J.—On the 26th of February, 1966, a notice u/s 148 of the Income Tax Act, 1961, was issued by the Income Tax Officer, Central Circle, Cuttack, to Biju Patnaik for reopening his assessment for the year 1958-59 and Biju Patnaik moved this court under article 226 of the Constitution challenging the validity of the said notice and for quashing the same.

2. The said writ petition of Biju Patnaik came up for final disposal before Chittatosh Mookerjee J. The learned judge by his order dated 7th of September, 1972, referred the matter to a Division Bench. The matter was subsequently assigned to this Bench by the Hon'ble the Chief Justice.

3. The only question that falls for determination in the instant case is whether the said notice dated 26th February, 1966, u/s 148 of the Income Tax Act, 1961, for reopening the assessment of the assessee for the year 1958-59 was lawfully and validly issued by the Income Tax Officer.

4. The case of the assessee in the petition mainly is that the said notice has been issued improperly and illegally as the conditions precedent to the assumption and exercise of power for reopening an assessment u/s 147(a) are not satisfied in the

instant case. It is the case of the assessee that there was, and there could be, no material which could lead to the formation of any belief on the part of the Income Tax Officer that the income of the assessee for the relevant year escaped assessment due to any failure or omission on the part of the assessee to disclose fully and truly all the material facts which were necessary for assessment of the assessee for the relevant year.

5. Dr. D. Pal, learned counsel appearing in support of the application, has contended before us that there was no material which could lead to the formation of any belief on the part of the Income Tax Officer that the income of the assessee during the relevant assessment year escaped assessment due to default on the part of the assessee to disclose fully and truly all the material facts relating to the assessment of the assessee. Dr. Pal has submitted that the assessee produced before the Income Tax Officer at the time of the original assessment all the relevant materials, and on a consideration of all the relevant materials produced, the Income Tax Officer made the assessment and the genuineness of the hundi loans was accepted by the Income Tax Officer who made the original assessment. Dr. Pal argues that no material is indicated to show that there has been any failure or omission on the part of the assessee to disclose fully and truly all material facts relating to the assessment and it is the argument of Dr. Pal that unless there is some material which can reasonably lead to the formation of belief on the part of the Income Tax Officer that the income of the assessee during the relevant year has escaped assessment because of any failure on the part of the assessee to disclose fully and truly all the material facts, the Income Tax Officer would not in law be entitled to assume and exercise jurisdiction or power u/s 147(a) and the notice u/s 148 must necessarily be held to be bad. Dr. Pal has drawn our attention to the case made by the Income Tax Officer in the affidavit-in-opposition affirmed by him on the 20th of August, 1968, Dr. Pal has referred to the statements made in paragraphs 7, 9, 16, 17 and 19 of the said affidavit-in-opposition and he has contended that the statements made therein clearly go to show that there was no material before the Income Tax Officer which could lead to the formation of any reasonable belief on the part of the Income Tax Officer that there was any failure or omission on the part of the assessee to disclose truly and fully all the material facts. Dr. Pal also called for production of the relevant file containing the recorded reasons which were placed by the Income Tax Officer before the Commissioner for obtaining the necessary sanction of the Commissioner before issuing notice u/s 148. The relevant file containing the recorded reasons had been produced before us by the department. The recorded reasons which were placed by the Income Tax Officer before the Commissioner for obtaining sanction read as follows:

"Brief reasons for starting proceedings u/s 147 :

The assessee's books of account showed loans of Rs. 3,00,000 in the names of various hundi lenders. These loans were accepted originally as genuine as claimed by the assessee. Information which came to light subsequently showed

that these hundi lenders indulged in the business of bogus accommodation and some of them (as, for example Giridharidas Raghomal and Giridhari Singh Jhaman Singh) have confessed that the loans shown to their names were mostly bogus, at least the loans shown to the assessee by the said lenders were bogus. Hence, it has become necessary to reopen the assessment to tax the said amount which appears to be concealed income of the assessee which has escaped assessment."

6. The recorded reasons were signed by the Income Tax Officer on January 29, 1966, and the sanction of the Commissioner was accorded on February 24, 1966. The confessional statements referred to in the recorded reasons of the Income Tax Officer were also produced before us at the hearing of the application. One of the confessional statements was produced in its original and a cyclostyled copy of the other confessional statement was produced and it was said on behalf of the department that the original of the said confessional statement had been sent to Bangalore. Dr. Pal has contended that the recorded reasons in the instant case do not constitute any material and in support of his contention Dr. Pal has strongly relied on the decision of the Full Bench in the case of Lakhmani Mewal Das Vs. Income Tax Officer, "I" Ward and Others, and he has placed particular reliance on the observations contained in paragraphs 20 to 25 at pages 825-827 of the report. Dr. Pal has submitted that an analysis of the recorded reasons in the instant case will clearly indicate that they are almost identical with the reasons recorded in the case before the Full Bench and the Full Bench on a consideration of the said reasons held on the authority of the decision of the Supreme Court in the case of Chhugamal Rajpal Vs. S.P. Chaliha and Others, that there were no materials and the notice was bad. It is indeed the contention of Dr. Pal that the decision of the Full Bench applies to the facts of the instant case on all fours and concludes the question. Dr. Pal has also referred to the following other decisions, Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, , Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, , Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar, and Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, .

7. We may incidentally note that Dr. Pal has criticised the conduct and attitude of the department and the way the department has proceeded against the assessee. Dr. Pal has pointed out that after the assessment was concluded and before issuing any notice the Income Tax Officer on the 16th August, 1965, addressed a letter to the assessee which has been set out at page 31 of the petition. Dr. Pal has commented that the Income Tax Officer had no authority to write any such letter to the assessee and it is the comment of Dr. Pal that this letter clearly indicates that the Income Tax Officer was trying to fish for information to make out a case against the assessee.

8. Mr. B.L. Pal, learned counsel for the respondent, has submitted that the

statements contained in the recorded reasons clearly indicate that there was sufficient material which could lead to the formation of a reasonable belief on the part of the Income Tax Officer that income of the assessee has escaped assessment due to the failure on the part of the assessee to disclose fully and truly all the material facts relevant for his assessment for the relevant year and the Income Tax Officer was clearly justified in the facts and circumstances of this case in issuing the said notice u/s 148 of the Act of 1961. Mr. Pal contends that the requirements of Section 147(a) which are in the nature of conditions precedent to the exercise of jurisdiction and power of reopening the assessment are clearly satisfied in the instant case. Mr. Pal has submitted that the position in law is well established and the question is one of application of the settled principles to the facts of a particular case. Mr. Pal has argued that whether there are materials or not will necessarily depend on the facts of a particular case and it is the contention of Mr. Pal that in the instant case the fact that two of the alleged hundi creditors have made a confession and they have confessed that the loans to the assessee were not genuine loans constitutes sufficient material to enable the Income Tax Officer to exercise his power and jurisdiction u/s 147(a) of the Income Tax Act. Mr. Pal has submitted that this court is not concerned really with the adequacy or sufficiency of the reasons and the court has only to enquire whether there is any material which can lead legitimately to the formation of a prima facie belief on the part of the Income Tax Officer that the income of the assessee has escaped assessment due to the failure on the part of the assessee to disclose fully and truly the material facts necessary for the assessment of the assessee in the relevant year. Mr. Pal has submitted that the statements made in the affidavit might not have been sufficient, but the recorded reasons which have been produced and the confessional statements which have also been produced before the court clearly justify the act on the part of the Income Tax Officer.

9. The question of the validity of the notice u/s 34 of the Act of 1922 and also u/s 147 of the Act of 1961 has come up for consideration before the Supreme Court and the High Courts in various cases. The principles of law, to my mind, are fairly established,

10. It is to be noted that in the instant case the reopening could be done only on the basis of the provisions contained in Section 147(a) of the Income Tax Act, 1961, and it is common case that Section 147(b) will have no application as any notice u/s 147(b) will clearly be out of time. The legal position which, in our view, is well settled and as stated by the Supreme Court in the case of Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, is:

".....the legal position is that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any nondisclosure as regards any fact, which could have material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer

to issue the notice u/s 34. Whether these grounds are adequate or not is not a matter for the court to investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again, the expression "reason to believe" in Section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The belief must be held in good faith; it cannot be merely a pretence. To put it differently, 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 the section. To this limited extent, the action of the Income Tax Officer in starting proceedings u/s 34 of the Act is open to challenge in a court of law."

11. As the principles of law are, in our opinion, well-settled, we do not consider it necessary to deal with the other cases cited from the Bar. The established principles which, in our view, are applicable in the instant case may be stated as follows:

(1) Before the Income Tax Officer can assume and exercise jurisdiction to issue the notice u/s 148 to the applicant-assessee, other conditions laid down in Section 147(a) must be fulfilled. The two conditions which are prescribed by Section 147(a) are :

(i) the Income Tax Officer must have reason to believe that the income, profits or gains chargeable to Income Tax have been under-assessed ; and

(ii) the Income Tax Officer must have reason to believe that such under-assessment had been made by reason of omission or failure on the part of the assessee to disclose fully and truly all the material facts necessary for the assessment for that year.

(2) Both these conditions are conditions precedent and must be complied with before the Income Tax Officer can assume jurisdiction and exercise the power to issue the notice u/s 148.

(3) If there be in fact some reasonable ground for the Income Tax Officer to believe that there had been any non-disclosure or untrue disclosure as regards any fact which could have a material bearing on the question of under-assessment, the Income Tax Officer would be entitled to assume and exercise jurisdiction and power to issue the notice.

(4) The sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue, though it is always open to the assessee to contend that the Income Tax Officer did not hold the belief that there had been any such non-disclosure or untrue disclosure. In other words, the existence of the belief can be

challenged by the assessee, but not the sufficiency of the reasons for the belief.

(5) The expression "reason to believe" does not mean a purely subjective satisfaction of the Income Tax Officer. The belief must be held in good faith and must not be merely a pretence. 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 the section.

(6) The duty of the assessee is to disclose fully and truly all the primary facts material for the assessment of the assessee in the relevant year ; and once the assessee has discharged his duty by disclosing truly and fully all the primary facts before the assessing authority, the duty of the assessee is at an end and the assessee is under no obligation to disclose to the assessing authority what inferences, whether of fact or law, are to be drawn from the primary facts.

(7) A mere change of opinion does not entitle the Income Tax Officer to reopen an assessment already concluded. In the case of a mere change of opinion on the same facts, there is, or can be no failure on the part of the assessee to discharge his obligation of disclosing fully and truly all the material facts.

12. In the facts of the instant case there appears to be a good deal of force in the contention of Dr. Pal that in the statements contained in the affidavit no materials are indeed indicated. If we were to decide this case only on the materials contained in the affidavit-in-opposition, we would have undoubtedly held that the statements made by the Income Tax Officer did not disclose any material which could lead to the formation of any reasonable belief. The recorded reasons which have been produced before us, in our opinion, establish that there was material which could lead to the formation of belief on the part of the Income Tax Officer that the income of the assessee escaped assessment due to failure on the part of the assessee to disclose fully and truly all the material facts necessary for the purpose of assessment of the assessee in the relevant year. The recorded reasons indicate that two of the alleged hundi creditors, whose loans in the relevant assessment year had been accepted to be genuine, subsequently confessed that the loans alleged to have been given by them to the assessee were not genuine. The confessional statements which were produced before us substantially bear out the statements made by the Income Tax Officer in his recorded reasons which were placed before the Commissioner. This fact that two of the alleged hundi creditors had made a subsequent confession that the loans alleged to have been given by them to the assessee were not in fact given by them, in our opinion, constitutes sufficient material which can lead to the formation of belief in the mind of the Income Tax Officer that the income of the assessee escaped assessment due to failure on his part to disclose truly and fully all the material facts necessary for his assessment in the relevant year. The criticism of Dr. Pal that in the confessional statement there is no specific mention that the loans to the assessee were not genuine, in our view, is not sound. It is undoubtedly true that there is no specific mention in the confessional statement

that the alleged loans to the assessee are not genuine. It has, however, been clearly stated in the confessional statement that the loans to the named persons mentioned in the statement are only genuine loans and the loans to other persons are not genuine loans. It, therefore, clearly follows that the confessional statement necessarily and clearly implies that the alleged loans to the assessee were not genuine loans and the Income Tax Officer was clearly justified in coming to that conclusion on his appreciation and understanding of the statements made in the confessional statement. The said conclusion of the Income Tax Officer, in our view, is clearly justified on a proper reading of the confessional statement and the Income Tax Officer has in his recorded reasons mentioned the same. We must, therefore, hold that the Income Tax Officer had, therefore, *prima facie* reason to believe that there had been a failure on the part of the assessee to disclose fully and truly all the material facts necessary for the assessee's assessment for the relevant year. There is no question of any mere change of opinion in the instant case.

13. In our opinion the contention of Dr. Pal that the present case is concluded by the decision of the Full Bench of this court in Lakhmani Mewal Das's case is not tenable.

14. Whether there are materials which will justifiably lead to the formation of belief on the part of the Income Tax Officer that income has escaped assessment due to the failure or omission on the part of the assessee to disclose fully and truly all the material facts, must necessarily depend on the facts and circumstances of each particular case. The decision of the Full Bench in Lakhmani Mewal Das's case and the decision of the Supreme Court in Chhugamal Rajpal's case turned necessarily on the particular facts of those cases. The facts of the present case, in our opinion, are different. In the case of Chhugamal Rajpal, before the Supreme Court or in the case of Lakhmani Mewal Das, there was no statement in the recorded reasons of the Income Tax Officer to the effect that any particular alleged hundi creditor has made a statement that the hundi loan alleged to have been granted by him to the assessee is bogus. In the case before us that statement appears in the recorded reasons of the Income Tax Officer and, in our opinion, that constitutes sufficient material on the basis of which the Income Tax Officer can reasonably believe that the income of the assessee has escaped assessment due to failure on the part of the assessee to disclose truly and fully all the material facts. The Income Tax Officer has stated in the recorded reasons which he placed before the Commissioner for necessary sanction that the confessional statements are to the effect that the loans to the assessee are bogus and this fact clearly indicated, in our view, that the Income Tax Officer has applied his mind to the confessional statement and after properly applying his mind to the confessional statements, has come to the conclusion that the effect of the confession is that the alleged loans to the assessee is bogus. Therefore, in the instant case the Income Tax Officer has clearly applied his mind to the confessional statement. The fact that after applying his mind to the confessional statement the Income Tax Officer stated the effect of his finding in his recorded

reasons which he placed before the Commissioner for necessary sanction, establishes that the Income Tax Officer was prima facie satisfied with the said confessional statement and he believed the same to be true. The defects noted by the Full Bench are absent in the instant case.

15. There are undoubtedly some peculiar features in the instant case. The fact that the assessee's original assessment was concluded on the basis of his undertaking to furnish certain documents later on and even before the said documents were furnished is indeed unusual. It also appears to be unusual that the Income Tax Officer after the assessment had been concluded and before he had reopened the assessment would write to the assessee asking for information regarding an assessment which had already been concluded. These particular features, however, are of no material consequence in considering and deciding the question involved in the present proceeding.

16. We cannot help observing that it was the clear duty of the Income Tax Officer who affirmed the affidavit-in-opposition in this particular proceeding to set out properly the reasons which led to the formation of the belief on his part. The object of filing an affidavit is to convey to the court all necessary relevant materials and facts and such materials and facts have necessarily to be stated on oath in the affidavit. It is undoubtedly open to the court to call for and to look into the file for finding out the correct position. This power of the court to call for and look into the relevant records does not, however, relieve the Income Tax Officer of his responsibility of placing the relevant materials and facts in the affidavit. Opportunity is afforded to file an affidavit so that statements on oath containing relevant facts and materials may be placed before the court and the opposite party gets an opportunity of dealing with the same. It is indeed unfortunate in the instant case that the affidavit filed by the Income Tax Officer was really of no assistance to the court.

17. This application fails. The rule is, therefore, discharged and the application is dismissed. There will be no order as to costs. The operation of this order will remain stayed for six weeks from date and the interim order already made will continue in the meantime.

R.N. Pyne, J.

18. I agree.