**(1971) 01 SC CK 0065**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 1311 of 1967

Chhugamal Rajpal APPELLANT

Vs

S.P. Chaliha and Others RESPONDENT

**Date of Decision :** 21-01-1971

**Acts Referred:**

Income Tax Act, 1961 — Section 147, 148, 151, 151(2)

**Citation :** AIR 1971 SC 730 : (1972) 20 BLJR 528 : (1971) 79 ITR 603 : (1971) 1 SCC 453 : (1971) 3 SCR 442

**Hon'ble Judges :** J. C. Shah, C.J;K. S. Hegde, J;A. N. Grover, J

**Bench :** Full Bench

**Advocate :** M.C. Chagla and N.D. Karkhanis, for the Appellant; S.C. Manchanda, R.N. Sachtey and B.D. Sharama, for the Respondent

**Final Decision :** dismissed

## Judgement

K.S. Hegde, J.—This is an assessee's appeal by special leave against the judgment of the High Court of Patna dismissing in limine its writ petition under Arts 226 and 227 of the Constitution of India.

2. The assessee is having construction contracts under the Railways as well as the Government. It is a partnership firm. For the assessment year 1960-61, relevant to the accounting year 1959-60, after the assessee submitted its income tax return, it was asked by the income tax Officer during the income tax assessment proceedings to produce before him its books of account and the other relevant papers. The assessee also produced before him a statement showing various creditors from whom it had borrowed on Hundis during the accounting year in question. In that statement it gave the full names and addresses of the alleged creditOrs. After enquiry, the assessee's total income was assessed at Rs. 69,886/-. On June 3, 1966, the 1st respondent (income tax Officer, Ward 'A', Muzaffarpur) issued to the assessee a notice u/s 148 of the Indian income tax Act, 1961. The material portion of that notice reads as follows:

Notice u/s 148 of the income tax Act, 1961.

income tax Officer, Muzaffarpur Dated, the 3-6-1966.

To M/s. Chugamal Rajpal, Muzaffarpur.

Whereas (I) have reason to believe that your income chargeable the income of 1960-1961 in respect of which you are assessable to tax for the assessment year 1919 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

I therefore propose to re-assess the income for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice a return in the prescribed form of your income

_______________ The income assessable relevant to the assessment year 1960-61 _______________ of in respect of which you are assessable for the said assessment year.

2. The notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income Tax, Bihar and Orissa, Patna.

Sd/-S.P. Chaliha income tax Officer, Ward A, Muzaffarpur.

3. The assessee challenged the validity of that notice as well as proceedings taken on the strength of that notice on various grounds. As we are accepting the contention of the assessee that the impugned notice is invalid inasmuch as it did not comply with the requirements of Section 151(2) of the Act, we have not thought it necessary to examine the other contentions advanced on behalf of the assessee. In this case the notice was issued after four years but before eight years of the date of the original assessment.

4. Section 151(2) of the Act reads:

No notice shall be issued u/s 148 after the expiry of four years from the end of the relevant assessment year, unless the Commissioner is satisfied on the reasons recorded by the income tax Officer that it is a fit case for the issue of such notice.

5. Section 148 prescribes:

(1) Before making the assessment, re-assessment 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 Sub-section.

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

6. Section 147 deals with income escaping assessment. At this stage we need

 

not refer to that section: We shall refer to that provision at a later stage. Section 139(2) says :

In the case of any person who, in the income tax Officer's opinion, assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the income tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(proviso is not necessary for our present purpose)

7. When this appeal came up for hearing on the last occasion, as we found the affidavit filed by the income tax Officer to be vague and indefinite, we directed the learned Counsel for the Department to produce before us the records of the income tax Officer to show that the income tax Officer had complied with the requirements of Section 148 and Section 151(2) of the Act. When the appeal was taken up for hearing on the 18th January 1971, only the report submitted by the income tax Officer to the Commissioner and the order of the Commissioner was produced. The order sheet recording the reasons of the income tax Officer as required by Section 148(2) was not produced. Here in below we have sent out the report of the income tax Officer as well as the order of the Commissioner:

8. During the year the assessee has shown to have taken loans from various parties of Calcutta. From D.I.S. Inv. No. A/P/ Misc(5) D.I./63-64/5623 dated 13-8-65, forwarded to this office under C.I.T. Bihar and Orissa, Patna's letter No. Inv. (Inv.) 15/ 65-66/1953-2017 dated Patna 24-9-65, it appears that these persons are name lenders and the transactions are bogus. Hence proper investigation regarding these loans is necessary. The name of some of the persons from whom money is alleged to have taken on loan on Hundis are:

1. Seth Bhagwan Singh Sricharan. 2. Lakha Singh Lal Singh. 3. Radhakissen Shyam Sunder.

The amount of escapement involved amounts to Rs. 100,000/-.

Sd/-S.P. Chaliha, 30-4-66. income tax Officer, A-Ward, Muzaffarpur.

9. In his report the income tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice u/s 148. The material that he had before him for issui. g notice u/s 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the C.I.T., Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name lenders and the transactions are bogus". He has not even come to a prima facie conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a

 

vague feeling that they may be bogus transactions. Such a conclusion does not fulfil the requirements of Section 151(2). What that provision requires is that he must give reasons for issuing a notice u/s 148. In other words he must have some prima facie grounds before him for taking action u/s 148. Further his report mentions:"Hence proper investigation regarding these loans is necessary". In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice u/s 148. Before issuing a notice u/s 148, the income tax Officer must have either reasons to believe that by reason of the omission or failure on the part of these 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 alternatively not with standing that there has been no omission or failure as mentioned above 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. Unless the requirements of Clause (a) or (b) of Section 147 are satisfied, the income tax Officer has no jurisdiction to issue a notice u/s 148. From the report submitted by the income tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason, of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the income tax Officer had any material before him which could satisfy the requirements of either Clause (a) or Clause (b) of Section 147. Therefore he could not have issued a notice u/s 148. Further the report submitted by him u/s 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice u/s 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself, record that he was satisfied that this was a fit case for the issue of a notice u/s 148. To Question No. 8 in the report which reads "Whether the Commissioner is satisfied that it is a case for the issue of (notice u/s 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice u/s 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the income tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance.

10. In the result this appeal is allowed, the order of the High Court is set aside and the impugned notice quashed. The Respondent No. 2 shall pay the costs of the appellant both in this Court and in the High Court.

 