
(1980) 04 CAL CK 0034
In the Calcutta High Court
Case No : Matter No. 1007 of 1978

Dilip Kumar Chandra

APPELLANT

Vs

Commissioner of Income Tax and Others

RESPONDENT

Date of Decision : 09-04-1980

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 147, 148, 153

Citation : (1983) 140 ITR 884

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : Sukumar Bhattacharyya and Poddar, for the Appellant; Suhas Sen, for the Respondent

Judgement

T.K. Basu, J.—In this application the petitioner challenges three notices all dated the 17th October, 1978, and issued u/s 148 of the I.T. Act, 1961 (hereinafter referred to as "the Act"). The notices are in respect of the assessment years 1970-71, 1971-72 and 1972-73, respectively. Although the main challenge is that the condition precedent for the applicability of Section 148 was not satisfied in the present case and it was pressed very strenuously and a large number of authorities were cited before me, the other point as to the limitation was also urged equally strenuously. Before I deal with the main challenge, I shall deal with the question of limitation.

2. On the question of limitation, it was submitted that Section 153 of the Act provides the time-limit for the completion of assessments and reassessments. The issue of limitation, it was contended, is to be considered in the light of Section 153(2) of the Act. It was pointed out that separate time-limits for the completion of an assessment were provided for u/s 147(a) and u/s 147(b) of the Act. The submission on the question of limitation was on the basis that the proceedings, which were impugned in the present case, fell u/s 147(b) of the Act. This is because, although the point was not given up by Mr. Suhas Sen, appearing for the Revenue, he did not seriously try to justify the issue of the

impugned notices u/s 147(a) of the Act. In other words, Mr. Sen's main argument was an attempt to justify the issue of the notices u/s 147(b) of the Act, an argument with which I shall deal later on.

3. On the question the following points were urged on both sides.

(a) What is the period of limitation for the completion of reassessment proceedings initiated u/s 147(b)/148 of the Act ?

(b) Whether the reassessment proceedings u/s 147(b) were already barred by limitation as provided in Section 153(2)(b) of the Act, on or before 17th October, 1978, the date when the ITO issued notices u/s 142(1) of the Act?

(c) Where the reassessment proceedings cannot be completed because of the bar of limitation u/s 153(2)(b) of the Act, should this court go into the question of limitation or leave it to be considered by the ITO ?

(d) Has Section 153(2A)/153(3) any application in this case?

(e) Is there any ground or prayer regarding limitation ? With regard to the points (a) and (b) noted above, it was pointed out that no order for reassessment u/s 147(b) of the Act could be made after the expiry of--

(i) four years from the end of the relevant assessment year, or (ii) one year from the date of service of the notices u/s 148, whichever is later.

4. It was pointed out that in this case the impugned notices were admittedly served on or about the 22nd July, 1974. These notices relate to three assessment years, as I have already indicated, viz., 1970-71, 1971-72, 1972-73. Therefore, the four-year period expired on 31st March, 1975, 31st March, 1976, and 31st March, 1977, respectively. If the one-year period is to be counted from the date of service of the notice, that expired on 21st July, 1975.

5. As such, it was pointed out 31st March, 1977, is in any event the last date for the completion of reassessment proceedings for the relevant years and any reassessment made after that date will be barred by limitation in view of Section 153(2)(b) of the Act. In the present case, the notice u/s 142(1) of the Act, asking for production of books of account and documents was issued only on 17th October, 1978, which shows that the reassessment proceedings u/s 147(b) of the Act had not been completed till then. Therefore, the reassessment proceedings in the present case is clearly barred by limitation. Therefore, it was submitted that the continuation of any further proceeding pursuant to the impugned notices was clearly illegal, unwarranted, without jurisdiction and void ab initio.

6. Coming to the question, whether this court should go into the aspect of limitation in writ proceedings at this stage, reference was made to the judgment of a Division Bench of this court in the case of Commissioner of Income Tax and Another Vs. Punam Chand Banthia, . In that case a notice issued u/s 148 of the Act and dated the 25th January, 1967, was challenged. The assessment was

reopened for the assessment year 1962-63. The notice u/s 148 was issued on 25th January, 1967, which was within a period of four years from the assessment year 1962-63. As such, it was within the time prescribed u/s 149 of the Act. It seems that in the trial court the Department tried to justify the reopening both u/s 147(a) as also u/s 147(b) of the Act. The notice was quashed by the trial court. On appeal, the Division Bench appears to have found that the notice in that case was issued u/s 147(b) of the Act. This is clear from an observation at p. 730 of the report, which is as follows :

"For the reasons aforesaid it appears to us that the notice was issued u/s 148 on the basis of the information received as mentioned hereinbefore u/s 147(1)(b) of the Act."

7. At pp. 730-31 the following passage occurs :

"In the instant case a notice was served on or about 25th January, 1967, u/s 148 of the Act. Thereafter, the Income Tax Officer served another notice bearing G.I. No. IV(1)/719-B/E dated February 1, 1971, u/s 139 of the Act requiring the respondent to produce or cause to be produced at his office at No. 40, Strand Road, Calcutta 1, on 9th February, 1971, at 11.30 A.M. accounts and documents mentioned on the reverse of the notice, viz., books of account, bank pass book and other related papers. This notice was served about 4 years after the service of the notice u/s 148 of the Act and no assessment or reassessment or recomputation could be made u/s 147 where the assessment, reassessment or recomputation is to be made under clause (b) of that section after the expiry of one year from the date of service of the notice u/s 148. It appears that this has clearly been the case in the instant matter. For the reasons aforesaid the appellants could not proceed with the reassessment as they purported to do by virtue of the notice dated 1st February, 1971.

For the reasons stated hereinabove, we are of the view that there is no merit in the appeal. The appeal must fail and is hereby dismissed."

8. On the strength of the above decision, it was contended by Mr. Sukumar Bhattacharyya and Mr. Poddar, who followed him, that in the above case the Division Bench went into the question of limitation in a writ application and on the finding that the assessment proceedings proposed to be undertaken pursuant to a notice u/s 148 of the Act was barred by limitation, upheld the finding of the trial court and dismissed the appeal.

9. Lastly, it was pointed out that specific grounds have been taken in the petition with regard to the point of limitation and grounds (A) and (C) were referred to in this connection. There are also specific prayers for certain directions with regard to the question of limitation.

10. Mr. Suhas Sen, appearing for the Revenue and dealing with this aspect of limitation, contended, in the first place, that the scope of writ jurisdiction in revenue matters is very limited. There is an adequate alternative remedy

provided by the Act itself. Moreover, the Supreme Court has repeatedly cautioned the courts against exercising the writ jurisdiction in matters where the court has to "make assumptions of facts which remain to be investigated by the Revenue authorities". *Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta, and Another*, .

11. It was contended that the question whether the reassessment proceedings initiated against a person are barred by limitation can and ought to be raised before the ITO. It cannot be raised in writ proceedings. My attention was drawn to a decision of the Supreme Court in the case of *Lalji Haridas Vs. Income Tax Officer and Another*, . In that case, it was held that the question whether the assessment proceedings initiated against a person are barred by limitation u/s 34(3) of the Indian I.T. Act, 1922 (which corresponds to Section 153 of the Act), can and ought to be raised by the assessee before the ITO. That is not a point which can be legitimately agitated in writ proceedings.

12. My attention was also drawn to another decision of the Supreme Court in the case of *Lalji Haridas Vs. R.H. Bhatt and Another*, the following passage occurs.

"Mr. Pathak for the appellant attempted to argue that the notice issued against the appellant is, on the face of it, invalid, because it is barred by time. We did not allow Mr. Pathak to develop this point, because we took the view that a plea of this kind must ordinarily be taken before respondent No. 1 himself. The jurisdiction conferred on the High Court under article 226 is not intended to supersede the jurisdiction and authority of the Income Tax Officers to deal with the merits of all the contentions that the assessee may raise before them, and so it would be entirely inappropriate to permit an assessee to move the High Court under article 226 and contend that a notice issued against him is barred by time. That is a matter which the Income Tax authorities must consider on the merits in the light of the relevant evidence."

13. With regard to the decision of the Supreme Court in the case of *S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company*, , where the Supreme Court affirmed the decision of the Bombay High Court and held that the notice u/s 34 of the old Act was barred by limitation, it was pointed out that the decision is clearly distinguishable from the present case. It was pointed out that jurisdiction u/s 34 of the old Act could only be assumed by issuing a valid notice u/s 34 after complying with all the conditions precedent provided under the Act. One of the conditions precedent is that the notice must be issued within the time-limit provided by the statute. In that case, the Supreme Court held that the ITO could not commence proceedings u/s 34 of the old Act on the ground that the issue of the notice itself was beyond the prescribed time-limit.

14. It was submitted that the fundamental distinction between *S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company*, and the present case is that the initial assumption of jurisdiction by issuing the notice under the Act is not invalid because the notices were admittedly issued within the time prescribed.

What the petitioner in this case is challenging is not the assumption of jurisdiction but the exercise of jurisdiction on the ground that the conclusion of the assessment proceeding is barred by limitation. This question, it was pointed out by Mr. Sen, should be left to be decided by the ITO on the strength of the two Lalji Haridas" cases mentioned above.

15. Lastly, it was pointed out that the two decisions in Lalji Haridas Vs. Income Tax Officer and Another, and Lalji Haridas Vs. R.H. Bhatt and Another, , mentioned above, are decisions of five learned judges of the Supreme Court and should prevail over the decision in S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, , which is the judgment of three learned judges only.

16. After giving my anxious consideration to the facts of the present case and on the authorities cited before me, I have come to the conclusion that the reassessment proceedings in the instant case are clearly barred by limitation. As already indicated, the last date for completion of the reassessment proceedings pursuant to the impugned notices expired on 31st March, 1977. The notice dated the 17th October, 1978, cannot enlarge the period of limitation as it was issued beyond the period of four years from the last assessment year. Irrespective of the contention of Mr. Suhas Sen whether this question should be gone into by the writ court or should be left to the ITO, the stark fact remains that all the reassessment proceedings pursuant to the impugned notices are clearly barred by limitation. That being so, no other question really arises for consideration.

17. Having regard to the elaborate arguments advanced from the Bar, I shall very briefly record the contentions on merits and refer to the authorities cited in support thereof.

18. With regard to the merits of the question of reopening of the assessment before I deal with them it will be useful to set out the recorded reasons for the relevant assessment years, namely, 1970-71, 1971-72 and 1972-73, which were, by consent of parties, tendered and forms part of the records of this case. The recorded reasons by the ITO dated the 28th June, 1974, are as follows:

"The assessee started construction of his house properties at 106/E, Amherst Street, Calcutta-9, in April, 1968, and completed the same in July, 1971. This is a four-storeyed house property measuring about 950 sq. ft. in each floor. The assessee claimed that the total cost of construction was only Rs. 61,000, vide O/s (70-71) dated Aprils, 1973. This sum was explained by him to be gift received from his father and grandmother. No valuation report estimating cost of construction was filed nor any enquiry has been made from the ITO concerned who made the assessment up to 1972-73 assessment year, accepting the assessee's cost of construction. To the best of my knowledge and estimate the total cost of construction incurred by the assessee is not less than Rs. 1 lakh only, in view of the total covered space and period of construction and with reference to the valuation report for wealth-tax purpose filed by the assessee. Secondly, all the gifts of Rs. 61,000 were not withdrawn from his bank account

(which were initially deposited in the bank fixed deposit account). As such I have reason to believe that the assessee has unexplained investment to the extent of Rs. 60,000 (approximate), representing his income from undisclosed sources which escaped assessment for his failure to file the true return of income. Since the major construction was made during 1969-70 to 1971-72, this year I considered that the escaped income, Rs. 60,000, may be reassessed u/s 148/147(a) equally in three assessment years, i. e., 1970-71 and 1971-72, 1972-73. So issue notice u/s. 148 for 1970-71, 1971-72 and 1972-73 assessment years at once. Inspector to enquire about the cost of construction only."

19. Mr. Bhattacharyya, appearing for the petitioner, relied on a number of decisions in support of his contention that this reopening could be justified only u/s 147(b) and not u/s 147(a) of the Act. As I have already indicated Mr. Suhas Sen for the Revenue, without conceding the point, had only sought to justify the notice u/s 147(b) of the Act.

20. I shall merely mention the cases on this point and not deal with them. Mr. Bhattacharyya relied on a decision of the Patna High Court in the case of Durga Sharan Udho Prasad Vs. Commissioner of Income Tax, . He also referred to the judgment of a Division Bench of this court in the case of Income Tax Officer, "G" Ward and Others Vs. Selected Dalurband Coal Co. P. Ltd., . He also referred to the case of Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, , the case of Gemini Leather Stores Vs. The Income Tax Officer, "B" Ward, Agra and Others, and the case of Ahmedabad Cotton Mfg. Co. Ltd. v. Union of India [1914] 95 ITR 639.

21. Since Mr. Sen for the Revenue really sought to justify the reopening of the assessment u/s 147(b) of the Act, I refrain from dealing with these authorities, mentioned above, in any detail.

22. Mr. Bhattacharyya, for the assessee, sought to contend that this is merely a change of opinion on the part of the ITO and no fresh information. In support of this proposition Mr. Bhattacharyya relied on a decision in the case of JAMNA LAL KABRA Vs. Income Tax OFFICER, B WARD, BAREILLY, AND OTHERS., . Reference was also made to a decision of the Patna High Court on the question of reasons recorded in the case of C.M. Rajgharia and Another Vs. Income Tax Officer and Others, . I do not see how this case is of any relevance to the present case. On the question of what is information within the meaning of Section 147(b) of the Act, reference was also made to the decisions of this court in Ballarpur Paper and Straw Board Mills Ltd. Vs. Commissioner of Income Tax, and in the case of Grindlays Bank Ltd. Vs. Income Tax Officer, "H" Ward and Others, .

23. On the question of valuation report my attention was drawn to a decision of this court in the case of Murarka Paints and Varnish Works Ltd. and Another Vs. Income Tax Officer and Another, .

24. Mr. Suhas Sen, appearing for the Revenue, placed very strong reliance on the

decision of the Supreme Court in the case of (1976) 102 ITR 287 (SC) . In that case it was held that Section 34(1)(b) of the old Act, which corresponds to Section 147(b) of the Act, would apply to the following categories of cases (headnote):

"(1) Where the information is as to the true and correct state of the law derived from relevant judicial decisions;

(2) Where in the original assessment the income liable to tax has escaped assessment due to oversight, inadvertence or a mistake committed by the Income Tax Officer ;

(3) Where the information is derived from an external source of any kind : such external source would include discovery of new and important matters or knowledge of fresh facts which were not present at the time of original assessment; and

(4) Where the information may be obtained even from the record of the original assessment from an investigation of the materials on the record or the facts disclosed thereby or from other enquiry or research into facts or law."

25. Mr. Sen sought to rely upon another decision of the Supreme Court in the case of R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs. Kasturbhai Lalbhai (Huf), . In that case, it was held that the audit department was the proper machinery to scrutinise the assessments of ITOs and point out the errors, if any, in law, and that the intimation received by the ITO constituted "information" within the meaning of Section 147(b) in consequence of which the ITO could reopen the assessment.

26. On the strength of these authorities of the Supreme Court, Mr. Sen sought to contend that a mistake in the original assessment could be an "information" within the meaning of Section 147(b) of the Act.

27. Mr. Poddar, who followed Mr. Bhattacharyya in reply, drew my attention to the recent decision of the Supreme Court, Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, . As will appear from page 1007 of the report, the Supreme Court, in the above case, held that its earlier decision in the case of R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs. Kasturbhai Lalbhai (Huf), and the decision in (1976) 102 ITR 287 (SC) , were wrongly decided.

28. Mr. Bhattacharyya drew my attention to para. 1004 of the report which is in the following terms:

"In the present case, an internal audit party of the Income Tax department expressed the view that the receipts from the occupation of the conference hall and rooms did not attract Section 10 of the Act and that the assessment should have been made u/s 9. While Sections 9 and 10 can be described as law, the opinion of the audit party in regard to their application is not law. It is not a

declaration by a body authorised to declare the law. That part alone of the note of an audit party which mentions the law which escaped the notice of the ITO constitutes "information" within the meaning of Section 147(b); the part which embodies the opinion of the audit party in regard to the application or interpretation of the law cannot be taken into account by the ITO. In every case, the ITO must determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has now come to his notice he can reasonably believe that income has escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. In short, the true evaluation of the law in its bearing on the assessment must be made directly and solely by the ITO."

29. In my view, this case is a clear authority for the proposition that an interpretation of the law by an audit party cannot be an "information" within the meaning of Section 147(b) of the Act. This case has expressly held that the two earlier decisions in the case of (1976) 102 ITR 287 (SC) and the case of R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs. Kasturbhai Lalbhai (Huf), , were wrongly decided.

30. Mr. Suhas Sen for the Revenue submitted that these decisions of the Supreme Court did not stand in the way of his client because, in the instant case, the information on which the ITO has sought to act was not from any internal source but from an outside source, viz., the records of the wealth-tax proceedings of the petitioner.

31. I am merely recording these contentions because, as I have already indicated, in view of my finding on the question of limitation, I do not feel it necessary to make any pronouncement on this aspect of the matter.

32. Before I conclude, I may record that a large number of other authorities were cited mainly on behalf of the petitioner, which I do not consider it necessary to deal with.

33. In the result, this application succeeds and the rule must be made absolute. There will be a writ in the nature of mandamus directing the respondents to forthwith recall, cancel and withdraw the three impugned notices dated July 12, 1974, for the assessment years 1970-71, 1971-72 and 1972-73, respectively, and to forbear from giving effect thereto in any manner whatsoever.

34. There will be no order as to costs.