
(1997) 04 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4291 of 1982

Bimal Parshad Jain

APPELLANT

Vs

Assistant Controller of Estate Duty

RESPONDENT

Date of Decision : 25-04-1997

Acts Referred:

Estate Duty Act, 1953 — Section 59

Citation : (1998) 234 ITR 435

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : S.S. Mahajan and Aparna Mahajan, for the Appellant; R.P. Sawhney, Senior Advocate instructed by Sanjay Goyal, for the Respondent

Judgement

G.S. Singhvi, J.—Whether the Controller of Estate Duty is required to communicate the reasons to the accountable person for initiating action u/s 59 of the Estate Duty Act, 1953 (for short, "the Act"), is the sole legal issue which calls for determination in this petition.

2. The petitioner, Bimal Parshad Jain, is the great-grand-son of Shri Zorawar Singh. The Hindu undivided family of the late Shri Zorawar Singh and his sons Nand Lal, Shiv Dayal and Kapur Chand had movable and immovable assets including a Bagichi which, according to the petitioner, was used exclusively as burning ghat of the family and in which there existed some samadhis. Nand Lal had three sons, namely, Attar Chand, Basant Lal and Lakshmi Chand. Shri Lakshmi Chand was married to Smt. Lachhi Devi. They had eleven issues, namely, Sumatt Parshad, petitioner-Bimal Parshad and nine daughters. Sumat Parshad was adopted by his material grandfather Shri Sham Lal. Lakshmi Chand died on September 30, 1974, and as per his will, the movable and immovable properties passed on his widow, Lachhi Devi. The estate duty proceedings initiated in respect of the properties of the late Shri Lakshmi Chand culminated in the order of assessment dated October 5, 1976. That was challenged by Smt. Lachhi Devi through the petitioner. The Appellate Controller of Estate Duty partly

accepted the appeal and reduced the principal value of the estate. Still not satisfied, the accountable person filed further appeal before the Tribunal which reduced the principal value of the property of the late Shri Lakshmi Chand. Simultaneously, the appeal filed by the Revenue was rejected.

3. In the meantime, the Assistant Controller of Estate Duty passed two orders revising the assessment. By the first order he valued the estate of Shri Lakshmi Chand at Rs. 9,23,412 and by the second order he revised it to Rs. 6,97,317.

4. Smt. Lachhi Devi died on June 2, 1976. As her accountable person, the petitioner filed a return disclosing the principal value of the estate of Smt. Lachhi Devi at Rs. 3,63,209. The Assistant Controller of Estate Duty did not accept the same. Vide order dated April 1, 1980, the Assistant Controller determined the principal value of the estate at Rs. 6,22,101. Against this order, the petitioner filed an appeal before the Controller of Estate Duty (Appeals). As on the date of the filing of the writ petition that appeal was pending decision.

5. On July 19, 1982, the petitioner received notice dated July 8, 1982, issued by the Assistant Controller of Estate Duty requiring him to produce an account of the property on which the estate duty was payable. The petitioner appeared before the Assistant Controller on August 24, 1982, through his accountant-cum-authorized representative along with Shri J. P. Jain, Advocate. On September 6, 1982, the petitioner wrote a letter to the Assistant Controller requesting him to disclose the reasons recorded by the latter for reopening the assessment u/s 59 of the Act. The Assistant Controller of Estate Duty turned down his request vide letter annexure P-4 dated September 12, 1982. In the present petition, the petitioner has questioned the legality of the notice, annexure P-2, and the communication, annexure P-4, on the ground of non-application of mind and also on the ground of violation of the principles of natural justice. His contention is that the notice issued by the Assistant Controller of Estate Duty does not disclose the basis for the action initiated u/s 59 of the Act. The petitioner has pleaded that the Assistant Controller of Estate Duty was duty bound to disclose the reasons for reopening of the assessment u/s 59 of the Act and by refusing to do so despite the written request, respondent No. 1 has acted in violation of the principles of natural justice,

6. The case set up by the respondent is that the notice u/s 59 of the Act was issued to the petitioner because the value of Bagichi was not included in the estate duty return and it was a case of escaped assessment. The respondent has contested the petitioner's assertion that he was informed that notice was issued because of the audit objection. The respondent has also disclosed reasons recorded by him on July 8, 1982, for issuance of notice u/s 59 of the Act.

7. Section 59 of the Act which is the centre of controversy between the parties reads as under :

"59. Property escaping assessment--If the Controller,--

(a) has reason to believe that by reason of the omission or failure on the part of the person accountable to submit an account of the estate of the deceased u/s 53 or Section 56 or to disclose fully and truly all material facts necessary for assessment, any property chargeable to estate duty has escaped assessment by reason of under-valuation of the property included in the account or of omission to include therein any property which ought to have been included or of assessment at too low a rate or otherwise, or

(b) has, in consequence of any information in his possession, reason to believe notwithstanding that there has not been such omission or failure as is referred to in Clause (a) that any property chargeable to estate duty has escaped assessment, whether by reason of under-valuation of the property included in the account or of omission to include therein any property which ought to have been included, or of assessment at too low a rate or otherwise,

he may at any time, subject to the provisions of Section 73A, require the person accountable to submit an account as required u/s 53 and may proceed to assess or reassess such property as if the provisions of Section 58 applied thereto."

A careful reading of the provisions quoted above clearly shows that the Controller is entitled to issue notice to the accountable person for assessment or reassessment of the property if any of the contingencies enumerated in Clause (a) or (b) exists. One of these contingencies is where the accountable person fails to disclose fully and truly all facts necessary for assessment and as a result of which any property chargeable to estate duty has escaped assessment or the assessment is at too low a rate. The crucial expression used in Section 59(a) is "has reason to believe". If it is held that this expression comprehends within itself the requirement of hearing the accountable person before the issuance of notice or communication of reasons to the accountable person along with the notice then the impugned notice will have to be declared as illegal. On the other hand, if it is held that the expression "has reason to believe" only contemplates recording of reasons by the competent authority on the basis of its subjective satisfaction and at the stage of issuance of notice the reasons are not required to be communicated to the accountable person, then the writ petition must fail.

8. The expression "reason to believe" has also been used in Section 34(l)(a) of the Indian Income Tax Act, 1922, which is *pari materia* to Section 59 of the Act. That expression came up for interpretation before the Supreme Court in *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, . The Mysore High Court had taken the view that the Income Tax Officer had the jurisdiction to initiate proceedings u/s 34(l)(a) of the Act of 1922 and it was not necessary to communicate the reasons for the same. While affirming the decision of the High Court, the Supreme Court observed (page 222) :

"It was also contended for the appellant that the Income Tax Officer should have communicated to him the reasons which led him to initiate the proceedings u/s

34 of the Act. It was stated that a request to this effect was made by the appellant to the Income Tax Officer, but the Income Tax Officer declined to disclose the reasons. In our opinion, the argument of the appellant on this point is misconceived. The proceedings for assessment or reassessment u/s 54(l)(a) of the Income Tax Act start with the issue of a notice and it is only after the service of the notice that the assessee, whose income is sought to be assessed or reassessed, becomes a party to those proceedings. The earlier stage of the proceedings for recording the reasons of the Income Tax Officer and for obtaining the sanction of the Commissioner are administrative in character and are not quasi-judicial. The scheme of Section 34 of the Act is that, if the conditions of the main Section are satisfied, a notice has to be issued to the assessee containing all or any of the requirements which may be included in a notice under sub-Section (2) of Section 22. But before issuing the notice, the proviso requires that the officer should record his reasons for initiating action u/s 34 and obtain the sanction of the Commissioner who must be satisfied that the action u/s 34 was justified. There is no requirement in any of the provisions of the Act or any Section laying down as a condition for initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed u/s 34 must also be communicated to the assessee. In *Presidency Talkies Ltd. Vs. First Addl. Income Tax Officer, City Circle II, Madras*, the Madras High Court has expressed a similar view and we consider that that view is correct. We accordingly reject the argument of the appellant on this aspect of the case."

The above quoted observations of the Supreme Court show that the proceedings u/s 34 of the Act of 1922 are administrative in character till the issuance of notice to the assessee and they become quasi-judicial only after the notice is served and it is not obligatory for the Income Tax Officer to communicate the reasons recorded for the purpose of initiating the action.

9. In *Thanthi Trust Vs. Income Tax Officer*, a Bench of the Madras High Court was called upon to examine a similar argument in the context of Sections 147 and 148 of the Income Tax Act, 1961. While reiterating the view that the proceedings before the commencement of proceedings for reassessment are administrative in character and it was not obligatory for the competent authority to disclose reasons at the stage of notice, the Division Bench held that disclosure of reasons at the stage of notice may be detrimental to the Revenue. At the same time, the Bench observed that the reasons are required to be disclosed before the court in case the notice is challenged on the ground that no reason in fact existed. Some of the observations made by the Division Bench of the Madras High Court are quite relevant and, therefore, the same are quoted below (page 273) :

"They have to be disclosed to the court when his jurisdiction to issue the notice is challenged on the ground that there is no reason to believe that certain income has escaped assessment by reason of omission or failure of the assessee to disclose fully and truly all material facts necessary for his assessment, and the

Income Tax Officer has to justify his assumption of jurisdiction only on those recorded reasons."

In *The New Bank of India Ltd. Vs. The Income Tax Officer and Others*, , the Delhi High Court examined the validity of the proceedings initiated under Sections 147 and 148 of the Income Tax Act, 1961. It was contended on behalf of the assessee that no material existed on which the Income Tax Officer could have reason to believe that the assessee's income had escaped assessment and, therefore, the very issuance of notice was without jurisdiction. While holding that the assessee was not entitled to straightaway come to the High Court against the notice issued u/s 148 and seek a restraint order and that the assessee must file its return in response to the notice, the Division Bench of the High Court observed (page 687) :

"All that the petitioner can insist is that the reasons for the issue of the notice u/s 148(1) must be disclosed by the Income Tax Officer to the assessee after the latter files the return and before the former makes the assessment. It is then only that the petitioner can contend that the said material could not form the basis of "reason to believe" within the meaning of Section 147. These reasons or materials can then be placed by the assessee before the court in a writ petition under Article 226 to invite the decision of the court whether such material can form the basis of exercise of the jurisdiction of having "reason to believe" by the Income Tax Officer u/s 147. It would not be proper for the assessee without filing the return to ask this court to call for the reasons recorded by the Income Tax Officer. If the Supreme Court has held that reasons need not be furnished with the notice, the decision of the Supreme Court would be stultified if this court were nevertheless to call for the reasons recorded by the Income Tax Officer for the benefit of the assessee without the latter submitting the return. This would be virtually compelling the Income Tax Officer to disclose his reasons along with the notice issued u/s 148(1), though, according to the Supreme Court, this was not obligatory for the Income Tax Officer to do."

In *K.M. Bansal (Deceased by Lrs.) Vs. Commissioner of Income Tax and Another*, , a Division Bench headed by B. P. Jeevan Reddy, Chief Justice, as he then was, examined the challenge to the initiation of proceedings for reassessment under Sections 147 and 148 of the Income Tax Act, 1961. After review of a large number of decisions of the Supreme Court and the High Courts, the Bench held (page 263) :

"A review of the decided cases shows that the function of the Assessing Officer at the stage of issuance of notice u/s 148(1) is administrative in nature. It becomes quasi-judicial once the notice is served upon the assessee. Since reasons are recorded at a stage anterior to issuance and serving of the notice, it is held that reasons need not be communicated. But once the proceedings become quasi-judicial and more important, and once it is admitted that, in such proceedings, the assessee has a right to question the validity of initiation of reassessment proceedings, refusal to communicate the reasons becomes unsupportable. No

decision of the Supreme Court says so. We may also observe that it is not enough that the reasons are disclosed to the court. No doubt, the court will look into them, but that is no substitute for the affected party looking into them and submitting his objections thereto. The system of jurisprudence we follow--adversarial--cannot recognise such half-measures.

The above discussion yields the following propositions :

(i) While the recording of reasons as contemplated by Sub-section (2) of Section 148 is obligatory, the reasons so recorded need not be communicated to the assessee along with the notice under Sub-section (1) of Section 148. It is also not open to the assessee to straightaway call upon the Assessing Officer to disclose or communicate reasons to him, as soon as he receives the notice u/s 148(1). He must first file his return or a revised return, as the case may be, and if he raises a contention either that no reasons were recorded or that the reasons recorded are not relevant and germane, then the Assessing Officer has to communicate the reasons to him,

(ii) While communicating the reasons, it is open to the Assessing Officer to withhold the names of informants and/or identities of sources, if he thinks it necessary to protect his sources and informants. If and when, however, the matter comes before the court, the Assessing Officer is bound to disclose the entire reasons to the court and it is for the court to decide whether to recognise the Assessing Officer's claim to withhold the names/identities of informants/sources or not.

(iii) So far as the material/information on the basis of which the assessment is reopened is concerned, there is no obligation upon the Assessing Officer to disclose all the material and information that may have been gathered by him. His obligation is to disclose such material/ information as he wishes to use against the assessee. This is a principle of natural justice and there is no other principle governing the issue.

(iv) All the issues arising in the reassessment proceedings including the issue relating to the validity of reopening of assessment proceedings have to be gone into at the same time. Normally speaking, there ought not to be any piecemeal decision of issues. If, however, it turns out in a case that no reasons whatsoever were recorded u/s 148(2), it may be a case where proceedings can be terminated on that question itself without going into the merits of the case. We must also clarify that this court, in a writ petition, does not sit in judgment over the adequacy or sufficiency of reasons recorded. This is a matter to be gone into in reassessment proceedings. This court will interfere only in cases where no reasons are recorded or where the reasons recorded are ex facie irrelevant."

Applying the ratio of the above referred decisions in this case I hold that :

(a) The expression "has reason to believe" used in Section 59 of the Act does contemplate the recording of reasons before notice is issued to the accountable

person for assessment or reassessment but such reasons need not be communicated to the accountable person along with the notice and the accountable person is not entitled to challenge the notice only on the ground that the reasons have not been communicated to him/her along with the notice.

(b) The accountable person cannot challenge the notice without filing a reply, However, he/she can, after filing the reply, request the competent authority to disclose reasons for initiating the action u/s 59 and ordinarily the competent authority must disclose the reasons at that stage.

(c) After filing the reply, the accountable person is entitled to challenge the notice on the ground that no reasons have been recorded by the competent authority and, therefore, the notice should be quashed on the ground of non-application of mind. If the court finds that no reasons have been recorded by the competent authority then it may quash the proceedings on that ground.

(d) If the reasons are disclosed before the court and it is found that the same are not relevant to the subject-matter of the notice then too the proceedings are liable to be quashed.

In so far as this case is concerned, the petitioner did not file a reply to the show-cause notice. Instead, he requested respondent No. 1 to disclose the reasons. Respondent No. 1 refused to do so and in my view, no illegality has been committed by him in doing so. I am also of the opinion that the reason which has been disclosed in paragraph 5 of the reply, namely, that the share of the deceased in Bagichi Nand Lal had not been disclosed in the estate duty return filed by the petitioner is quite relevant and germane to the proceedings under the Act of 1953 and, therefore, there existed good ground for issuance of notice u/s 59.

10. Before concluding, I may dispose of an ancillary argument urged by Shri Mahajan that the notice had in fact been sent by respondent No. 1 on August 8, 1982, but the date was subsequently changed to July 8, 1982. After perusing the original record, I am convinced that the figure "8" has not been changed to "7" with mala fide design. Rather, it is a case of correction of a typographical error. The carbon copy of the notice served upon the petitioner shows that it had in fact been issued on July 8, 1982. Thus, no capital can be made out of the typographical error in the date of notice.

10. For the reasons mentioned above, the writ petition is held to be without merit and the same is dismissed. The interim order passed by this court stands automatically vacated.