
(1982) 05 CAL CK 0025

In the Calcutta High Court

Case No : Income-tax Reference No. 67 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Bhagwan Ltd.

RESPONDENT

Date of Decision : 25-05-1982

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1983) 32 CTR 35 : (1983) 144 ITR 699 : (1982) 11 TAXMAN 220

Hon'ble Judges : Suhas Chandra Sen, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : B.K. Bagchi and S.C. Chakrabarty, for the Appellant;None, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the following question has been referred to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in annulling the reassessments u/s 147(a) for the assessment years 1959-60, 1961-62 and 1962-63?"

2. There is some mistake in the question referred to this court. The proper question which the Tribunal wanted, in our opinion, to refer was :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct or justified in law in holding that the reassessments u/s 147(a) for the assessment years 1959-60, 1961-62 and 1962-63 were bad and as such were liable to be annulled u/s 147(a) of the Income Tax Act, 1961 ?"

3. The assessments for the assessment years 1959-60, 1960-61, 1961-62 and 1962-63 were reopened by the ITO u/s 147(a) of the I.T. Act, 1961. The assessment year 1960-61 is not under reference. So far as the facts relevant for the assessment year 1959-60 are concerned, the same have been set out by the Tribunal in its order as follows :

"During the original assessment proceedings, the assessee filed the return of income in January, 1960, along with the balance-sheets and profit and loss account. The balance-sheets show unsecured loans from the creditors other than the banks at a figure of Rs. 9,08,800. The Income Tax Officer had apparently scrutinised the balance-sheet as is clear from his noting against the entry in the balance-sheet of Rs. 9,08,800. The Income Tax Officer had scribbled the following remarks on the face of the balance-sheet against this particular item.

Details given, ledger accounts filed to be reported:

On going through the miscellaneous folder for the assessment year 1959-60, one finds that the copies of accounts of the creditors had been filed with the Income Tax Officer by the assessee. The address of many of the creditors had been furnished. During these assessment proceedings, the Income Tax Officer had issued a questionnaire some time in February, 1962, asking the assessee, inter alia, to give the complete addresses and the Income Tax districts wherein the loan creditors were being assessed. This information was required to be given to the Income Tax Officer so far as it was known to the assessee. The order sheet entry dated 17th February, 1962, indicates that this questionnaire was issued by the Income Tax Officer and that on two occasions some discussion had taken place. The details of the discussions have not been recorded in the order sheet and there is no reference to the result of the enquiries made as a result of the information supplied in pursuance of the questionnaire. There is no reference in the assessment order to the necessary facts not having been supplied to the Income Tax Officer by the assessee. The original assessment order is, therefore, silent on this point. It can, therefore, be presumed that the Income Tax Officer had no grievance in this matter. Otherwise, he could have referred to the assessee's lapse in not supplying the information or would have made some additions. In the records which were shown to the Tribunal, the necessary details called for in the questionnaire are not available. One is not, therefore, in a position to say whether these materials as asked for by the Income Tax Officer were actually supplied to the Income Tax Officer or not. One can only make an inference from the facts stated above that the Income Tax Officer was not apparently aggrieved about any of the lapses of the assessee, if any. In 1968, the Income Tax Officer reopened the proceedings u/s 147(a) and the reasons given by him for reopening the proceedings are extracted below :

"M/s. Bagwan Ltd.:

Assessee has business in share dealings, gunnies and hessians and speculation and income from dividend. During the previous year relevant to the assessment year 1959-60, the assessee has introduced his concealed income amounting to Rs. 2,00,000 in the names of various unverifiable hundi creditors. Full details of the deposits were not disclosed at the time of original assessment. I have reason to believe that, by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that year, income of Rs. 2,00,000 chargeable to tax escaped assessment during 1959-60

assessment. Sanction may, therefore, be given for issue of notice u/s 147(a)/148.

2. The Commissioner recorded his satisfaction or sanction to the initiation of these proceedings. The ITO noticed that the assessee had taken a number of loans on hundies and that these hundi credits represented the concealed income of the assessee. He found that the peak credit of the hundi loans reached Rs. 10 lakhs on 17th January, 1962, and that an amount of Rs. 2 lakhs was introduced between July, 1958, and December, 1958. He was of the opinion that these loans were of the same nature as loans surrendered by the shareholders of the assessee-company under the Voluntary Disclosure Schemes. He called upon the assessee to explain the true source and nature of these credits and when the assessee did not reply to the query letter, he had proceeded to add back the amount of Rs. 2 lakhs as income from other sources along with the interest thereon. The Appellate Assistant Commissioner noticed that the transaction impugned by the Income Tax Officer had practically been transacted in cash as, even where the cheques had been issued, they were only bearer cheques. As the transactions in respect of these loans had taken place in cash and as no evidence was led by the assessee to prove the genuineness of these loans, the Appellate Assistant Commissioner confirmed the addition. He also upheld the validity of the reassessment proceedings.

The assessee's representative vehemently contended before the Tribunal that the ITO could have had no prima facie reason to believe at the time of reopening the assessment that there was any concealment of income on account of the assessee's failure to furnish the material particulars at the time of the original assessment proceedings. He stated that the necessary particulars regarding the creditors had been furnished to the Income Tax Officer during the original assessment proceedings and that, if so advised, the Income Tax Officer could have made further enquiries and satisfied himself about the genuineness of these loans. It was not open to him to embark upon the provisions of Section 147(a) and make the additions which he sought to do. He also argued that the Commissioner had apparently not applied his mind since he gave his sanction without testing the material on record. He relied upon the Supreme Court decision reported in *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, in the case of *Chhugamal Rajpal*. As for merits, he stated that the Income Tax Officer was wrong in making the additions without making further enquiries.

The departmental representative stated before the Tribunal that the assessee had failed to make a complete and true disclosure of the material facts necessary for the assessment and in this connection he stated that a mere furnishing of the addresses or the copies of accounts of the creditors was not enough and, for this purpose, he relied upon an unreported Calcutta High Court decision in the case of *Shri Lakhmani Mewal Das* dated 13th January, 1972 (reported in *Lakhmani Mewal Das Vs. Income Tax Officer, "I" Ward and Others*, . He pointed out that, in that case also, necessary particulars about the creditors had been filed in the course of the original proceedings and yet the court held that there was not a

full, true and complete disclosure of the material facts. As for merits, he argued that the transactions were in cash and that though cheques had been issued they were bearer cheques and apparently the cheques had been cleared by the assessee itself at the time of the repayment of the loans. He, therefore, argued that the reassessment proceedings were valid and that the additions had been rightly made. He also tried to distinguish the Supreme Court decision relied upon by the assessee from the facts obtaining before us."

4. After noting the aforesaid contentions, the Tribunal, observed, *inter alia*, as follows:

"We have heard the rival contentions advanced by both the sides at length and we are inclined to agree with the submissions made by the assessee's representative that the reassessment proceedings were not validly initiated. The necessary condition to be satisfied for the reopening of the assessment u/s 147(a) is that the Income Tax Officer must have reason to believe that income has escaped the assessment owing to the failure of the assessee to furnish material particulars. This belief on the part of the Income Tax Officer must not be founded on suspicion, rumour, gossip or caprice. It is no doubt trite law that sufficiency of the reasons in such circumstances is not justiciable. However, the Supreme Court has laid down on more than one occasion that it is open to us to look into the reasons given by the Income Tax Officer to find out whether the Income Tax Officer had *prima facie* reasons to believe that there was an escapement of income on account of the assessee's failure to furnish material particulars and whether the reasons given by the income tax Officer, if any, for reopening the assessment have a reasonable and rational nexus to the belief entertained by him. In this connection, reference may be made to the observations of the Supreme Court in this case of *Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta*, . The Supreme Court has emphasised in this decision that the words "reason to believe" found in the statutory provisions in question suggest that it must be that of an honest and reasonable person based upon reasonable grounds and that the court can always examine whether the reason for the belief exists or not though the sufficiency of the reasons cannot be investigated by the court.

In this case before the Supreme Court, the Income-tax Officer reopened the assessment on the ground that the assessee had made secret profits which were not offered for assessment and had received a sum of Rs. 22 lakhs, which according to him, represented concealed income. The Income Tax Officer had mentioned in a separate sheet in that case that he had reason to believe that such income had escaped assessment. On going through the facts and circumstances of that case, the Supreme Court, however, found that the Income Tax Officer could have had really no reason to believe that on account of the assessee's omission to disclose fully and truly all material facts, any income had escaped assessment. Coming now to the facts before us, we find that the necessary particulars had been supplied to the Income Tax Officer at the time of

the original assessment. Of course, if the Income Tax Officer had materials to believe that the income had escaped assessment, the matter would have been different. The reasons which induced the Income Tax Officer to reopen the assessment have been extracted above and it would not be clear therefrom that the assessment was reopened on the ground that the assessee had concealed income of Rs. 2 lakhs in the names of various unverifiable hundi creditors and that full details of the depositors had not been disclosed at the time of the original assessment. The materials supplied to the Income Tax Officer at the time of the original assessment certainly give a clue to the total absence of reasons which could have, reasonably led the Income Tax Officer to reopen the assessment. There is nothing in the statement in which the Income Tax Officer has recorded his reasons to indicate that the hundi creditors were all bogus. There is no reference to the confessions made by the hundi bankers or to any information that those hundi creditors were bogus. The mere ipse dixit of the Income Tax Officer that some income is concealed and that he has reason to believe that the income has escaped assessment would not by itself confer jurisdiction on him to reopen the assessment. The facts are very close to the Supreme Court decision in the case of Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, . We may also refer to the unreported decision of the Calcutta High Court relied upon by the departmental representative and point out that in that case also, the assessment proceedings were struck down by the High Court by following the decisions of the Supreme Court referred to above. In the case before the Calcutta High Court, the Income Tax Officer had even mentioned that there was information regarding the bogus nature of the credits which had since been known. Even then the Calcutta High Court held that the proceedings were bad as the important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer. Respectfully following the decisions of the Calcutta High Court relied upon by the departmental representative and the two Supreme Court decisions reported in Chhugamal Rajpal Vs. S.P. Chaliha and Others, and Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, , we hold that the reassessment proceedings were not validly initiated. The reasons given by the ITO hopelessly fail to meet the requirements of Section 147(a) and are totally bereft of the basic requirements necessary for reopening the assessment u/s 147(a). In this view of the matter, we annul the reassessment order made u/s 147(a) for the assessment year 1959-60. It would not be necessary, therefore, to go into the merits of the addition."

5. So far as the assessment for the year 1961-62 is concerned, the Tribunal observed as follows:

"For the assessment year 1961-62, the Income Tax Officer reopened the assessment proceedings u/s 147(a) in the circumstances similar to those described for the assessment year 1959-60. During the assessment proceedings for the assessment year 1961-62, one finds that confirmatory letters of the hundi creditors had been filed along with the copies of accounts giving the Income Tax

file numbers of the hundi creditors. In 1968, the Income Tax Officer reopened the proceedings in circumstances similar to those obtaining in the 1959-60 assessment year. The reasons given by him for reopening the assessment were identical to those given for the assessment year 1959-60 except for the amount of concealed income mentioned therein. The Income Tax Officer added Rs. 1,25,000 this year by deducting from the peak of Rs. 3,25,000 the amount of Rs. 2 lakhs added back in the assessment year 1959-60. The Appellate Assistant Commissioner upheld the validity of the reassessment order. He was, however, of the opinion that Rs. 1,45,000 should have been added on the peak basis and, therefore, enhanced the addition to Rs. 1,45,000.

The Tribunal found that the circumstances here were similar to those for the assessment year 1959-60. It, therefore, annulled the reassessment for 1961-62 for the same reasons as were mentioned by it for the assessment year 1959-60."

6. So far as the assessment year 1962-63 is concerned, the Tribunal noted as follows :

"During the original assessment proceedings, the assessee had provided to the Income Tax Officer copies of accounts of the creditors along with their addresses and Income Tax file numbers. Confirmatory letters had also been filed. In the circumstances similar to those obtaining for the assessment year 1961-62, the Income Tax Officer reopened the proceedings for the assessment year 1962-63 for reasons recorded by him in a separate sheet which is almost identical to that for the earlier years except for the amount mentioned therein. During the reassessment proceedings, the Income Tax Officer proceeded on the peak basis and found that there was a peak of Rs. 9,20,000 on 18th December, 1961. Deducting the amount of Rs. 3,25,000 taxed in the earlier years, he added the sum of Rs. 5,95,000 along with another cash credit in the name of New India Saw Mills. The interest on these loans was also disallowed. The Appellate Assistant Commissioner found that the peak was Rs. 4,20,000 on 30th October, 1961. As for the loans appearing thereafter, he excluded all the loans transacted through cheques on the strength of the bank certificates and reduced the addition of Rs. 3,85,000. The assessee's representative contested before the Tribunal the validity of the reassessment proceedings and further criticised the Appellate Assistant Commissioner's action in not going into the cheque transactions before 3rd October, 1961. He stated that the Appellate Assistant Commissioner was right in excluding the cheque transactions and that, even as regards cash transactions, it was only want of evidence which was coming in the way of the assessee. The departmental representative reiterated the arguments advanced by him for the earlier years and also criticised the Appellate Assistant Commissioner's action in being inconsistent. As regards the departmental appeal, he pointed out that in the reassessment proceedings, the assessee was not justified in taking up a point which had been decided in the original assessment and the Appellate Assistant Commissioner erred in going into the question of the true nature and character of income from shares and securities.

As for the hundi loans allowed by the Appellate Assistant Commissioner as genuine, the departmental representative stated that a cheque transaction is by no means a talisman guaranteeing the genuineness of a loan and that the Appellate Assistant Commissioner was not further justified in admitting the additional evidence of bank certificates without giving the Income Tax Officer an opportunity to meet the assessee's case.

For the assessment year 1962-63, the assessee had again borrowed loans on hundis but, in the original assessment itself, the Income Tax Officer made certain additions. The loan transactions were both in cash and by cheques. For this year, it was argued before the Tribunal by the assessee that it was not possible to adduce the evidence in support of the genuineness of the loans after a long lapse of time. The assessee's representative, however, sought to produce the bank certificates in support of the cheque transactions before the Tribunal for the first time and the Tribunal did not admit this additional evidence at that stage. After hearing both the parties, the Tribunal held that the additions were called for in the absence of evidence in support of the genuineness of the loans."

7. The Tribunal concluded that the finding of the Tribunal for the assessment years 1959-60, 1961-62 and 1962-63 were primarily based on the ITO's reports submitted to the Commissioner for reopening the assessment. A typical report of the ITO had been extracted in the Tribunal's order and there was no reference in the ITO's report to the assessment proceedings for the assessment year 1963-64 though in the reassessment orders the ITO had mentioned that the reassessments were resorted to in the course of the assessment proceedings for the assessment year 1963-64. Similarly, there was no reference in these reports to any confession, if any, made by the creditors or to any information that the creditors were name-lenders. Apart from the ipse dixit of the officer what the Tribunal described, the reasons given by the ITO in the reports had no nexus or relation to the belief entertained by him, whatever materials might or might not have existed in support of the ITO's belief that the conditions in Section 147(a) were not satisfied. In these circumstances, the Tribunal held that there were no reasons, in view of the well-settled principles of law for the reassessment.

8. The grounds for reopening assessment u/s 147(a) of the I.T. Act, 1961, are well settled. There must be some reasons or materials existing before reopening which have a rational nexus to the formation of the belief by the ITO. There has been either non-disclosure or failure to disclose truly or fully all material facts or concealment of income as a result of which there has been an escapement or under-assessment of income. The materials must exist, as a fact, before reopening is resorted to. Now, whether in a particular case, before the reopening is made, whether there were materials which had a rational nexus to the formation of the belief required u/s 147(a) is primarily and essentially a question of fact and unless the Tribunal bases its conclusion on non-consideration of material facts or on wrong or erroneous principles of law or on rejection of material evidence in a reference jurisdiction, this court cannot and should not

interfere with the finding of facts arrived at by the Tribunal. This principle is well settled by the observations of the Supreme Court in the case of Commissioner of Income Tax Bombay North Vs. Lakhiram Ramdas, , where the Supreme Court at p. 731 observed as follows:

"Therefore, what the Tribunal had to consider was whether the assessee had fully and truly disclosed all material facts necessary for the assessment. The Tribunal examined all the relevant materials produced by the assessee at the time of the original assessment and came to a conclusion that there was no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The Tribunal referred to the account books produced by the assessee and particularly to the report of the examiner of accounts who submitted a report to the Income Tax Officer with regard to the bank account of the assessee in the Exchange Bank of India and Africa Limited. In our opinion, in the circumstances of this case, the question whether the assessee had or had not failed to disclose fully and truly all material facts necessary for his assessment was a question of fact and we are unable to accept the argument of the learned advocate for the appellant to the contrary."

9. The same view was reiterated by the Supreme Court in the case of Commissioner of Income Tax, West Bengal III Vs. Kamal Singh Rampuria, . In this case the Tribunal has discussed all the relevant facts and has come to a conclusion that at the time of the reopening there were no materials which had any rational nexus to the formation of a belief that there had been escapement of income or underassessment of income due to omission or failure on the part of the assessee to disclose fully or truly all material facts at the time of original assessment. Learned advocate for the Revenue drew our attention to several authorities in aid of the proposition that all the facts or all the materials need not be stated by the ITO in his report to the Commissioner or need not be recorded prior to the reopening. In aid of his submission he drew our attention to the observations of the Supreme Court in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , and he relied on the observations of the Supreme Court at p. 203. He also drew our attention to the observations of this court in the case of H.A. Nanji and Co. Vs. Income Tax Officer, "A" Ward and Others, . In aid of the same proposition, he relied on some observations of this court in the case of Income Tax Officer and Others Vs. Mahadeo Lal Tulsian and Others, , some observations of the Gauhati High Court in the case of Assam Forest Products (P.) Ltd. Vs. Commissioner of Income Tax, , and also to the decision of the Allahabad High Court in the case of Phool Chand Bajrang Lal and Another Vs. Income Tax Officer, "B"-Ward and Another, . He also relied on the observations of this court in the case of Income Tax Officer, "I" Ward and Others Vs. Mahadeo Lal Tulsyan, , and also the observations of the Madras High Court in the case of Asa John Devinathan and Another Vs. Addl. Commissioner of Income Tax, , also the observations of the Punjab and Haryana High Court in the case of Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another, . If we were concerned with the question whether in making a

finding of fact, the court as a Tribunal should have confined itself only to the report of the ITO made to the Commissioner at the time of the reopening or should have confined itself only to the reasons recorded at that time or it was possible for him to rely on other materials which were existing at the time of reopening, then these decisions would have been relevant for our consideration. But that is not the question here. The position here is, the Tribunal has considered all the facts and has come to a definite finding of fact that at the time of reopening, there were no materials on record which could lead or which could be said to have a rational nexus with the formation of a belief that the income of the assessee had escaped assessment or there had been under-assessment of the income of the assessee due to failure or omission on the part of the assessee to disclose fully or truly all material facts necessary for the purpose of assessment. In this case such a finding of fact has not been challenged as being either bad in law or perverse. If that is the position, then, in our opinion, on the materials on record, the corrected question must be answered in the affirmative and in favour of the assessee.

10. As the assessee is not appearing, there will be no order as to costs.

Suhas Chandra Sen, J.

11. I agree.