

(1973) 03 CAL CK 0037
In the Calcutta High Court
Case No : Matter No. 246 of 1969

Biswanath Samanta

APPELLANT

Vs

Income Tax Officer, A-Ward and Others

RESPONDENT

Date of Decision : 20-03-1973

Acts Referred:

Income Tax Act, 1961 — Section 148

Citation : (1973) 92 ITR 331

Hon'ble Judges : Ghose, J

Bench : Single Bench

Advocate : Sanjoy Bhattacharya, for the Appellant; Ajoy Mitra, for the Respondent

Judgement

Ghose, J.—This is an application made by the petitioner for the issue of a writ in the nature of mandamus commanding the respondent to withdraw or cancel the notice dated March 19, 1969, issued u/s 148 of the Income Tax Act, 1961, for the assessment year 1960-61. The application also seeks for the issue of a writ in the nature of certiorari, inter alia, for quashing or setting aside the said impugned notice.

2. The petitioner is a partnership firm registered under the Indian Partnership Act. The petitioner is also registered under the provisions of the Income Tax Act. The partners of the petitioner are Biswanath Samanta, Tarapada Daw and Prasanta Samanta. For the assessment year 1960-61 the Income Tax Officer, A-Ward, Special Survey Circle II, Calcutta, completed the assessment of the petitioner u/s 23(3)/ 23(5)(a) of the Indian Income Tax Act, 1922. The petitioner, it is stated, at the time of the said assessment furnished to the assessing Income Tax Officer all challans and particulars relating to all primary and relevant facts that were necessary to be ascertained for the purpose of assessing the income of the petitioner for the said assessment year. On March 24, 1969, the petitioner received a notice dated March 19, 1969, issued u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the new Act") for the assessment year

1960-61, calling upon the petitioner to submit a fresh return in the prescribed form to the respondent No. 1 of its income for the very same assessment year 1960-61. The reasons for issuing the said notice u/s 148 of the new Act have been stated in paragraph 3 of the affidavit of Dhiresh Chandra Bose affirmed on January 19, 1973. The said reasons are set out hereunder :

"The assessee was assessed on a total income of Rs. 19,420 as per the original assessment on 12th December, 1960. At the time of the original assessment proceedings the assessee's hundi loan transactions with the various parties were accepted to be genuine as per the assessee's books of accounts without detailed enquiry. During the course of subsequent years" assessment proceedings it was, on investigation, known that the assessee's hundi loan transactions with the following parties were of bogus character:

Rs.

1. Dandaram Basudeb involving loan money of 30,000
 2. Seth Noorsumal Gangaram do. 15,000
 3. Seth Vishandas Moolchand do. 25,000
 4. Ghanshyamdas Asoke Kumar do. 15,000
 5. Murlidhar Kanayalal do. 15,000
 6. Tiratdas & Sons do. 20,000
 7. Mohansing Kanayalal do. 20,000
 8. Vashuram Gokuldas do. 45,000
 9. Dwarkadas Pailajrai do. 5,000
 10. Bhagwandas Purushottamdas do. 20,000
 11. Teekamdas Madhabdas do. 15,000
- 2,25,000

Thus it is seen that at the time of the original assessment, the assessee failed to disclose its income from other sources representing unaccounted money introduced in the shape of bogus loans."

3. In short, the deponent in the aforesaid affidavit has disclosed the following reasons for the issue of the said notice u/s 148. of the new Act:

(1) At the time of the original assessment the assessee's hundi loan transactions with various parties were accepted as genuine without detailed enquiry;

(2) During the course of subsequent years" assessment proceedings it was found on investigation that the assessee's hundi loan transactions with the parties mentioned in paragraph 3 of the said supplementary affidavit of Dhiresh Chandra

Bose affirmed on January 19, 1973, were bogus; and

(3) At the time of the- original assessment, the assessee failed to disclose its income from other sources representing unaccounted money introduced in the shape of bogus loans.

4. The facts disclosed in paragraph 3 of the said affidavit have been stated to be reasons for reopening the assessment for issuing notice u/s 148 of the new Act.

5. The said facts do not, in my opinion, show any material that could lead or induce the Income Tax Officer to form a belief in his mind that the income of the assessee had escaped assessment during the relevant year on account of the failure or default on the part of the assessee to disclose fully and truly all relevant and material facts necessary for the assessment of his income for that year. No nexus or connection can be found on the basis of the averments made in the said affidavit between the loans, if any, shown in the bogus account mentioned in the said paragraph and the loan shown by the assessee during the said assessment year, that is to say, 1960-61. It has not been stated that even during the relevant year, that is to say, assessment year 1960-61, the assessee showed any loan from any of the parties mentioned in paragraph 3 of the said affidavit. From a perusal, of the said affidavit and in particular the reasons stated therein for issuing the said impugned notice I am constrained to conclude that the reason for issuing the impugned notice was the change of opinion and not discovery of any new material. In the premises, I have to hold that the conditions precedent to the issue of the notice u/s 148 of the new Act, namely, that the Income Tax Officer had reason to believe that income, profits or gains chargeable to Income Tax of the assessee had been under assessed and such under-assessment had occurred by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of his income for that year had not been satisfied. In the premises, the Income Tax Officer wrongfully usurped jurisdiction in issuing notice u/s 148 of the new Act. The impugned notices cannot, therefore, be sustained. The application must succeed. The rule nisi is made absolute. There shall be a stay of operation of the order for eight weeks.