

**(1975) 08 CAL CK 0010**  
**In the Calcutta High Court**  
**Case No : C.R. No. 1228 (W) of 1973**

Ganesh Chandra Khan

APPELLANT

Vs

Income Tax Officer, "A" Ward and Another

RESPONDENT

**Date of Decision :** 11-08-1975

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Income Tax Act, 1961 — Section 147, 148

**Citation :** (1978) 111 ITR 934

**Hon'ble Judges :** Sabyasachi Mukharji, J

**Bench :** Single Bench

**Advocate :** Sanjay Bhattacharyya and Aparna Dutta, for the Appellant; Nanda Lal Pal, for the Respondent

## Judgement

Sabyasachi Mukharji, J.—The petitioner, Shri Ganesh Chandra Khan, in this application under article 226 of the Constitution, challenges three notices all dated 25th of May, 1971, issued u/s 148 of the Income Tax Act, 1961, by the Income Tax Officer, "A" Ward, Hooghly, for the assessment years 1963-64, 1964-65 and 1965-66. It is the case of the petitioner that the petitioner No. 1 is one of the trustees of the separated trust of one Jogendra Chandra Khan. The other trustee is Smt. Annapurna Khan, wife of the petitioner. The petitioner states that the petitioner is the sole beneficiary of the said trust. For the assessment year 1963-64, the petitioner filed a return showing an income of Rs. 9,617. The Income Tax Officer, however, computed the total income of the petitioner at a sum of Rs. 15,038 of which the house property income was computed at Rs. 11,582. The immovable properties which were subjected to tax included one house property being premises No. 9/1, Gariahat Road, P. S. Ballygunge, District 24-Parganas. It is this property which has led to the controversy in this proceeding. For the assessment years 1964-65 and 1965-66, the total income of the petitioner was assessed at Rs. 30,085 and Rs. 35,334, respectively. Out of the aforesaid total income the house property income was computed at Rs. 11,854 and Rs. 11,969, respectively. The aforesaid premises

being premises No. 9/1, Gariahat Road, referred to hereinbefore, was under the occupation of the Government of India, since 16th of October, 1963, on a monthly rental of Rs. 400. The same was subsequently increased to Rs. 484. It is stated in the petition that the petitioner had requested for enhancement of the rent. The Government, however, refused to enhance the rent on the ground that Rs. 484 was the amount which was fixed as the standard rent as per provisions of the West Bengal Rent Control Act. In the premises according to the Government, the petitioner was not entitled to any enhanced rent. The petitioner, thereafter, served a notice dated 25th August, 1962, on the Government of India for vacating the premises on the ground that the petitioner wanted the said building for personal use. Thereafter, it appears the Government initiated proceeding for requisitioning the building under the Requisitioning and Acquisition of Immovable Property Act, 1952. Under the provision of the said Act, the Government requisitioned the building and, thereafter, on the 11th November, 1965, the petitioner and his wife entered into an agreement with the Government whereunder there was an agreement for payment of compensation of Rs. 2,128. Prior to entering into of the said agreement, the First Land Acquisition Collector, Calcutta, by a memorandum dated 21st of September, 1965, had informed the petitioner and his wife that the rent-compensation in respect of the said building which had been requisitioned under the said Act and possession thereof were taken on the 29th of December, 1962, had been fixed at Rs. 2,128 per month inclusive of taxes and cost of the repairs. Following the aforesaid award the agreement referred to hereinbefore was entered into. It appears that in the regular assessment for the assessment year 1968-69, the aforesaid compensation had been taken as gross rental and was assessed as such. The petitioner preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner for the assessment year 1968-69, by his order dated 2nd February, 1973, held that the amount paid as compensation for that year was revenue receipt but it could not be taxed under the head "House Property" assessed as such. According to the Appellate Assistant Commissioner the said income was assessable under "other sources" and the assessment was, therefore, set aside with a direction to the Income Tax Officer to compute the income under the head "other sources". I was told from the Bar that the Income Tax Appellate Tribunal, by its order dated 3rd August, 1974, has held that the compensation amount, apart from Rs. 484, should be excluded from tax altogether for the assessment year 1968-69. Counsel for the petitioner drew my attention to a copy of the judgment of the Income Tax Tribunal in Income Tax Appeal No. 796 (Cal) of 1973-74 and Income Tax Appeal No. 1720(Cal) of 1973-74. Thereafter, it is stated from the Bar that a reference application was made and the said reference is pending in this court.

2. In the reasons for reopening for three years with which I am concerned and which were produced before me, the Income Tax Officer has stated as follows:

"I have reasons to believe that by reason of omission or failure on the part of the assessee to disclose fully or truly the material facts necessary for the original

assessment, the income from house property situated at No. 9/1, Gariahat Road, Calcutta, amounting to Rs. 41,966 has escaped assessment."

3. Therefore, action was proposed under Clause (a) of Section 147 of the Income Tax Act, 1961. The reasons for the three years were identical.

4. As mentioned hereinbefore, the petitioner challenges the said notices u/s 148 of the Income Tax Act, 1961, for the aforesaid assessment year. The main ground of challenge of the petitioner is that at the relevant time when the petitioner made the return for the three assessment years the amount of compensation had not been determined. Therefore, it was urged that the petitioner could not be made liable for non-disclosure or failure of anything which happened subsequently and in respect of which the petitioner was not aware at the time of the filing of the return. It is not in dispute that the returns for the three relevant assessment years were filed prior to 11th of November, 1965, or 21st of September, 1965. The assessment for the assessment year 1963-64 was made by one Shri A. N. Banerjee, Income Tax Officer, "A" Ward, Hooghly, on the 30th of September, 1963. The assessment for the assessment year 1964-65 was made by the same Income Tax Officer on the 9th of September, 1964. The assessment for the assessment year 1965-66 was done by one Shri S. Banerjee, Income Tax Officer, "A" Ward, Hooghly, on the 24th of February, 1970. Therefore, the assessments for the first two years were completed prior to the date when enhanced compensation in respect of the said house property was agreed upon. The petitioner in paragraph 11-A of the petition has stated that, in respect of the assessment years 1965-66 and 1966-67, the original Income Tax Officer issued a combined notice dated 20th of January, 1970, for hearing and in response to the said notice the petitioner duly appeared along with his learned advocate before the Income Tax Officer and produced and submitted copies of all documents including the aforesaid agreement dated 11th November, 1965, relating to compensation. It is the case of the petitioner that the assessing Income Tax Officer was satisfied that the amount was not liable to assessment. The said Income Tax Officer, thereafter, had taken the fair rental value at Rs. 484 per month and had assessed as such the said amount in the assessment year 1965-66 as income from house property. But the said Income Tax Officer did not make the assessment for the assessment year 1966-67. In the affidavit-in-opposition, filed and affirmed by one Shri Prabodh Chandra Banerjee, on the 22nd January, 1974, it has been stated that he was the Income Tax Officer at the material time and was posted as Income Tax Officer, "A" Ward, Hooghly. In paragraph 4, he had stated that the premises at No. 9/1, Gariahat Road, Calcutta, had been let out to the Government of India, at a rent of Rs. 484 per month. He has set out the history mentioned hereinbefore that, thereafter, as per memorandum of agreement dated November 11, 1965, the property was requisitioned with effect from December 29, 1962, and it was settled that the Government would pay a sum of Rs. 2,128 per month in full settlement of the compensation. It is further stated that the fact of the increase in rent was noticed by the Income Tax Officer at the time of the assessment for the

assessment year 1966-67 and as such he had included the same for the said assessment year as income from house property. He has further stated that it was noticed by him that the previous assessments for the assessment years 1963-64 to 1965-66 were completed taking the rent at the rate of Rs. 484 per month instead of Rs. 2,128 per month. Therefore, he had duly initiated proceedings u/s 147(a) of the Income Tax Act, 1961. Dealing with the allegations made in paragraph 11-A of the petition as mentioned hereinbefore the said deponent had stated that separate notices dated 6th January, 1970, were duly issued fixing the case on 20th January, 1970, for both the assessment years in question. But according to the deponent on an application for adjournment made by the assessee the cases were fixed for hearing on February 18, 1970. Hearing for the assessment year 1966-67 was adjourned till 24th of February, 1970, with the request to the assessee to file a copy of the requisition deed. On the 24th February, 1970, according to the deponent, the case for the assessment year 1965-66 was heard and the assessment order was passed on that date accepting the rental income at Rs. 484 per month as disclosed in the return. According to the deponent there was nothing in the record to show that the requisition deed was filed on that date and the Income Tax Officer concerned had accepted the fair rent at Rs. 484 instead of Rs. 2,128 per month as contended.

5. It is well settled that when a challenge has been thrown, the Income Tax Officer must satisfy the court that conditions precedent for the initiation of the proceeding under Clause (a) of Section 147 of the Income Tax Act were fulfilled. The conditions are well settled. There must be omission or failure on the part of the assessee to disclose fully or truly all relevant or material facts at the time of the original assessment. It appears to me that prior to 11th November, 1965, or 21st September, 1965, the petitioner was not aware of the compensation money being payable at the rate of Rs. 2,128. Therefore, the petitioner cannot be held guilty of any failure or omission to disclose any material facts. So far as the assessment for the assessment years 1963-64 or 1964-65 it is not in dispute that the returns were filed and the assessments had been made prior to 21st September, 1965. For these two years at least the petitioner could not be held guilty of any omission or failure to disclose any material or relevant facts. It is not in dispute that for these two years the petitioner had disclosed that the property was under requisition and compensation award was pending. So far as the assessment year 1965-66 is concerned it appears that the petitioner has made a statement which is true to his knowledge that the agreement dated 11th November, 1965, had been produced. The assessing income tax Officer has not filed any affidavit controverting this point. In that view of the matter the statement made by the petitioner has to be accepted. If that is the position, then it cannot be said that there was any omission or failure on the part of the assessee to disclose any material or relevant facts at the time of the original assessment. The notices u/s 148 relating to the said three assessment years are liable to be quashed on this ground.

6. Counsel for the petitioner drew my attention to several decisions in aid of the

argument that where the system of accounting followed by the assessee was cash, the year of receipt was the year which should be considered to be the appropriate year for taxing the receipt if it was otherwise taxable." He drew my attention to the decision of the Supreme Court in the case of *The Commissioner of Income Tax, Madras Vs. A. Gajapathy Naidu*, . Reliance was also placed on the decision of the Andhra Pradesh High Court in the case of *Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax*, , where the Division Bench of the Andhra Pradesh High Court held that when the land was taken over by the Government under the Land Acquisition Act, the right of the owner to compensation was an inchoate right till the compensation was actually determined and had become payable. But once it became payable, the determination "of the. question whether it was actually received or deemed to have been received might depend upon the method of accounting adopted by the assessee. But before the right to receive a particular amount as income "accrued, no charge could be levied under the Income Tax Act on that amount in any year anterior to the one in which it was receivable. It was held that the enhanced compensation accrued to the assessee only when the court accepted the claim and not when the land was taken over by the Government. The Division Bench further observed that to hold otherwise entitling the Income Tax Officer to reopen, notwithstanding any limitation prescribed in the Act, an assessment and recompute the entire income on the basis of final compensation as determined by the fast appellate court, was not warranted under the Act. Reference was also made to the decision in the case of *Commissioner of Income Tax, Bombay City Vs. Chunilal and Mehta and Sons P. Ltd.*, . But in this case there is another aspect of the matter, viz., that the income from house property has to be taxed by virtue of Section 22 of the Income Tax Act, 1961, which provides that the annual value of a property consisting of any land or building shall be chargeable to Income Tax under the heading "Income from house property" and Section 23 of the said Act provides how the annual value has to be determined. For the purpose of Section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year. Therefore, what is the reasonably expected letting value is deemed to be the income from the house property by virtue of Section 23 of the Income Tax Act, 1961. If that is so then the method of accounting followed by the assessee is not relevant or germane. In the case of *Sultan Brothers (P) Ltd. Vs. Commissioner of Income Tax*, , the Supreme Court has held that u/s 9 of the Indian Income Tax Act, 1922, which was the corresponding section of the relevant section of the present Act, the owner of the building was liable to tax not on the actual income received from it but on its annual value, irrespective of whether he has let it out or not. The Supreme Court further held that the income under consideration was taxable u/s 9 or u/s 10 and should not be taxed u/s 12 of the Indian Income Tax Act, 1922. Counsel also drew my attention to the decision in the case of *Nalnikant Ambalal Mody Vs. Commissioner of Income Tax, Bombay*, . In this case, if the compensation received by virtue of the agreement dated 11th November, 1975, is taxable as income from the house property then

the same should be taxed on the annual letting value of the property. If that is the position then annual letting value must be on the basis of what is reasonably expected to be the letting value. In the case of *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, , the Supreme Court had to consider the gross annual rent at which the building might reasonably be expected to let under the provision of the Calcutta Municipal Act, 1923. The Supreme Court observed that the word "reasonably" in Clause (a) of Section 127 of the said Act was not capable of precise definition. It was a question of fact but on a combined reading of the provisions of the Act and the Rent Control Act left no room for doubt that a contract for a rent at a rate higher than the standard rent was not only not enforceable but also the landlord would be committing an offence if he collected a rent above the standard rent. Therefore, in this case if anything in excess of Rs. 484 was being realised by the assessee as the rent the same would not be the reasonable letting value of the property and should not be computed as income from house property as such. More or less the same view was reiterated by the Supreme Court in the case of *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, . As mentioned hereinabove in the relevant assessment year there was a statutory rent of Rs. 484. Therefore, the petitioner was not entitled under the law to realise anything in excess of Rs. 484 as letting value of the said premises as it would be contrary to law or excess of standard rent. Counsel also drew my attention to the relevant provisions of Sub-section (2) of Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952. It appears that the amount of compensation is paid on various counts and not only as a recurring payment of a sum equal to rent. I am, however, in this application not concerned with the question whether the amount of compensation paid could be assessed as income from other sources. It appears that the Income Tax Officer proceeded on the basis that income from the house property has escaped assessment. For that, in my opinion, there was no material or legal material for the Income Tax Officer to form the belief. On this ground also the notices in question are liable to be quashed.

7. Counsel for the petitioner further contended that the agreement for compensation was an agreement with the trustees of the properties. Notice u/s 148 had been issued to the petitioner in his individual capacity. The receipt of the money by the petitioner in his individual capacity has resulted from the compensation award. Therefore, I am of the opinion that in this application under article 226 of the Constitution the petitioner is not in a position to seek any assistance on this point.

8. Counsel for the revenue drew my attention to a decision in the case of *Lalji Haridas Vs. Income Tax Officer and Another*, in aid of his argument that whether the reopening was under Clause (a) or (b) of the section of the Act was a question of limitation and as such should be left for determination by the Income Tax Officer concerned. This question does not really arise because it is the case of the revenue that the reopening was done under Clause (a) of Section 147 of the Income Tax Act. Counsel also drew my attention to a decision in the case of

Commissioner of Income Tax, Poona Vs. Manna Ramji and Co., . As I am not concerned with the question whether the income, if any, was a capital receipt or a revenue receipt this case is also not of any assistance to him.

9. In the view I have taken, the notices for the assessment years 1963-64, 1964-65 and 1965-66, issued u/s 148 of the Income Tax Act, 1961, and all dated 25th of May, 1971, are hereby quashed and the respondents are restrained from proceeding in pursuance of the said notices. The rule is made absolute to the extent indicated above. If the respondents have already made the assessments pursuant to the said notices the said assessments are also set aside. There will be no order as to costs in this application. There will be a stay of operation of this order for six weeks from to-day.