

(1994) 09 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 819 of 1985

Govind Ballabh Parikh

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 05-09-1994

Acts Referred:

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

Citation : (1995) 214 ITR 519 : (1995) 2 WLC 490

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : S.M. Mehta, for the Appellant;

Judgement

Arun Madan, J.—By this petition filed under Articles 226 and 227 of the Constitution of India, in the matter of notice dated February 6, 1985, served on the petitioner u/s 148 of the Income Tax Act, 1961 (for short, "the Act"), for the assessment year 1980-81, the petitioner has challenged the impugned notice on the ground that no reasons have been disclosed by the assessing authority as to what was the basis on which the notice was sent to the petitioner and in the absence of disclosure of reasons, the petitioner was not bound by the notice. Shri Mehta, learned counsel for the petitioner, has contended that for the assessment year 1980-81, the late Shri Balkishan Pareek, advocate, submitted his return disclosing income from property, income from profession and income from other sources well within time. The assessment of the petitioner was completed on January 12, 1981, on a sum of Rs. 14,115 as per return and a sum of Rs. 510 was refunded to the assessee on July 19, 1980, as excess advance tax. which was paid. The original assessment order dated January 12, 1981, has been referred to as annexure 1 to the writ petition.

2. On February 6, 1985, the non-petitioner issued notice mentioning therein that he has reasons to believe that income chargeable to tax for the assessment year 1980-81 had escaped assessment within the meaning of Section 148 of the Act,

and it is proposed to "reassess the income and that the petitioner was further required to file the challan in the prescribed form within 30 days from the date of the receipt of the notice for the assessment year in question. The petitioner received the said notice on February 12, 1985, vide annexure 2.

3. Soon after the receipt of the aforesaid notice, the petitioner through his authorised representative/chartered accountant submitted a detailed reply to the respondent mentioning therein that the assessee had made a complete disclosure of the primary and material facts and that there was no omission or violation on the part of the assessee towards disclosure of his income for the assessment year in question. In paragraph 4 of the said reply, the assessee declared that the income from property was declared up to January 21, 1980, and after that, the property has been put into partnership firm. The petitioner also filed the copy of the accounts of the partnership firm as well as the deed of partnership firm which was given to the assessing authority. In paragraph 5 of the reply, the assessee further mentioned that there cannot be any reasonable belief for the respondent to arrive at a conclusion that the property has been transferred, on account of which income chargeable to Income Tax has escaped assessment. It was, therefore, contended on behalf of the assessee that for the reasons mentioned hereinabove, the notice issued by the respondent in pursuance of Section 147(b) read with Section 148 of the Act is bad in law, illegal and without jurisdiction and requested that the same being vacated. It was further mentioned on behalf of the assessee that he may kindly be intimated as to how there has been any concealment on his part when all the information which was relevant for the purpose of assessment to his knowledge had been voluntarily disclosed in the return and, hence, the question of any escapement of income chargeable to tax does not arise. The said reply on behalf of the assessee was duly submitted to the Revenue on February 13, 1985, vide annexure 3.

4. On February 25, 1985, the assessee through his counsel intimated the Revenue, vide letter annexure 4, that the impugned notice dated February 6, 1985, issued u/s 148 of the Act in respect of Shri B. K. Pareek, advocate, for the assessment year in question was without jurisdiction and it was further submitted that all material facts necessary for his assessment for the year in question had voluntarily been disclosed and the Revenue was, therefore, requested to reconsider the whole matter and drop the proceedings initiated against the assessee in pursuance of the impugned notice under due intimation to learned counsel failing which he will be compelled to move the High Court.

5. Notwithstanding the fact that notices were duly issued by this court and the rule was made returnable after due service of notice on the respondents, no reply was filed in this court on behalf of the Revenue. It obviously implies that since the averments of the petitioner having not been controverted by the respondent, they shall be deemed to have been admitted and can be fully relied upon by this court.

6. In support of his contentions reliance has been placed by Shri Mehta on the

judgment of the Calcutta High Court in the matter of Indra Co. Ltd. Vs. Income Tax Officer, In this case, the High Court of Calcutta held that it is the duty of the Revenue to make full disclosure of all reasons for issuing notice to the assessee under Sections 147 and 148 of the Act. It was further held as under (at page 566) :

"... that while it is not incumbent on the Income Tax Officer to disclose the reasons for issuing the notice at the time of issuing the notice, once the assessee challenges the existence or validity of such reasons in a proceeding under Article 226, the reasons should be disclosed at least in the affidavit-in-opposition."

7. Shri Mehta has also placed reliance on the decision of the apex court in the matter of Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle "B", Nagpur, in which the apex court has held as under (headnote) :

" Where, upon the issue of a notice u/s 34 of the Indian Income Tax Act, 1922, a claim is made in a writ petition that the Income Tax Officer had no power to issue the notice and that the power is exercised not for any legitimate purpose for which it may be used, but for the purpose of making a fishing enquiry and to review a previous order made in favour of the petitioner, a rule upon the Income Tax Officer to show cause why the notice should not be set aside and an opportunity to him either to accept or to deny the facts and to set out such other material facts as have a bearing on the question, is at least called for. When the party claiming relief challenges on oath the existence of the conditions which confer jurisdiction, and sets out facts which may, unless disproved, support his case, an order dismissing his petition in limine may not properly be made."

8. Shri Mehta has also placed reliance on the judgment of the apex court in the case of Madhya Pradesh Industries Ltd. Vs. The Income Tax Officer, Nagpur, in which the apex court has held as under (headnote) :

" that it was not possible to hold that the Income Tax Officer had any reason to form the necessary belief which was a condition precedent to his issuing the notice u/s 34(1)(a). He had no jurisdiction to issue the notice and the proceedings taken by him had to be quashed."

9. Keeping in view the facts and circumstances of the case and the submissions made by learned counsel and after perusing the relevant documents on record and the propositions of law laid down on the subject by the apex court, I am of the considered opinion that the learned Income Tax Officer had no justification for issuing the impugned notice dated February 6, 1985 (annexure 2) to the assessee for the assessment year 1980-81, since no reasons were disclosed by the Revenue for arriving at the conclusion that the amount was due from the assessee and in the absence of disclosure the notice dated February (5, 1985 (annexure 2), per se is illegal and is without jurisdiction and the same is hereby quashed and set aside. The writ petition is allowed as indicated above.