

(2002) 01 CAL CK 0024

In the Calcutta High Court

Case No : Appeal From Original Order No. 226 of 1997

Income Tax Officer

APPELLANT

Vs

Shree Bajrang Commercial Co. (P.) Ltd.

RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 131, 139, 147(a), 148

Citation : (2002) 124 TAXMAN 776

Hon'ble Judges : Ashok Kumar Mathur, C.J.;Subhro Kamal Mukherjee, J

Bench : Division Bench

Advocate : Ram Chandra Prasad, for the Appellant;Debi Prasad Pal and Amar Nath Sen, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—This appeal is directed against an order dated 18-12-1992, passed by a learned Single Judge of this Court whereby the learned Single Judge allowed an application under article 226 of the Constitution of India and, accordingly, quashed notices u/s 148 of the income tax Act, 1961 ("the Act"). The writ petitioner-company was an assessee under the Act and, admittedly, they have submitted their returns of income for the assessment years 1972-73 and 1973-74. Although orders of assessment for the said years were passed by the ITO concerned, subsequently the ITO issued notices u/s 148 proposing to reopen the assessments in respect of the aforesaid assessment years.

The present application under article 226 was moved before this Court challenging the said notices u/s 148 contending, inter alia, that the ITO was really harassing the assessee and there was no bona fide reason to reopen the assessments.

The learned Single Judge by the order impugned quashed the aforesaid notices holding that the reasons for reopening the assessments did not provide a live-

link between the materials and the belief.

Being aggrieved, the revenue has come up with this appeal.

2. In the course of hearing before the learned Single Judge, the records of the case were produced and the reasons for reopening of the assessment u/s 147(a) were brought to the notice of the learned Single Judge. The reasons were as under:

Reasons for reopening assessment u/s 147(a), assessment year 1973-74 Shree Bajrang Commercial Company (P.) Ltd.

Information has been received that Sri Manick Chand Jain alias Manick Chand Baid son of Chhotilal Baid has made a deposition u/s 131 of the income tax Act before the IAC, Range-XIII on 30-7-1976, that he was a name-lender and that he was carrying on business in the name of Gulab Chand Jainarayan, Mahindra Steel Corpn. and Aruna Engg. Stores. It is noticed from the examination of the assessment record that during previous year ended 30th June, 1972, relevant to the assessment year 1973-74 the assessee had account with Aruna Engg. Stores and Gulab Chand Jainarayan which showed total credit of Rs. 45,000 and Rs. 47,000, respectively. I have, therefore, reason to believe that by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for this year that income chargeable to tax has escaped assessment. It is, therefore, proposed to reopen the assessment u/s 147(a) of the income tax Act for the assessment year 1973-74.

3. The learned Judge himself recorded that although several legal contentions have been raised by the assessee before him, but the learned Judge was unable to accept any of the said legal propositions. Nevertheless, the learned Judge quashed the said notices with the following observations:

The recorded reasons have been set out earlier in the judgment. It will be seen that in the first part it has been recorded that Manick Chand Jain has deposed that he was a name-lender. Thereafter, it has been recorded that Manick Chand was carrying on business in the name of Gulab Chand Jainarayan, Mahindra Steel Corpn. and Aruna Engg. Stores. There is no categorical statement that all the businesses carried on in the names of Gulab Chand Jainarayan, Mahindra Steel Corpn. and Aruna Engg. Stores were bogus and fictitious.

The Supreme Court on very similar reasons recorded in the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, held that such reasons did not provide a live-link between the material and the belief. In view of this pronouncement of the Supreme Court, it must be held that the strength of the reasons recorded in the instant case, the ITO could not proceed to reopen the assessment.... In view of the clear pronouncement of the Supreme Court on very similar facts in the case of Lakhmani Mewal Das (supra), it must be held that the reason recorded by the ITO could not be the basis for formation of the requisite belief that the assessee had concealed material particulars at the time of the

assessment proceeding.

4. In the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, while considering the scope of section 147(a), the Supreme Court observed that to confer jurisdiction u/s 147(a), two conditions were to be satisfied. Firstly, the ITO must have reason to believe that income, profits or gains chargeable to income tax had escaped assessment. Secondly, he must also have reason to believe that such escapement had occurred by reason of either (a) omission or failure on the part of the assessee to make a return of his income u/s 139, or (b) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions were conditions precedent to be satisfied before the ITO could assume jurisdiction to issue a notice u/s 148, read with section 147(a).

5. The Supreme Court of India in the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, observed that the reasons for the formation of the belief contemplated by section 147(a) for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection stipulated that there must be a direct nexus or live-link between the material coming to the notice of the ITO and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It was no doubt true that the Court could not go into the sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening the assessment. At the same time, it was not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

6. The Supreme Court of India in the case of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, observed that an ITO acquired jurisdiction to reopen an assessment u/s 147(a) only if, on the basis of specific, reliable and relevant information coming to his possession subsequently, he had reasons, which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income tax had escaped assessment. He might start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed came into his possession, which intended to expose the untruthfulness of those facts. In such situations, it was not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available, but one of acting on fresh information.

Since the belief is that of the ITO, sufficiency of the reasons for forming the belief was not for the Court to judge, but it was open to an assessee to establish that there in fact existed no belief or that the belief was not a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court could look into the conclusion arrived at by the ITO and examine whether there was any material available on the record from which the requisite belief could be formed by the ITO and, further whether that material had any rational connection with or a live-link for the formation of the requisite belief.

7. In the background of aforesaid decisions, initiation of the proceedings for reassessment, in the present case, can never be held to be illegal when, prima facie, the ITO had reason to believe and formed an opinion that the assessee had not disclosed fully and truly all the material facts at the time when the assessment orders have been passed. It is for the ITO to consider the reliability and credibility of the matter requiring reopening of the assessment and for that matter, prima facie, the opinion of the ITO is final at that stage and the High Court, while exercising the power under article 226, cannot go into sufficiency or adequacy of the materials which were considered by the ITO at the time of formation of the opinion. It was the jurisdiction of the ITO to consider the materials and to initiate proceedings and when there is, prima facie, materials at the hand of the ITO, the High Court in exercise of the power under article 226 should not interfere with the discretion of the ITO when no case of mala fide has been established. The sufficiency or correctness of the material is not a matter to be considered at this stage.

8. We are of the opinion that there was prima facie some materials on the basis of which the ITO reopened the case. The interference made by the learned Single Judge, in your view, was unwarranted as the purpose of section 147(a) is to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of the original assessment.

The judgment under appeal passed by the learned Single Judge is, therefore, set aside.

The appeal is allowed. We, however, make it clear that we have no occasion to go into the rival contentions of the parties and the parties will be free to agitate all points before the appropriate authority and the authority concerned will decide the matter in accordance with law expeditiously. There will be no order as to costs.

Ashok Kumar Mathur, C.J.

I agree.