

(1972) 05 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 886 of 1972

Hiralal Dewan Chand

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 10-05-1972

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (1974) 93 ITR 204

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Bhagirath Dass and S.K. Hirajee, for the Appellant; D.N. Awasthy, for the Respondent

Judgement

Bal Raj Tuli, J.—The petitioner-firm is registered under the Partnership Act and the Income Tax Act, 1961 (hereinafter called "the Act"). The firm's accounting year was from April 13, 1964, to April 1, 1965, which corresponded to the assessment year 1965-66. For that assessment year, the petitioner-firm returned an income of Rs. 2,02,229, and in support thereof produced its account books which showed its sales of shawls for that year at Rs. 15,77,570, yielding a gross profit of Rs. 2,16,502. The rate of profit worked out to 13.7 per cent. as against 13.4 per cent. for the preceding year. The Income Tax Officer noted that the sales had gone down as compared with the previous years but that the petitioner-firm had made much larger profit in the sale of wool-tops. The sale turn-over of wool-tops amounted to Rs. 2,05,927 on which the gross profit shown was Rs. 64,614. The Income Tax Officer accepted the trading accounts of the petitioner-firm after examining its books and did not doubt that the profits from the sale of wool-tops had been under-stated. The assessment order was made on August 31, 1966.

2. On January 2, 1969, the Inspecting Assistant Commissioner, Jamnagar, addressed a letter to the Inspecting Assistant Commissioner of Income Tax, Amritsar, and enclosed therewith a report of the Income Tax Officer, Jam-nagar,

who was processing the assessment of Messrs. Digvijay Woollen Mills, Jamnagar, and in that connection made investigations into the purchases made by it. The said Income Tax Officer had gone to Amritsar in connection with the investigation to examine certain parties and found that eleven bales of wool-tops imported under the licence of the petitioner-firm were sold by Tara Chand Dwarka Dass to Digvijay Woollen Mills on March 31, 1965. The Inspecting Assistant Commissioner of Amritsar was requested to make enquiries into the matter as it had come to the notice of the Income Tax Officer, Jamnagar, that the importers of wool-tops were indulging in concealment of their real profits by introducing bogus intermediaries for selling the wool-tops to the woollen mills. On January 27th 1969, the Inspecting Assistant Commissioner of Amritsar forwarded that letter along with the report of the Income Tax Officer, Jamnagar, to the Income Tax Officer, Amritsar, in charge of the assessment of the petitioner-firm to make further enquiries and take necessary action under the Act. The Income Tax Officer held enquiries into the matter and came to the conclusion that the petitioner-firm had reduced its profits on the sale of wool-tops by introducing bogus intermediaries. After examining the accounts of the petitioner-firm and those of Messrs. Tara Chand Dwarka Dass, the Income Tax Officer recorded the following reasons for initiating proceedings u/s 147 of the Act against the petitioner-firm on November 14, 1969:

"During the previous year relevant for the assessment year 1965-66, the assessee made sale of imported wool-tops and/or dyes. The sale was actually effected at considerable high rate of profit but it was manipulated and shown to have been made at nominal profit through the agency of one and/or two intermediaries. These intermediaries were created with a view to reduce the incidence of taxation. As such, I have reasons to believe that by adopting this device the assessee had failed to disclose fully and truly all material facts necessary for his assessment and, consequently, correct income chargeable to tax has escaped assessment. Notice u/s 148 should, therefore, be issued so that the escaped income be brought to proper taxation."

3. The reason for the belief of the Income Tax Officer that considerable high profits had been made but nominal profits had been shown in the account books by manipulation was based on the fact that Messrs. Tara Chand Dwarka Dass had sold the very same 11 bales of wool-tops at Rs. 18.37 per pound to Digvijay Woollen Mills on March 31, 1965, which the petitioner-firm sold at Rs. 9⁵⁰ per pound to Ramesh Woollen Mills on March 16, 1965.

4. After recording the reasons stated above, the Income Tax Officer issued notice u/s 148 of the Act to the petitioner-firm on November 14, 1969, reading as under :

"Whereas I have reason to believe that your income, in respect of which you are assessable, chargeable to tax for the assessment year 1965 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 ;

I, therefore, propose to reassess the income for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice a return in the prescribed form of your income in respect of which you are assessable for the said assessment year."

5. In reply to this notice, the petitioner-firm submitted its return on December 14, 1969, with a note that no income had escaped assessment and that the assessment had already been completed on the income of Rs. 2,12,042 on August 31, 1966. The Income Tax Officer, after receipt of the return from the petitioner-firm, started investigations into the matter and recorded the statements of the representatives of the petitioner-firm, Ramesh Woollen Mills and others believed to be involved in the racket. On January 1, 1971, the petitioner-firm received a letter from the Income Tax Officer informing it that efforts had been made to contact Messrs. Ganga Ram Aggarwal and Sons, Katra Ahluwalia, Amritsar, but without any success as no such party was traceable. The petitioner-firm was directed to appear before the Income Tax Officer on January 8, 1971, and to produce Messrs. Ganga Ram Aggarwal and Sons or their account books in order to enable him to complete the pending enquiries. In reply to this notice, the petitioner-firm informed the Income Tax Officer by letter dated January 4, 1971, that:

" We sold 11 bales of wool-tops to Ramesh Woollen Mills, O/S Chatiwind Gate, Amritsar, weighing 5,388 pounds on March 16, 1965. We have already appeared before yourself, and, further, Shri Roshan Lal Kadd of the above-captioned Ramesh Woollen Mills has also appeared before yourself with relative account books.

As such, we have to categorically state that we have no dealings with the firms of Messrs. Tara Chand Ashok Kumar, Bazar Bikanerian, Amritsar, nor with Messrs. Ganga Ram Aggarwal and Sons, Katra Ahluwalia, Amritsar, at any time in the past or at present. The question, therefore, of producing the party of Messrs. Ganga Ram Aggarwal and Sons or their account books does not arise, and all such queries may be addressed to Messrs. Tara Chand Ashok Kumar, who are alleged to have sold the goods to this firm."

6. On January 22, 1972, the petitioner-firm wrote a letter to the Income Tax Officer asking for the reasons which led him to issue notice u/s 148 of the Act for the assessment year 1965-66. In reply to this query, the Income Tax Officer informed the petitioner-firm by letter dated February 24, 1972, that:

"The assessment for the year in question was reopened u/s 148 after recording necessary reasons as required u/s 147 vide order-sheet entry dated November 14, 1969. The basis for reopening the assessment is that the then Income Tax Officer had reasons to believe that during the account year relevant to the assessment year in question, the sale of imported wool-tops/dyes was shown at under-stated figure by adopting one or more than one intermediaries with a view to suppress the actual profits. He had, accordingly, reasons to believe that you

failed to disclose fully and truly all material facts necessary for your assessment. It was in consequence thereof that your assessment was reopened holding that you had escaped assessment by omission to disclose fully and truly all material facts necessary for a correct assessment."

7. After receipt of that reply, the petitioner-firm filed the present petition challenging the issue of that notice on the ground that the petitioner-firm had not failed to fully and truly disclose all material facts for the assessment year 1965-66 and that the Income Tax Officer had no jurisdiction to issue that notice. The prayer for the quashing of that notice has been made. Written statement has been filed by the Income Tax Officer justifying the issue of the notice.

8. The notice u/s 148 of the Act was issued to the petitioner-firm on November 14, 1969, and was within time for reassessment both under Clause (a) and Clause (b) of Section 147 of the Act as it had been issued within four years from the end of the relevant assessment year. In the notice no mention was made either of Clause (a) or Clause (b) of Section 147 of the Act. Therefore, in pursuance of that notice, the assessment could be made by the Income Tax Officer under either of the two clauses. It is not disputed by the learned counsel for the petitioner that the notice was perfectly valid and within the jurisdiction of the Income Tax Officer under Clause (b) of Section 147, as the Income Tax Officer had obtained information after making the order of assessment with regard to that assessment year on the basis of which he had reason to believe that the income of the petitioner-firm chargeable to tax had escaped assessment. But he vehemently asserts that the Income Tax Officer had no jurisdiction under Clause (a) of Section 147, as the petitioner-firm had not failed to disclose fully all material facts necessary for its assessment for that year. The Income Tax Officer has also acted as if the notice was issued under Clause (a) and not under Clause (b) of Section 147 and reasons were also recorded for action being taken under Clause (a). It is further pertinent to note that if the Income Tax Officer had intended to reassess the petitioner-firm under Clause (b), the assessment order had to be made on or before the expiry of one year from the date of the service of the notice dated November 14, 1969, as is provided in Section 153(2)(b)(ii) of the Act. It has, therefore, to be determined whether the Income Tax Officer had the jurisdiction to issue the impugned notice under Clause (a) of Section 147 of the Act and can continue reassessment proceedings under that Clause pursuant to that notice.

9. The petitioner-firm produced its account books before the Income Tax Officer during the assessment proceedings which culminated on August 31, 1966, and in those books appeared an account of wool-tops, an extract of which has been filed as annexure "A" to the writ petition. This extract shows that 22 bales containing 10,434 pounds of wool-tops were sold to G.M. Worsteds at Rs. 9.75 per pound and 11 bales containing 5,301 pounds of wool-tops were sold to Sehgal Weaving Factory at Rs. 10 per pound. These bales had been received by the petitioner under railway receipts dated October 29, 1964, The account of these

bales was at page 235 while the account of the 11 bales sold to Messrs. Ramesh Woollen Mills was at page 298 which shows that wool-tops of the value of Rs. 51,186 were sold to Ramesh Woollen Mills at Rs. 9.50 per pound which had been received under railway receipt dated February 23, 1965. No other entry with regard to the receipt or sale of wool-tops was contained in the account books of the petitioner-firm. The Income Tax Officer looked through the accounts and accepted the same on the sole ground that a profit of Rs. 64,614 had been shown on a sale turnover of Rs. 2,05,927.50, which was fairly high. There was nothing in the accounts to make him suspect that the sale price shown was far below the market price. That fact came to his notice when the Income Tax Officer, Jamnagar, made a report that the sale of those very 11 bales of wool-tops, alleged to have been purchased by Ramesh Woollen Mills from the petitioner-firm, had been ultimately made to Digvijay Woollen Mills at Rs. 18"37 per pound on March 31, 1965, that is within 15 days of the sale made by the petitioner-firm in favour of Ramesh Woollen Mills. After obtaining this information, the Income Tax Officer made further enquiries and came to the conclusion that certain intermediaries had been introduced which were bogus. During the course of the enquiries, it was revealed that Ramesh Woollen Mills sold the wool-tops purchased from the petitioner to Messrs. Tara Chand Ashok Kumar, who sold to Messrs. Ganga Ram and Sons. The latter firm further sold the same wool-tops in favour of Tara Chand Dwarka Dass who ultimately sold them to Digvijay Woollen Mills. There was no trace of the firm, Ganga Ram Aggarwal and Sons. There was, thus, sufficient material on the record for the Income Tax Officer to believe that income of the petitioner-firm chargeable to tax had escaped assessment. The only question to be answered is whether the escapement was due to the failure of the petitioner-firm to disclose fully and truly all material facts for assessment of the entire profits earned from the sale of wool-tops. In my opinion it was the duty of the petitioner-firm, while disclosing that it had sold the wool-tops to Ramesh Woollen Mills at Rs. 9.50 per pound, to further disclose that the market rate was much higher but for certain reasons the sale in favour of Ramesh Woollen Mills had been made at a lower rate leaving the Income Tax Officer to enquire into the matter and to find out whether the explanation for sale at a lower price than the market price was really genuine. It cannot, therefore, be said that by disclosing the import of the bales of the wool-tops and their sale to various parties including Ramesh Woollen Mills the petitioner-firm fully and truly disclosed all the material facts. The Income Tax Officer had to assess the income of the petitioner-firm from the sale of wool-tops and it could be assessed only on the basis of the sale price actually received. It must have been within the knowledge of the petitioner-firm that the market price of wool-tops on March 16, 1965, was far higher than Rs. 9.50 per pound and it was further within its particular knowledge why the sale was made by it at a lower rate to Ramesh Woollen Mills. The petitioner-firm ought to have brought the market rate of wool-tops on that date to the notice of the Income Tax Officer in order to enable him to make the proper assessment. If then he had accepted the reasons of the petitioner-firm for selling the wool-tops in favour of Ramesh

Woollen Mills at lower rate than the market rate it could have pleaded that the Income Tax Officer had no jurisdiction to say that the petitioner-firm had failed to fully and truly disclose all material facts. In this case, therefore, all the material facts for the assessment of the true income of the petitioner-firm from the sale of the wool-tops to Ramesh Woollen Mills were not fully and truly disclosed by it to the Income Tax Officer who was within his jurisdiction to issue the impugned notice and take proceedings for reassessment as he has done.

10. Strong reliance has been placed by the learned counsel for the petitioner-firm on my judgment in Civil Writ No. 1398 of 1971, Karam Chand Kakkar Vs. Income Tax Officer and Another, , decided on October 22, 1971, an appeal under Clause 10 of the Letters Patent against which was dismissed in limine by a Division Bench. But that judgment is distinguishable on facts and does not cover the present case. In that case, the assessee had filed its balance-sheet along with the return showing the correct entries in the names of various firms. The Income Tax Officer issued notice u/s 143(2) of the Act for appearance before him and asked the assessee to prove the cash credits which appeared in its balance-sheet and file the account of zeera, etc. The assessee submitted the details of the credit entries of all the parties in whose names the credits stood in its books along with the dates of payment, letters of confirmation and copies of accounts. On the basis of the documents filed, the Income Tax Officer felt satisfied with respect to the cash credits of five firms with regard to whose credits notice u/s 148 of the Act was issued on December 23, 1970. While making the original assessment order, the Income Tax Officer had stated:

"The balance-sheet was examined and loans were satisfactorily proved by the assessee."

11. On those facts, I held that the assessee had disclosed fully and truly all the material facts for its assessment and that the Income Tax Officer had further enquired into the genuineness of the entries found in the account books and after being satisfied about the genuineness of those entries, the assessment order was passed. Later on, information was received that the five firms in whose favour cash credits had been shown in the accounts of the assessee-firm were bogus hundi dealers, and on the basis of that information the Income Tax Officer entertained the belief that the cash credit entries in favour of those five firms shown in the accounts of the assessee were bogus and on that ground issued notice u/s 148 of the Act, I held that it amounted to change of opinion and not suppression of material facts on the part of the assessee. In the present case, no enquiry was made by the Income Tax Officer at the time of the original assessment as to the market price of the wool-tops and the reason why the sale in favour of Ramesh Woollen Mills was made at a lower rate than the market rate. It is a matter of general knowledge that the businessmen try to make the maximum profit out of their sale transactions and there must be some special reason if the goods are sold at a far lower rate than the market rate. Those very bales of wool-tops which had been sold by the petitioner-firm at Rs. 9.50 per

pound were sold within 15 days to Digvijay Woollen Mills at Rs. 18.37 per pound. Naturally, the Income Tax Officer entertained the belief that the petitioner-firm was not so ignorant of the market rates as to deliberately sell its wool-tops at a lower rate than the market rate. In fact, the petitioner-firm has stated a reason for making the sale at a lower rate to the Income Tax Officer after the issue of the notice and during the reassessment proceedings and that reason is that these wool-tops had been imported under licences issued in 1963, and the agreement for their sale in favour of Ramesh Woollen Mills was "made shortly after the receipt of the licences. By virtue of that agreement, the petitioner-firm was obliged to sell the wool-tops to Ramesh Woollen Mills at the agreed rate in spite of the market rate being much higher on March 16, 1965, after the receipt of the wool-tops. Although the licences were obtained in 1963, the wool-tops were actually received in February/March, 1965. It is for the Income Tax Officer to believe this explanation or not in the light of other circumstances and facts coming to his notice. But it cannot be said that the petitioner-firm did not fail to disclose truly and fully the material facts for purposes of its assessment. The mere production of its account books containing the account of wool* tops by the petitioner-firm did not amount to full and true disclosure of all material facts necessary for the assessment of the real income of the petitioner within the ambit of the Explanation to Section 147 of the Act. After the investigation, if it is found by the Income Tax Officer that the sale in favour of Digvijay Woollen Mills was in fact made by the petitioner-firm and Ramesh Woollen Mills and other firms mentioned above were bogus intermediaries, then it will be evident that the petitioner-firm did not truly disclose the purchaser to whom it sold the wool-tops and the actual price received from their sale.

12. The learned counsel for the petitioner has then relied on a judgment of their Lordships of the Supreme Court in Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar, . But the facts of that case are also distinguishable and no help can be derived from the observations made in that judgment. In that case, the assessee carried on business in ghee at Porbandar, which at the material time was outside the taxable territories. For the assessment years 1947-48, 1948-49 and 1949-50, assessment proceedings were initiated against the assessee as a nonresident. In the relevant accounting periods the assessee had current account with a bank in Bombay (within the taxable territories) and sale proceeds in respect of large quantities of ghee supplied outside the taxable territories were credited in that account and then transferred to Porbandar. The assessee also had a current account with a firm in Bombay and from the interest paid by the -firm in this account, tax at the maximum rate was deducted u/s 18(3B) of the Indian Income Tax Act, 1922. The assessee disclosed these facts to the Income Tax Officer and also produced the pass books of the account with the bank and contended that, since the assessee had no business in the taxable territories nor any income other than the interest from which tax had been deducted at the maximum rate, the assessment proceedings should be discharged. The Income Tax Officer accepted the contention and held, for the

assessment years 1947-48 and 1948-49, that there was no source of income in the taxable territories and that the proceedings should be dropped. For the assessment year 1949-50 also, the Income Tax Officer dropped the proceedings after stating that the assessment proceedings for 1947-48 and 1948-49 had been dropped after enquiries. In 1956, the Income Tax Officer initiated proceedings for reassessment u/s 34(1)(a) of the Income Tax Act, 1922. In answer to those reassessment proceedings, the assessee contended that since all the primary facts necessary for the assessment had been fully and truly disclosed, the Officer had no jurisdiction to initiate reassessment proceedings. The Tribunal held that the reassessment proceedings were validly initiated because the disclosures made by the assessee did not furnish any particulars about how the delivery of the ghee was given and the question about the price of the ghee was not mentioned and that, on that account, the statement must be recorded as incomplete; that though the Income Tax Officer was informed about the interest paid by the firm to the assessee, no question was raised of any possible liability of the assessee to tax on any other account, and that the question of the receipt of the sale proceeds in the taxable territories was bypassed. On a reference, the High Court held that all the primary facts had been disclosed and, therefore, the action u/s 34(1) was not valid. On appeal, it was held by the Supreme Court:

(i) That the Tribunal had misconceived the nature of the proceedings and the duty imposed upon the assessee by Section 34(1)(a). It is not for the assessee to satisfy the Income Tax Officer that there was no concealment with regard to any income; it was for the Income Tax Officer, if that issue was raised, to establish that the assessee had failed to disclose fully and truly certain facts material to the assessment of income which had escaped assessment. Failure to disclose how the delivery of ghee was given at Porbandar was wholly irrelevant.

(ii) That in regard to the years 1947-48 and 1948-49, the assessee had disclosed that the sale proceeds in respect of ghee supplied were received in Bombay and subsequently transferred to Porbandar. No more detailed disclosure was necessary to comply with the requirement that the assessee had fully and truly disclosed all material facts necessary for the purpose of assessment. It was not the assessee's duty to disclose to or instruct the Income Tax Officer that there were "profits embedded in the receipts" of the money at Bombay. The Income Tax Officer might have raised a wrong legal inference from the facts disclosed but on that account he was not competent to commence proceedings u/s 34(1)(a).

(iii) That since for the assessment year 1949-50, the factual position remained unaltered and the assessee had invited the attention of the officer to the proceedings for the earlier years, there was no non-disclosure of material facts necessary for assessment of income for that year also.

(iv) Section 34(1)(a) does not cast any duty upon the assessee to instruct the Income Tax Officer on questions of law.

(v) When the primary facts necessary for assessment are fully and truly disclosed to the Income Tax Officer at the stage of the original assessment proceedings, he is not entitled, on a change of opinion, to commence proceedings for reassessment u/s 34(1)(a).

13. In that case, the assessee had disclosed to the Income Tax Officer that he had received the sale proceeds of the ghee in the taxable territories and it was for the Income Tax Officer to find out whether any profit was made by the assessee on the sale of ghee which necessarily formed part of the sale proceeds and was chargeable to tax. It could not, therefore, be said that the fact that he had sold the ghee within the taxable territories from which profits accrued, had not been disclosed by the assessee to the Income Tax Officer. In the present case, the petitioner-firm disclosed the import of the wool-tops and the rate at which the sale had taken place, but did not disclose that the purchaser entered in the account books was not the real purchaser and that the sale had been made in his favour at a far lower rate than the market rate. If any of these two facts had been disclosed at the time of the original assessment, it would have become the duty of the Income Tax Officer to investigate the matter further and to hold whether the sale at the stated rate was genuine or not. Because of the non-disclosure of these facts, the Income Tax Officer did not doubt the trading account of the petitioner-firm and believing them to be true, made the assessment because he was of the opinion that the profit of Rs. 64,614 on the sale turnover of Rs. 2,05,927.50 was fairly high. There was no reason for him to suspect that the profits made by the firm had not been truly disclosed.

14. For the reasons given above, I hold that the notice issued by the Income Tax Officer to the petitioner-firm on November 14, 1969, was valid and within the jurisdiction of the Income Tax Officer and he can continue reassessment proceedings pursuant thereto. There is thus no merit in this petition which is dismissed with costs. Counsel's fee Rs. 100.