

**(2004) 04 AHC CK 0111**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 43 of 2004

Brij Mohan Agarwal

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

**Date of Decision :** 09-04-2004

**Acts Referred:**

Income Tax Act, 1961 — Section 132(4), 143(1), 147, 148, 48

**Citation :** (2004) 188 CTR 562 : (2004) 268 ITR 400

**Hon'ble Judges :** V.C. Mishra, J;M. Katju, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

M. Katju, J.—This writ petition has been filed challenging the notice u/s 148 of the IT Act dt. 14th Nov., 2002 Annex. 6 to the writ petition.

2. Heard learned counsel for the parties.

3. The petitioner is a HUF and Brij Mohan Agarwal is the Karta of the family. The relevant asst. yr. 2001-02.

4. It is alleged in para 6 of the petition that the main source of income of the petitioner is from house property. The petitioner enjoys income from the house property which is said to be commercial premises.

It is alleged in para 7 of the petition that during financial year 1999 the petitioner purchased 8,400 shares of M/s Charismatic Tradelinks Ltd. and the purchase of these shares was duly shown in the relevant Income Tax return for that year. True copy of the purchase certificate dt. 4th June, 1999 has been annexed as Annex. 1 to the writ petition.

It is alleged in para 8 of the petition that during asst. yr. 2001-02, the aforesaid shares were sold to one M/s Yadav & Co. In para 9 of the petition it is stated that this sale of shares was duly shown in the return of income. A true copy of the statement of income along with acknowledgement receipt as well as the

intimation u/s 143(1) has been annexed as Annex. 3 to the writ petition.

5. Subsequently, the petitioner received a summons from the Addl. Director of IT (Investigation) Unit-I, New Delhi, vide summon dt. 17th Jan., 2002 by means of which certain information was required from the petitioner. True copy of the notice has been annexed as Annex. 4 to the writ petition. Thereafter the petitioner again received a summons dt. 14th/15th Feb., 2002 by which certain more information was required vide Annex. 5 to the writ petition. It is alleged in para 12 of the petition that due compliance was made by the petitioner by letter dt. 19th Feb., 2002 vide Annex. 5-A.

However, the petitioner was surprised to receive the impugned notice u/s 148 of the Act vide Annex.-6 to the writ petition. On 14th Feb., 2003 the petitioner received notice u/s 142 of the IT Act with certain queries. The petitioner replied that the time period for issuing the notice u/s 143(2) has expired hence the respondent No. 1 was not authorised to initiate the proceedings.

6. In para 16 of the petition it is alleged that the respondent No. 1 did not point out any reason to believe u/s 148. It was also not informed by the respondents that the receipts in respect of sale of shares was doubtful according to the respondents. In compliance to the notice u/s 148 the petitioner requested that the return already filed by him may be treated as compliance of the said notice. He also requested that copy of the reasons recorded for initiation of reassessment proceedings u/s 148 may be supplied to him. On 24th Dec., 2003 the respondent No. 1 has supplied the reasons vide Annex. 7 to the writ petition.

7. A perusal of the reasons shows that information relating to bogus entries for long-term capital gains/loss, share dealings, etc. was received from the Director of IT (Inv.) Unit-I, New Delhi, vide letter dt. 19th July, 2002 alongwith the investigation report prepared by the Addl. Director of IT (Inv.) Unit-I, New Delhi. Search and seizure operation u/s 132 of the IT Act was conducted in the cases of the brokers namely, M/s Yadav & Co., Rakesh Nagar & Co. Sri Surendra Singh Mehta. During the course of investigation it was found that bogus entries of sale of shares amounting to Rs. 5,98,800 has been issued to Brij Mohan Agarwal, HUF as per Sl. No. 63 of the list of the investigation wing enclosed with the report. From a perusal of the record of the assessee it is revealed that the assessee in his return of income for the asst. yr. 2001-02 has claimed profit of Rs. 7,62,282 for long-term capital gain on sale of 8,400 shares for Rs. 7,89,180 and has claimed Income Tax chargeable @ 10 per cent as special rate. From the finding of the investigation wing and as per the record the respondent had reason to believe that the assessee has diverted and has concealed his income of Rs. 5,98,800 by disclosing it to be sale proceeds of shares which is not correct as no real transaction of dealing in shares had ever taken place.

8. The petitioner has alleged in para 20 of the writ petition that the purchase of shares is not in dispute, the sale of these shares is also not in dispute. The aforesaid shares have not been transferred in favour of M/s Yadav & Co. by the

concerned company. Merely on the basis of the statement of a third person, reassessment proceedings cannot be initiated against the petitioner, It is alleged in para 22 of the writ petition that the sale value of shares have been disclosed and has been accepted and there is no dispute in respect of sale value of the shares. The complete sale value has been shown in the original return of income filed by the petitioner and hence it cannot be said to be a case of escaped assessment.

9. The Department has filed a counter-affidavit and we have perused the same. In para 4 of the counter-affidavit it is stated that the petitioner is one of the links in the chain which indulges in bogus transactions in long-term capital gain/short-term capital gains/share capital/gifts, etc. It is alleged that the petitioner has a very chequered history which was unravelled during an investigation, which was done by the investigation wing, Delhi, and the report was forwarded to the IT Department in the month of October, 2002. This investigation report contained details of enquiries conducted, which showed that certain share brokers during the course of investigation had stated/admitted about the bogus transactions in shares through their several bank accounts opened in their names, which were denied by the stock brokers as their own, and have denied the contract. Notes also issued by the banks were found counterfeit. The report also contained exhaustive list of persons who have indulged in such share transactions and the petitioner's name finds mention in the list at Sl. No. 63 vide Annex.-CA-1 to the counter-affidavit. In the investigation report the name of the petitioner figures in the bogus transactions with M/s Yadav & Co. who have already been indicted in another scam of Rs. 101 crores. Copy of the relevant extract of the investigation report dt. 19th July, 2002 is annexed as Annex. CA-2 to the counter-affidavit. Statement of bank account No. 8273 of the petitioner maintained at State Bank of India, Agra, is Annex. CA-3 to the counter-affidavit, which goes to show that the petitioner was indulging in bogus transactions of shares. The transacted amounts are shown in the pass book which goes to show that the petitioner is actively involved in bogus transactions and was also recipient of several lacs rupees arising out of these bogus transactions.

10. In para 5 of the counter-affidavit it is stated that the petitioner has falsely shown share proceeds receipt of Rs. 5,98,800 of which he had only paid long-term capital gain. This amount has already been investigated and the balance is in process of being investigated. The amounts shown are nothing but the receipt of undisclosed income for which there is ample material before the AO. The petitioner has cleverly shown his undisclosed income under the head "long-term capital gain" which is assessed at 10 per cent, which is a special rate, although income of the petitioner should be shown under the head "income from other sources" and was to be taxed at the normal rate.

11. In para 6 of the counter-affidavit it is stated that the petitioner had bifurcated his funds obtained from these bogus transactions to long-term capital gain tax. In the search and seizure operation conducted in the premises of M/s

Yadav & Co., Rakesh Nagar & Co., Sri Surendra Singh Mehta, Sri O.P. Yadav and Mahendra Singh Yadav of Yadav & Co. had categorically admitted in their statement recorded u/s 132(4) of the IT Act that they have never operated the bank account from where the alleged cheques and drafts were issued. The statement of Sri O.P. Yadav along with affidavit and Mahendra Singh Yadav of Yadav & Co. recorded u/s 132(4) have been annexed as Annex. CA-4 and 5 to the counter-affidavit.

12. In para 8 of the counter-affidavit, it is stated that the petitioner further indulged in bogus transactions in purchase also whereby he purchased shares on bogus transaction from M/s J.R.D. Stock Broker (P) Ltd. The director of M/s J.R.D. Stock Broker (P) Ltd. Mr. Ashok Gupta has admitted in his statement that he was engaged in providing bogus accommodation entries in exchange of cash/ cheques for certain commission. The copies of the statement of Mr. Ashok Gupta are Annex. CA-5, 7 and 8 to the counter-affidavit. In para 10 of the counter-affidavit it is stated that the petitioner is the recipient of several lacs of rupees arising from the bogus transactions entered into through Yadav & Co. and through M/s J.R.D. Stock Broker (P) Ltd. The petitioner has concealed all these relevant materials. The earlier assessment was done u/s 143(1) of the IT Act, in which there was no scrutiny of the material.

13. In para 21 of the counter-affidavit it is stated that the petitioner has concealed income in his return. A sum of Rs. 7,88,298 was taxable under the normal rate under the head "income from other sources" but it had been shown under the head "long-term capital gain" and was taxed at special rate of 10 per cent. Hence, the petitioner has furnished inaccurate income and has also shown lesser income" and has been assessed at a lower rate. The contention of the petitioner that Department has accepted the sale of shares is misleading. There is no finding of the AO that the sale of shares ever took place. Whatever, is shown are bogus entries.

14. We have also perused the rejoinder-affidavit.

15. From the facts stated in the counter-affidavit it is evident that the petitioner has been suppressing his correct income and has been indulging in bogus transactions as stated in the counter-affidavit. The contention of the learned counsel for the petitioner that it is a mere change of opinion cannot be accepted. Very important materials have come before the IT authorities to show that the petitioner was suppressing his income by indulging in bogus transactions.

16. It may be mentioned that at this stage we are not pronouncing a final verdict about the allegations in the counter-affidavit. All that the Court has to see at this stage as to whether it can be said that the authority concerned had reason to believe that the assessee had concealed his income or that the correct income of the assessee has escaped assessment. In view of the investigation made by the investigation wing of the Department, relevant and very material facts have come before the respondent No. 1 that the petitioner was concealing his income

by indulging in bogus transactions. All that is required at the stage of issuing of notice u/s 148 is that the belief of the ITO must be that of an honest and reasonable person based upon reasonable grounds and not on mere suspicion, gossip or rumours.

17. In the present case, we are of the opinion that the belief of the respondent No. 1 was an honest and reasonable belief on the material which he had received from the investigation wing of the Department. In *Ranbir Engineering Mills Store Vs. Income Tax Officer*, consequent upon raids conducted by the IT Department on certain brokers and examination of the books of a certain person, it was found that many of the transactions recorded in the books of the assessee as loans were accommodation entries in which no moneys had passed and the so-called lenders were name-lenders only. It was held that the proceedings u/s 148 by the AO had been validly initiated. Similar view has been taken in *Frontier Trading Company Vs. P.N. Chaudhry, Income Tax Officer and Another*, *Jash Bhai F. Patel Vs. Commissioner of Income Tax*, *Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another*, *M. VARADARAJULU NAIDU Vs. COMMISSIONER OF Income Tax, MADRAS-II.*, and *Hazi Amir Mohd. Mir Ahmed Vs. Commissioner of Income Tax*,

Thus there is no merit in this petition and it is dismissed.