
(1971) 04 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 919 of 1971 and Writ Miscellaneous Petition No. 1233 of 1971

G. Sreerama Murthy

APPELLANT

Vs

Income Tax Officer, A-Ward

RESPONDENT

Date of Decision : 05-04-1971

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 154, 155

Citation : (1974) 97 ITR 290

Hon'ble Judges : Sriramulu, J;Kondaiah, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Sriramulu, J.—By this writ petition, filed under Article 226 of the Constitution of India, the petitioner seeks a writ or direction prohibiting or restraining the Income Tax Officer, Rajahmundry, from proceeding further in pursuance of notice dated December 11, 1970, issued u/s 148 of Income Tax Act, 1961, proposing to reopen the assessment for the assessment year 1965-66 and requiring him to file a return of income for the said assessment year.

2. The case as set up by the petitioner in his affidavit is as follows :

The petitioner is a partner of Sri Venkateswara Ferry Company. His individual assessment for the assessment year 1965-66 was completed after a thorough scrutiny of the account books. On March, 17, 1970, the Income Tax officials raided the business premises of the said firm and also the houses of seven of its partners including that of the petitioner. No incriminating material was found in his house. The firm did not conceal any income. The incriminating material found in the possession of the managing partner of the firm, Mr. Ammi Reddy, had nothing to do with the firm.

3. The Income Tax Officer had no reason to believe that income chargeable to

tax in his hands had escaped assessment and the notice dated 11th December, 1970, served on him u/s 148 of the Income Tax Act, 1961, was issued long after the expiry of four years from the last date of the assessment year. It was, therefore, time-barred and bad in law. The notice was also issued without any jurisdiction. The Income Tax Officer should, therefore, be prohibited from proceeding further in the matter of reassessment in pursuance of the said notice.

4. The respondent, the Income Tax Officer, filed a counter-affidavit alleging that from the business premises of the firm an agreement was found, wherein it was stated that the firm had purchased that launches for Rs. 58,000 but in the account books of the firm the sale price was shown at Rs. 30,700. The managing partner of the firm, Sri Ammi Reddy, in his deposition on October 19, 1970, admitted that the difference of Rs. 27,300 was paid by the firm out of its account books. The paper No. 13 recovered from the possession of another partner of the firm showed that the total net profit for the year 1965-66 was Rs. 7,24,000 which comprised of two items, one Rs. 2,62,000 indicated by letter "A", and Rs. 4,62,000 indicated by letter "B". The letter "A" indicated "accounted for" and the letter "B" indicated "black money". The above paper was in the handwriting of T. Narayanareddy, son of Ramireddy, who was another partner of the firm. In his sworn deposition Ramireddy had stated that his son, Narayanareddy, informed him that he received from time to time moneys of the firm, which were not disclosed in the accounts. Besides these incriminating documents, it was also found in the possession of the petitioner, an agreement of sale, dated April 4, 1967, in respect of certain sites in Vizag., for a value of Rs. 67,500. The actual sale deeds found in the petitioner's house were executed only for Rs. 51,000 in the names of his kith and kin. Some other slips were also found in his possession which were in the handwriting of the petitioner, showing that he had made private collections with the help of the clerk and cashier of the ferry company. The Income Tax Officer recorded reasons in his report to the Commissioner on the basis of which he proposed to reopen the assessment of the assessee. After duly considering those reasons given by him, the Commissioner of Income Tax sanctioned issue of notice u/s 151(2) of the Income Tax Act, 1961. In pursuance of the notice served on the managing partner of the firm, Ammi Reddy hid filed a return of income of the firm declaring an income of Rs. 7,46,850 as against an income of Rs. 3,07,960 assessed previously, and that on the basis of these facts, he had issued the notice for reopening the assessment of the assessee for the assessment year 1965-66.

5. It was further submitted in the counter that some of the partners of the firm including the petitioner filed writ petitions bearing Nos. 647 to 649 of 1971, questioning the validity of the notice issued for reopening the assessment of the firm for the assessment years 1965-66, 1966-67 and 1967-68 and they were dismissed. As against the said orders of dismissal, the petitioner had filed writ appeals but after arguing for some time, the learned counsel appearing for the appellants did not press those writ appeals and they were accordingly dismissed. As per the revised return filed by Ammi Reddy, the managing partner of the firm,

the petitioner, received a sum of Rs. 59,747 towards his share, but had returned only an income of Rs. 24,637. It is on the basis of these facts the Income Tax Officer considered that there was reason for him to believe that income chargeable to tax had escaped assessment in the hands of the petitioner. The notice issued by him was valid and cannot be quashed.

6. We have heard the arguments of the learned counsel for the petitioner and also of the standing counsel, Sri P. Rama Rao, at some length.

7. The learned counsel, Sri Dasaratharama Reddy, appearing for the petitioner raised the following four contentions :--(1) Since the notice dated December 11, 1970, issued by the Income Tax Officer to reopen the petitioner's assessment for the year 1965-66, did not disclose the sub-section of Section 147, under which it was issued, the petitioner's case is that this case falls u/s 147 and, therefore, the notice, dated December 11, 1970, served on him was barred by time, as it was issued after four years from the end of the relevant assessment year. It was bad in law. (2) If the said notice has been issued u/s 147, then the petitioner's objection is that the Income Tax Officer did not record his reasons in writing for his proposal to reopen the assessment. The Commissioner of Income Tax did not apply his mind in giving his sanction. The notice is, therefore, void and bad in law. (3) The only material on the basis of which the assessment of the petitioner was sought to be reopened was that the firm had concealed its income, which was chargeable to tax. Since the firm and the individual partners are different and distinct taxable entities, concealment of income by the firm would not justify the reopening of the assessment of the individual partners. Concealment of income by the firm justifies reopening of the assessment of the firm and not the assessment of the individual partners. (4) After reopening the assessment of the firm and after completion of the reassessment against the firm, the Income Tax Officer can amend the assessment of the individual partners u/s 155 of the Income Tax Act, 1961. Section 155, being a special provision, would prevail over Section 147, which is a general provision. The Income Tax Officer had, therefore, no jurisdiction to reopen the assessment u/s 147 of the Act. In support of the above propositions the learned counsel relied upon the decisions in Chhugamal Rajpal Vs. S.P. Chaliha and Others, and Girdhardas Kothari Vs. Income Tax Officer, "A" Ward and Others, .

8. The learned counsel appearing for the revenue on the other hand contended that the Income Tax Officer had gathered sufficient material to show that the firm had concealed income chargeable to tax which was relevant for the assessment year 1965-66. The Income Tax Officer had recorded his reasons in writing for the proposed reopening of the assessment of the petitioner. The Commissioner of Income Tax did apply his mind to the reasons recorded by the Income Tax Officer and had accordingly sanctioned issue of notice. The case does not fall under Clause (b) of Section 147, because income chargeable to tax had escaped assessment by reason of the assessee's failure to disclose true and correct income of the relevant assessment year. The Income Tax Officer is

entitled to reopen the assessment u/s 147 in the above-said circumstances and may have also power to modify the assessment of the petitioner u/s 155 of the Act. Sections 147 and 155 of the Act are not mutually exclusive. In the circumstances of the case, the Income Tax Officer could reopen the assessment u/s 147 and bring the escaped income to tax. It is not within the province of the assessee to question the validity of the notice issued by the Income Tax Officer u/s 148 on the ground that he could have taken action u/s 155, without reopening the assessment u/s 147 of the Act.

9. Income may escape assessment in one of two ways. It may escape assessment by reason of the default on the part of the assessee in filing the return of income or on account of omission or failure on his part to fully and truly disclose all the particulars of the income necessary for making the assessment. Income may also escape assessment for other reasons, which may not be attributable to the assessee. In other words, escapement, of income may also be due to the inadvertence and carelessness of or mistaken view of law taken by the Income Tax Officer. In both the cases the law empowers the Income Tax Officer to reassess or recompute the said income u/s 147, if he has reason to believe that the escapement of the income was due to the assessee's default or u/s 147 if in consequence of the information in his possession, he has reason to believe that income chargeable to tax had escaped assessment. The Income Tax Officer cannot, however, proceed to reassess such income, unless he has : (1) recorded the reasons in writing for the issue of such notice, and (2) has served a notice on the assessee u/s 148 within the time limited, laid down by Section 149.

10. The notice contemplated u/s 148 of the Act has to be issued within 8 years, or 16 years, as the case may be, from the end of the assessment year, depending upon the amount of escaped income is less or more than Rs. 50,000 if that escapement of income was due to the default of the assessee, or within four years from the end of the assessment year, if the escapement of income was due to a reason not attributable to the assessee. Such notice u/s 148 shall not be issued : (1) after expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income Tax Officer, that it is a fit case for the issue of such a notice, or (2) after the expiry of four years, unless the Commissioner of Income Tax is satisfied for the reasons recorded by the Income Tax Officer that it is a fit case for the issue of such a notice.

11. The notice u/s 148 in this case has been issued on December 11, 1970, i.e., long after the expiry of four years of the end of the assessment year 1965-66. The learned counsel, Sri Dasaratharama Reddy, appearing for the petitioner, feebly contended that the case for reopening his assessment fell u/s 147 and that the notice issued after expiry of four years was bad. However, after some time, the learned counsel had to and did concede that there was no substance in that argument and that the case rightly fell u/s 147 of the Act.

12. In the present case, the Income Tax Officer has recorded his reasons in

writing for the issue of notice u/s 148. The Commissioner of Income Tax has also sanctioned the issue of notice. The contention of the learned counsel appearing for the petitioner, that the Income Tax Officer did not record his reasons in writing for the issue of notice u/s 148, is factually incorrect. We have ourselves seen the reasons recorded by the Income Tax Officer, so also the learned counsel. The further contention of the learned counsel was that the Commissioner of Income Tax did not apply his mind in sanctioning the issue of notice and merely noting "yes" at the end of the report, does not establish that the Commissioner of Income Tax had duly applied his mind to the reasons recorded by the Income Tax Officer for justifying issue of notice. In support of the above contention the learned counsel invited our attention to the decision of the Supreme Court in *Chkugamal Raj pal v. S. P. Chaliha*. In that case the Income Tax Officer had recorded that during the year the assessee had shown to have taken loans from various parties at Calcutta. From a letter received by him from the office of the Commissioner of Income Tax, it is found that those persons, from whom the assessee had alleged to have taken loans, were name-lenders and the transactions were bogus. Hence proper investigation regarding those loans was necessary. On the basis of that report the Commissioner of Income Tax merely noted " yes " and commenting upon those reasons, the Supreme Court observed :

"That the Income Tax Officer had not even come to a prima facie conclusion that the loan transactions to which he referred were not genuine transactions; he appeared to have had only a vague feeling that they might be bogus transactions. Such a conclusion did not fulfil the requirement of Section 151(2)151(2). What that provision requires is that he must have given reasons for issue of notice u/s 148. In other words he must have some prima facie grounds before him for taking action u/s 148."

13. Since the report mentioned that proper investigation regarding the loans was necessary, the Income Tax Officer's conclusion was that it was a case fit for investigation as to the truth of the alleged transactions and it was not the same thing as saying that there were reasons to issue notice u/s 148. The Supreme Court, therefore, quashed the notice.

14. In the present case, the Income Tax Officer came to the conclusion that the income chargeable to tax had been concealed by the firm of which the assessee was a partner. His conclusion also gained support by the fact that the managing partner of the firm filed a return declaring an income of Rs. 7,46,850 as against, the original income of Rs. 3,07,960. On the basis of those reasons, even a layman, who did not know Income Tax law, would not have hesitated to sanction issue of notice. By noting "yes" the Commissioner of Income Tax could not, therefore, be considered to have sanctioned the notice without applying his mind. We are satisfied in this case that the Commissioner of Income Tax after due application of his mind considered that it was a fit case for the issue of notice u/s 148 of the Act.

15. The next question that arises for consideration is whether the concealment of income by the firm provides a justifiable ground for reopening the assessment of the individual partners. In this connection the learned counsel relied upon the decision of the learned single judge, T. K. Basu J., of the Calcutta High Court in *Girdhardas Kothari v. Income Tax, Officer*. The learned judge held that "non-disclosure of certain receipts by an unregistered firm does not justify reopening of the assessment of the individual partners".

16. Assessment includes three steps: (1) Computation of income, (2) Registration of tax, and (3) Demand for the tax found due.

17. Registration of a firm does not make any difference in the first step. In the case of an unregistered firm, the tax payable by the firm itself is determined as in the case of any other entity and tax in respect thereof is levied on the firm itself. When the firm is registered, Income Tax at special low rates is assessable on the registered firm. The partners of a registered firm are liable to be taxed in their individual assessment, in respect of their shares from the profits of the registered firm. Tax is not payable by a partner of an unregistered firm in respect of his share in the profits of the firm of which tax is payable by the firm, although such share is to be included in his total income for the purpose of determining the rate applicable to his taxable income. However, u/s 183(b) of the Income Tax Act, 1961, the Income Tax Officer may assess the partners of an unregistered firm in respect of their shares of the firm's profits, instead of assessing the unregistered firm as a unit of assessment, if such a course would be more advantageous to the revenue.

18. u/s 141(3) of the Act, a partner of a firm can be assessed on his share from the firm, if the firm's return is received, even though the individual return of the partner has not been received. Thus, whether the firm is registered or not, the basis on which the assessments of the individual partners are made is the income of the firm. It is, therefore, manifest that concealment of income by the firm would amount to concealment of income by the partners. Therefore, the objection of the petitioner that concealment of income by the firm did not justify reopening of his assessment is untenable. No doubt, the learned single judge of the Calcutta High Court has taken a view in *Girdhardas Kothari v. Income Tax Officer*, that concealment of income by an unregistered firm did not justify the reopening of the assessment of the individual partners. It is unfortunate that the attention of the learned judge has not been drawn to a decision of the Division Bench of the same court in *Indra Singh and Sons Private Ltd. Vs. Union of India (UOI)* and *Another*, which took a contrary view. It cannot, therefore, be stated that the decision relied upon by the petitioner lays down a good law. We are, however, of the opinion that the decision of the learned single judge does not hold good in view of the fact that the basis of the assessment of the individual partners is the income of the firm. We, therefore, find no force in the contention raised by the learned counsel.

19. Thus, we find that in the instant case the Income Tax Officer had valid

reasons for believing that the income chargeable to tax had escaped assessment in the hands of the petitioner. He had recorded his reasons in writing on the basis of which he, prima facie, came to the conclusion that the income chargeable to tax had escaped assessment in the hands of the petitioner. The Commissioner of Income Tax had after due consideration of those reasons sanctioned issue of notice.

20. The last contention that now remains to be disposed of is that when the Income Tax Officer, u/s 155 of the Act, can amend the completed assessment of the individual partners in pursuance of the reassessment of the firm, there is no necessity for reopening the assessment of the individual partners u/s 147. In support of this argument, the learned counsel submitted that Section 155 is a special provision and Section 147, a general provision, and when both the sections are applicable to the facts of a given case, the special provision must prevail over the general provision.

21. We do not find any merit in this argument. The arguments advanced by the learned counsel that Section 155 is a special provision and Section 147, a general provision, and that when both the sections are applicable to a given case, the special provision would prevail over the general provision, is not supported by any authority. u/s 155 wherein in respect of a completed assessment of any individual partner it is found that on reassessment of the firm, the share income of the partner as originally assessed is not correct, according to the share income of the firm as reassessed, it would be open to the Income Tax Officer to amend the assessment of the individual partners u/s 155 and in such a case Section 154 of the Act would apply.

22. It is now well settled that in cases where reassessment u/s 147, or rectification u/s 154, are both equally competent, the department may take action under either section, since the two sections are not mutually exclusive. If any authorities are required for this proposition, we find them in The Commissioner of Income Tax Vs. D.R. Naik, and P.C. Doshi and Another Vs. 7th Income Tax Officer, C-I Ward, Bombay, .

23. Even for the amendment of the assessments of the individual partners as a consequence of the reassessment of the firm, it could be done only u/s 154 read with Section 155 and Sections 154 and 147 are not mutually exclusive. It is open to the Income Tax Officer to take action under any of those two sections. It is not within the province of the assessee in such a case to question the action of the Income Tax Officer, taken under one section, on the ground that he could have taken the action under the other section.

24. Moreover, from the allegations made in the counter-affidavit, it appears that the assessee had other individual incomes which escaped assessment. If that is so, for the assessment year 1965-66, they could not have been brought to assessment by modification of the assessment u/s 155 of the Act. They could only be brought under assessment if the assessment is reopened u/s 147 of the

Act. It is also well-settled now that when an assessment is reopened u/s 147, the Income Tax Officer can add items of income which had escaped assessment other than those, or in addition to, the item which led to the issue of notice u/s 148. Therefore, the reopening of the assessment u/s 147, in this case, is more appropriate than the modification of the assessment u/s 155 of the Act.

25. In the result all the contentions raised by the petitioner are devoid of merit and are accordingly rejected. Interim stay already granted is hereby vacated. The writ petition fails and is dismissed with costs.

26. Advocate's fee is Rs. 250.