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**(2002) 04 DEL CK 0151**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 1741 of 1979 26 April 2002

Great Arts (P) Ltd.

APPELLANT

Vs

ITO

RESPONDENT

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**Date of Decision :** 24-04-2002

**Acts Referred:**

**Citation :** (2002) 175 CTR 121

**Hon'ble Judges :** S. Mukerjee, J

**Bench :** Division Bench

**Advocate :** None, for the assessed R.D. Jolly and Ajay Jha and Ms. Rashmi Chopra, for the Revenue, for the Appellant;

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## **Judgement**

S. Mukherjee, J.

By this writ petition the petitioner has challenged the validity of notice dated 27-3-1976, issued u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act), proposing to reassess the income of the petitioner for the assessment year 1967-68, on the ground that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act.

2. The petitioner has also challenged a communication dated 29-10-1979, issued by Income Tax Officer, Company Circle-XIV, vide which the said officer had conveyed that the reasons leading to the initiation of reassessment proceedings, were not required to be communicated by relying on the Supreme Court decision reported as S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore,

3. After show-cause notice was issued in the writ petition, the respondents filed a counter-affidavit to which has been annexed, as Annexure A, the statement of reasons recorded by the Income Tax Officer, Company Circle-XIV on the file, while requesting for permission of the competent authority for reopening the case for the assessment year 1967-68. The recorded reasons may be quoted for convenience of reference :

"Original assessment in this case was completed on 29-2-1968, at a total income of Rs. 1,05,912. During the course of this assessment, he claimed interest of Rs. 23,781.66 and was allowed by the then Income Tax Officer. Now I have come to know the following new fact :

That the interest of Rs. 23,781.66 includes the interest of Rs. 1,200 shown as paid to Shri Des Raj Sharma. Inspector has recorded his statement now and in that statement he has clearly stated that no interest was paid to him.

On account of this new fact I have reasons to believe that by reason of this omission or failure on the part of the assessed to disclose fully and truly all material facts for the assessment year 1967-68 income of Rs. 1,200 chargeable to tax has escaped assessment. I, Therefore, request that permission may kindly be given for reopening of the case for the assessment year 1967-68."

4. The respondents have also placed on record as Annexure B to the said counter-affidavit, the statement on oath of Shri Des Raj Sharma who has categorically denied the receipt of Rs. 1,200 or any other amount by way of interest from the petitioner- company. It is the case of the department that this statement, constituted the fresh material and information on the basis of which the Income Tax Officer formed the reasons to belief that income chargeable to tax had escaped assessment, warranting reopening of the assessment under sections 147 and 148 of the Act.

5. It is well-settled that under the extraordinary writ jurisdiction, interference is called for only in the event of there being any jurisdictional infirmity which goes to the root of the matter, and not otherwise. In this case the reasons recorded on the file by the Income Tax Officer, as well as the recorded statement of Shri Des Raj Sharma in respect of whom payment of interest at the rate of 12 per cent has been claimed by the petitioner in the report filed disowning categorically that he had not received any interest at all, most certainly constituted valid material for justifying formation of reason to believe that income chargeable to tax has escaped assessment. As such there is no invalidity or infirmity in the impugned notice u/s 148 of the Act.

6. As regards the impugned communication dated 29-10-1979, vide which the Income Tax Officer, relying upon (1967) 63 ITR 219 (SC) (supra), had conveyed that he was not required to communicate the reasons, said contention no longer survives for consideration since upon show-cause notice being issued, a counter has been filed by respondents placing on record the reasons and the statement of Shri Des Raj Sharma who had totally disowned the receipt of any payment by way of interest from the petitioner.

7. In the rejoinder filed by the petitioner, an attempt has been made to deny the statement of Shri Des Raj Sharma as recorded during the course of the enquiry. It is also contended by the petitioner, in the said rejoinder, that the statement of Shri Sharma cannot be treated as legal and admissible evidence, and rather is mere a scrap of paper.

8. At this stage, since the challenge is to the notice itself, all that has to be seen is whether there was any material is available on the record which could constitute the basis of formation of belief by the Income Tax Officer that income chargeable to tax has escaped assessment. Shri R.D. Jolly, learned senior standing counsel for the respondent has drawn my attention to INCOME TAX OFFICER Vs. SELECTED DALURBAND COAL CO. (P) LTD., where the notice issued u/s 147(a) of the Act, on the basis of letter of the Chief Mining Officer, had been quashed by the Calcutta High Court. However, on appeal to the Supreme Court, the judgment was reversed by the Apex Court holding that such information was relevant material on which a reasonable person could have formed the requisite belief. It was also observed that whether the facts stated in the letter were true or not, was not the concern at this initial stage, where only the reassessment notices were under challenge.

9. The Division Bench of this court in Rattan Gupta Vs. Union of India (UOI) and Others, following the above-mentioned judgment of the Supreme Court, held that at the stage of considering the validity of the notice of reassessment, the question is not whether what is stated in the information or the conclusion drawn, is true or not. The only question at this stage is about the relevancy of the material for formation of the requisite belief.

10. In the present case also there is a categorical statement of Shri Des Raj Sharma recorded by the Income Tax authorities, by which specific information came on record to the effect that interest had not been paid to the said Shri Des Raj Sharma. In fact Shri Des Raj Sharma has clearly stated that he had never lent any money to petitioner- company at all. In these circumstances, on the basis of material existing on the record of the respondents; it cannot be said that the notices for reopening of the assessment are invalid or without jurisdiction.

11. It needs to be mentioned that initially there was a stay of reassessment proceedings dated 8-1-1980, which was subsequently modified vide order dated 17-1-1980, with the direction that assessment may be completed, but demand if any, will not be enforced till further orders. It is, Therefore, clarified that as a result of dismissal of the writ petition, the stay against enforcement of demand, shall accordingly cease to be operative, and the respondent win be entitled to proceed in accordance with law in that behalf.

12. Writ petition is dismissed, but with no order as to costs.

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