
(2008) 05 RAJ CK 0009
In the Rajasthan High Court

Commissioner of Income Tax

APPELLANT

Vs

Shri Ram Singh

RESPONDENT

Date of Decision : 20-05-2008

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 149, 150, 151

Citation : (2008) 217 CTR 345 : (2008) 306 ITR 243

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—This appeal by the Revenue has been filed against the judgment of the learned Tribunal dated 4.2.2005, allowing the appeal of the assessee, and quashing the reassessment proceedings. The appeal was admitted vide order dated 23.5.2006, by framing the following substantial question of law:

whether in the facts and in the circumstances of the case, the Tribunal was justified in holding that the proceedings for re-assessment u/s 148/147 of the Income Tax Act were initiated by the Assessing Officer on non-existing facts because ultimately, the assessee has been able to explain that the income which was believed to have escape assessment was explainable but some other additions were made under the assessment order?

2. The necessary facts are, that some search was undertaken at some business establishment, and in that process one diary was found, which showed some entry regarding purchase of plot of land by the present assessee, in village 1-a-Chhoti, for a consideration of Rs. 1,66,000/-, while in the agreement, it was shown to have been purchased for Rs. 45,000/-. On this basis, a notice u/s 148 was issued to the present assessee. Then query letters were also issued. The assessee appeared, and explained, that he purchased the plot from his agricultural income, and also submitted the requisite return, showing the agricultural income. Then his statements were also recorded, wherein he

deposed, that he carries on agriculture and animal husbandry. However, the Assessing Officer summoned the books of accounts of the establishment, at whose premises search was undertaken, and found, that during the period 4.3.95 to 16.3.95, the assessee had deposited Rs. 1,65,000/- cash, which the assessee has failed to explain, therefore, this amount was taken to be unexplained investment, and was added to income.

3. It may be observed here that the transaction relating to the purchase of land relates to October 1994.

4. Against this order, the assessee filed appeal before the learned Commissioner. The learned Commissioner in the order reproduced the books of M/s. Barar & sons, relating to the assessee, showing the credit and debit balances in the account of the assessee, and ultimately found, that during the relevant assessment year, the assessee purchased a plot for a sum of Rs. 1,60,000/- and also spent some amount on construction of the rooms etc. Thus, withdrawals made were utilised towards acquisition of plot, as also on construction, and it cannot be said that substantial amount aggregating to Rs. 1,65,000/- was still left with the appellant, so as to make deposits in cash with the firm within the short span of time, and thus, concluded, that the assessee has failed to prove the sources of deposits, aggregating to Rs. 1,65,000/- in cash, with M/s. Barar & sons, and thus, the addition was upheld.

5. It may be observed here, that so far the allegation of purchase of plot, from the amounts representing undisclosed source of income is concerned, the assessee had clearly explained, that the amount was withdrawn from M/s. Barar & sons by cheques, and from the entries in the books of accounts, as reproduced by the learned Commissioner, it is clear, that a sum of Rs. 1,00,000/- was withdrawn on 8.10.94, and sum of Rs. 60,000/- was withdrawn by cheque on 17.10.94, apart from other withdrawals. Then even the learned Commissioner himself had recorded a finding, to the effect, that the withdrawals made by the appellant from the firm M/s. Barar & sons were utilised towards acquisition of plot, as also in construction.

6. Then the assessee filed further appeal before the learned Tribunal, and the learned Tribunal found, that the Assessing Officer has accepted the investment in the plot, as explained, but made out addition. With this, it was held, that the reason, on the basis of which proceedings u/s 148 were initiated, did not lead to any additions, rather Assessing Officer made different addition. This question was held by the learned Tribunal to be covered by the decision of the Tribunal in ITA No. 401 to 403 decided on 13.8.2004, being *Income Tax Officer v. Maruti Guar Gum (P) Ltd.*, and then it was also found, that in the order dated 13.1.2004 passed in the case of *I.T.O. v. Bhanwar Lal Murawatiya* it has been held by the learned Tribunal, that when the very base of the reopening goes, the reason for reopening also goes. Thus it was found, that action taken by the learned Assessing Officer u/s 148/147 of the Act is illegal, and notice issued u/s 148 is ab- initio void and was thus, quashed.

7. Arguing the appeal, it was contended by learned Counsel for the Revenue, that a look at the provisions of Section 147 shows, that once the Assessing Officer has reason to believe, that any income chargeable to tax has escaped assessment, for any assessment year, he may, subject to provisions of Section 148 to 153, assess or reassess, such income, and also any other income chargeable to tax, which has escaped assessment, and which comes to his notice subsequently in the course of the proceedings under this Section. Thus, on the language of Section 147, if in the course of the proceedings u/s 147, any other income, chargeable to tax, which has escaped assessment, comes to the notice of the Assessing Officer, subsequently, still such income could be assessed very well, and therefore, the learned Tribunal has gone wrong in passing the impugned order. It was contended, that for initiating proceedings u/s 147, the sine-qua-non is only, that the Assessing Officer should have reason to believe, that any income chargeable to tax has escaped assessment, for any assessment year, and once this condition exists, the Assessing Officer gets the jurisdiction to proceed further u/s 147, subject to provisions of Section 148 to 153, and once the jurisdiction commences, he has to assess or reassess the income, and if in the course of such proceedings, any other escaped income comes to the notice, that could very well be assessed to tax. Learned Counsel referred to the judgments of Hon"ble the Supreme Court, in *Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd.*, , and *Jagan Nath Singhal Vs. Deputy Commissioner of Income Tax and another*, to substantiate the above submission.

8. On the other hand, learned Counsel for the assessee submits, that the bare reading of the language of Section 147, rather makes it clear, that of course the sine-qua-non for assumption of jurisdiction is, that the Assessing Officer should have a reason to believe, that any income chargeable to tax, has escaped assessment, for any assessment year, and on such jurisdiction coming into existence, he is to proceed under that Section, but then, he is to assess or reassess "such income", obviously the income, regarding which he has "reason to believe" to have escaped assessment, for any assessment year, and while so assessing, such "income" of course may make assessment with respect to other income, which also may have escaped, and which comes to his notice subsequently, in the course of the proceedings, but then, if while exercising powers u/s 147, the Assessing Officer comes to conclusion, that the income, with respect to which he has entertained "reason to believe" to have escaped assessment, did not escape, or that it was not liable to tax, then merely because he had initiated proceedings, would not confer on him the continued jurisdiction, to assess the other incomes, which have come to his notice subsequently, in the course of proceedings, to have escaped assessment. In the present case, since the "reason to believe" entertained by the Assessing Officer was, with respect to the assessee having purchased a plot of land from undisclosed source of income, while it has been found, that the source of income was clearly established to be agricultural income, which were lying deposited with M/s. Barar & sons,

wherefrom it was withdrawn by cheque, and was invested, and the Assessing Officer himself also found the investment to have been properly explained, that being the position, the jurisdiction commenced, came to an end, at that point itself, and did not confer any jurisdiction on the Assessing Officer, to further continue with the assessment proceedings, simply because, he was of the opinion, that other escaped income had come to his notice, subsequently, in the course of the proceedings. In this regard, learned Counsel has relied upon a judgment of Punjab and Haryana High Court, in Commissioner of Income Tax Vs. Atlas Cycle Industries, which in turn is based on the judgment of Hon''ble the Supreme Court, in Bankipur Club Ltd., Patna Vs. The Commissioner of Income Tax , Bihar and Orissa, Patna, as well, apart from the fact, that it does consider various judgments also. Accordingly, it is contended by learned Counsel for the assessee, that the impugned order doesn't require any interference.

9. We have considered the submissions, and have gone through the judgments cited at the bar, so also the impugned judgment of the learned Tribunal.

10. A look at the judgment of the learned Tribunal shows, that it substantially proceeds on its earlier judgment, in the case of Maruti Guar Gum (P) Ltd., dated 13.8.2004. Since learned Counsel for the Revenue pointed out, that appeal against that judgment has already been filed, and is pending before this Court, we requisitioned that file, and have gone through that order also, and find, that that order basically proceeds on the basis, that the reasons for reopening were consistently demanded by the assessee, but were not supplied, and then it has been found on merits, by holding, that otherwise also, the facts are, that the assessee had received rent in connection with leased godown and factory premises, the claim of depreciation was made by the assessee in the returns of income, therefore, in the opinion of the Tribunal, no income chargeable to tax can be said to have escaped assessment. Then reference is made to judgment of Punjab and Haryana High Court, in Atlas Cycle Industries'' case by observing as under:

to find support we can quote the decision of Hon''ble S.C. in the case of 180/319 Supreme Court in which it was held.

11. However, it was pointed out by learned Counsel for the assessee, that as a matter of fact it was in a bunch of appeals, led by ITA No. 10/2005, Dr. Devendra Kumar Gupta v. ITO, that the learned Tribunal, vide order dated 8.9.2005, had decided this controversy, by giving detailed reasons. It was pointed out, that against that judgment also appeals are pending before this Court, and therefore, we requisitioned that file also, and have gone through the order of the learned Tribunal, available in that case, in an attempt to find out, as to what were the reasons, working in the mind of the Tribunal, instead of standing to ceremonies, about the propriety of construction of sentences, or propriety of expression etc.

12. In Dr. Devendra Gupta's case, learned Tribunal has relied upon the judgment of the Punjab and Haryana High Court, in Atlas Cycle Industries'' case, and

concluded, that the basic condition is, that the Assessing Officer has reason to believe, that any income chargeable to tax has escaped assessment, for any assessment year, and it was found, that the Section puts no bar on the powers of the Assessing Officer, to put to tax, any other income, chargeable to tax, which has escaped assessment, and which subsequently comes to his notice, in the course of the proceedings, but then, the prefixing words "and also", which succeeded "any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Section 148 to 153, assess or reassess such income". This expression was found to be making clear, that existence of the income, for which the Assessing Officer formed belief, to have escaped assessment, is a precondition, for including any other income chargeable to tax, escaping assessment, and coming to the notice of the Assessing Officer subsequently, in the course of the proceedings. Thus, unless and until such income, as giving rise to form belief, for escaping assessment, continues to exist, and constitutes a subject matter of assessment, u/s 147 "no other income" coming to the notice of the Assessing Officer, during the course of the proceedings, can be roped in.

13. Thus, though by undertaking a long drawn exercise, but then, we have been able to decipher the reasons, appear to have existed in the mind of the learned Tribunal, though succinctly expressed, on a subsequent occasion, in Dr. Devendra Gupta's case.

14. It is in the above situation, that the question as framed is required to be examined by us.

15. Before proceeding further we may gainfully quote the relevant provisions of Section 147, which read as under:

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year)

16. With this, a look at the judgment cited by Mr. Bissa, being in Rajesh Jhaveri's case, and Jagan Nath Singhal's case, do show, that those judgments are slightly on different points, inasmuch as, in Rajesh Jhaveri's case, proceedings were initiated u/s 147, by giving notice, which itself was under challenge, and Hon'ble the Supreme Court was examining the parameters of the expression "reason to believe", as used in Section 147, and it was held as under:

the expression "reason to believe" in Section 147 would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to

believe that income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What is required is "reason to believe" but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether material would conclusively prove escapement of income is not the concern at that stage. This is so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer.

17. Likewise in Jagan Nath Singhal's case again, this very view was taken, that was also a case, where the initiation of proceedings was challenged. It was also held, that the affidavit of the daughter of the petitioner, formed a reasonable ground for the Assessing Officer, to entertain a prima-facie reason to believe, about the escapement of income, and therefore, it was held, that the proceedings cannot be said to be without jurisdiction. It was also clarified, that the Court was not going into the merits of the case of the assessee, the assessee was left free to lead evidence, in the re-assessment proceedings, to show, that the expenditure incurred in the daughter's marriage was upto a specified extent, and as such, no income has escaped assessment.

18. In the present case, initiation of the proceedings is not under challenge before us, by either side, and rightly so. Therefore, the two judgments cited by the learned Counsel for the Revenue, are of no assistance to the appellant.

19. Then we are referred to the judgment of Hon"ble the Supreme Court, in Bankipur Club Ltd."s case, wherein again, the question was about the jurisdiction of the Assessing Officer to initiate reopening proceedings. In that case it was found, that the material on the basis of which the reason to believe was entertained, did also exist, at the time of passing of the original order of assessment, and it was not the case of the Assessing Officer, that when he made the original assessment order, he was not aware of the true legal position.

20. Then we come to the judgment of Punjab and Haryana High Court, in Atlas Cycle Industries" case, which is a case, precisely on the point, inasmuch as, in that case, the Tribunal referred for the opinion of the High Court, the question viz., whether on the facts and in the circumstances of the case the Tribunal was right in law in canceling the reassessment made by the ITO.

21. Dealing with this question, it was held by the High Court, that the Tribunal was right in canceling the reassessment, as the two grounds, on which the reassessment notice was issued, were not found to exist, and the moment such is the position, ITO does not get the jurisdiction to make re-assessment. Of course for this proposition, reliance was placed on Bankipur Club Ltd."s case, and another judgment of Hon"ble the Supreme Court, in CIT v. A. Raman and Company, which in turn, again was a case, dealing with the aspect of validity of commencement of the proceedings for reassessment u/s 147. But then, the

Division Bench of the Punjab and Haryana High Court does take the view, that once the grounds, on which the reassessment notice was issued, are not found to exist, the Income Tax Officer does not get the jurisdiction, to make re-assessment.

22. Learned Counsel for the Revenue could not find, or show, any contrary judgment of this Court, or of Hon'ble the Supreme Court, or even of any other High Court of the country.

23. Thus, the question is required to be examined, as to whether, we should follow the judgment in Atlas Cycle Industries" case, or take a different view.

24. Reverting back to language of Section 147, this much is clear, that the sine-qua-non for conferment of jurisdiction on the Assessing Officer, to initiate proceedings under that Section is, that he should have "reason to believe" that "any income chargeable to tax has escaped assessment for any assessment year" and that, being that situation, being available, i.e. the Assessing Officer having entertained a "reason to believe", obviously on valid grounds, he acquires the jurisdiction to assess or reassess "such income", which obviously means, the income, which was chargeable to tax, and had escaped assessment for any assessment year, according to his "reason to believe", and while so assessing or reassessing, he can also, in addition, assess or reassess "any other income chargeable to tax which has escaped assessment and which may come to his notice subsequently in the course of proceedings u/s 147".

25. The precise question, thus requiring to be considered is, as to whether, the conjunctive word used, being "and", used between the expression "such income" and "also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings u/s 147" is required to be given its due, or is required to be ignored, or is required to be interpreted as "or". Obviously because, if it is to be interpreted as "or", then the language would read as under:

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year)

26. But then if it were to be so read, the word "also" becomes redundant, and to make sense of the sentence, the Section would be required to be read by ignoring the words "also", as well, in which event, the Section would read as under:

147. If the Assessing Officer has reason to believe that any income chargeable to

tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year)

27. It is established principle of interpretation of statutes, that the parliament is presumed to be not extravagant, in using the words, and therefore, every word used in the Section, is required to be given its due meaning.

28. If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings u/s 147 the Assessing Officer, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings u/s 147.

29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings u/s 147, the Assessing Officer were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings u/s 147.

30. It is a different story that for such other income, the Assessing Officer may have recourse to such other remedies, as may be available to him under law, but then, once it is found, that the income, regarding which he had "reason to believe" to have escaped assessment, is not found to have escaped assessment, the Assessing Officer is required to withhold his hands, at that only.

31. To this extent, we agree with the view expressed by the Punjab and Haryana High Court, in Atlas Cycle Industries" case.

32. The result of the aforesaid discussion is, that the question framed, in the order dated 23.5.2006, is required to be, and is, answered in the manner, that the Tribunal was not justified in holding, that the proceedings for reassessment u/s 148/147 were initiated by the Assessing Officer, on non-existing facts, because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment, was explainable. It is further held, that the Assessing Officer was justified in initiating the proceedings u/s 147/148, but

then, once he came to the conclusion, that the income, with respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment.

33. Consequently, the result is, that the appeal is dismissed.