

(1994) 04 MP CK 0044
In the Madhya Pradesh High Court
Case No : MP No. 2178 of 1993

HOTEL ASHOKA and Another	Vs	APPELLANT
UNION OF INDIA and Another		RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 132, 147, 148

Citation : (1998) 145 CTR 226

Hon'ble Judges : A. R. Tiwari, J

Bench : Division Bench

Judgement

A. R. TIWARI, J. :

Petitioner No. 1 is a registered partnership firm and petitioner No. 2 is one of its partners. The firm is the assessee under the IT Act, 1961 (for short, "the Act"). It submitted the return which was assessed by the ITO. Respondent No. 2, however, issued a notice dt. 2nd September, 1993 (Annexure "B") to petitioner No. 1 under s. 148 of the Act for the asst. yr. 1986-87 saying that he had reason to believe that income chargeable to tax for the assessed period had escaped assessment within the meaning of s. 147 of the Act and demanding delivery of the return in the prescribed form within 30 days from the date of service of this notice. The petitioners replied on 8th November, 1993 (Annexure "C"), indicating that the return already filed be treated as return in response to this notice. On 10th November, 1993, the petitioners demanded, vide Annexure "D", that the reasons recorded for proceedings under s. 148 of the Act be communicated. Respondent No. 2 declined to do so and took the stand in reply dt. 10th November, 1993 (Annexure "E"), that there was no provision under the Act for communicating the reasons for reopening of assessments. The petitioners being aggrieved by the initiation and refusal, have filed this writ petition under Art. 226 of the Constitution of India seeking quashment of the aforesaid notice and a direction that a notice under s. 148 of the Act, whenever necessary, should be accompanied by the reasons.

2. The respondents have filed a reply oppugning the contentions and have taken the stand that proceedings became necessary on the linchpin of material discovered in the search operations under s. 132(1) of the Act and enquiry justifying reopening of the assessment. It is contended that law requires the existence of reasons and requisite belief on that basis and not the communication or disclosure on demand. It is further averred that reasons are recorded and justified the proceedings. The material, it is urged, is sure and not speculative, is cogent and not conjectural, is proper and not perverse. On this basis, admission is opposed.

3. I have heard both sides.

Counsel for the petitioners has questioned the validity of the notice on two grounds :

(a) Reasons have not been communicated despite demand after compliance with the notice in regard to return. Notice under s. 148 of the Act is a serious proceeding resulting in dislodgement of earlier proceeding and eventual order. No person should be compelled to face another innings of assessment without disclosure of reasons in an esoteric manner. The notice, thus, merits to be mortalised.

(b) Reasons are now furnished during the course of this petition. These are to a large extent irrelevant and inadequate. Irrelevance and irrationality are recognised grounds of judicial review and affect the very jurisdiction of the authority. The notice is thus without jurisdictional competence and deserves to be quashed.

4. Counsel for the respondents has dubbed both the grounds meritless and prayed for dismissal of the petition on the fulcrum of remedy available under the Act itself. It is contended that communication or disclosure is not essential and that existence is not disputed.

Shri Bagadia has placed reliance on *Thanthi Trust Vs. Income Tax Officer*, ; *British Electrical and Pumps P. Ltd. Vs. Income Tax Officer, "B" Ward and Others*, and *K.M. Bansal (Deceased by Lrs.) Vs. Commissioner of Income Tax and Another*, to contend that communication of reasons are unavoidable and essential for tenability of the proceedings under s. 148 of the Act.

5. Sec. 147(a) postulates two conditions. One, that the officer must, on the basis of material facts on record, *prima facie*, be satisfied that the income, exigible to tax, had escaped assessment and two, that escapement is attributable to the omission or failure on the part of the assessee to fully and truly disclose all material facts necessary for proper assessment. These are conditions precedent to the exercise of jurisdiction under s. 147 r/w s. 148 of the Act. Even if the notice revealed no satisfaction, yet it can be sustained if the record disclosed it.

6. Law is settled. In *ITO vs. Biju Patnaik* (1993) 188 ITR 247 and *M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another*, the position

of law has been stated in classic terms.

7. As to the ground (a), it needs to be stated that when the aforesaid conditions alone confer the jurisdiction, then it becomes all the more obligatory on the part of the authority concerned to disclose and communicate the reasons for appreciation and proper defence at least on demand after submission of the return in compliance with the notice. At that stage, refusal is unwarranted in law and citation of absence of provision in the Act tantamounts to closure of the eyes to realities. Law in fact permits no privilege in that behalf. The assessee is entitled to contest the issue effectively. This is possible only on obtaining the reasons. It cannot be gainsaid that the satisfaction of the conditions, being *sine qua non*, can be judged only on the basis of the reasons. Refusal is, thus, arbitrary and prejudicial. However, for this lapse, this point now pales into insignificance because the reasons have since been furnished. As such, the debate centred round the necessity of declaration of the position of law.

8. In his dissenting judgment in *Breen vs. Amalgamated Engineering Union* (1971) 2 QB 175 Lord Denning MR, has observed that :

"The giving of reasons is one of the fundamentals of good administration".

And in *Alexander Machinery (Dudley) Ltd. vs. Crabtree* (1974) ICR 120 Sir John Donaldson, as President of the National Industrial Relations Court, has expressed that -

"Failure to give reasons amounts to denial of justice".

And Lord Lane, C.J., has observed in *Regina vs. Immigration Tribunal* that : "A party appearing before a Tribunal is entitled to know either expressly stated by the Tribunal or inferentially stated what it is to which the Tribunal is addressing its mind". Ideally, the answer then should be "yes".

It is thus stated that respondent No. 2 was not right in saying "no".

In the result, it is found that the contention has substance. It should then be permitted to prevail. Point is answered as above.

9. As to the ground (b), I find that the prayer is premature because no such objection, in the absence of communication of reasons, was raised before the authority. This can be done now. I, therefore, find it inept to express any opinion on the merits of the contention. It is thus luculent that the petitioners may, if they so elect, point out irrelevance, irrationality or inadequacy to the authority concerned and may seek termination of the proceedings through detailed reply or contest it for proper verdict on reassessment. Needless to say that the authority shall consider the objections if raised and decide the same in conformity with law. In sum, I do not feel persuaded to quash the notice on this ground in exercise of this extraordinary jurisdiction. It is manifest and undisputed that the remedy is available on the terms of the statute itself.

In *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, it is

held that :

"... the resort to Arts. 226 and 227 should be discouraged when there is an alternative remedy, a more satisfactory solution is available on the terms of the statute itself".

In the light of what is stated above, I am satisfied that there survives no further case or cause for adjudication in this petition. The petition is, therefore, disposed of finally with observations as above but without any orders as to costs.

Respondents No. 2 may now proceed further in the matter in accordance with law.