
(1969) 10 CAL CK 0009

In the Calcutta High Court

Case No : Appeal from Original Order No. 202 of 1967

Income Tax Officer, H-Ward and Another

APPELLANT

Vs

Sudhir Kumar Bhose

RESPONDENT

Date of Decision : 10-10-1969

Acts Referred:

Income Tax Act, 1961 — Section 139, 147, 147(1), 148

Citation : (1972) 84 ITR 60

Hon'ble Judges : D. Basu, J;A.K. Basu, J

Bench : Division Bench

Advocate : G. Mitter and D. Gupta, for the Appellant; D. Pal and R. Dutt, for the Respondent

Judgement

D. Basu, J.—This is an appeal against the judgment of A.N. Sen J. dated September 2, 1966, in Matter No. 185 of 1966 SUDHIR KUMAR BHOSE Vs. Income Tax OFFICER, "H" WARD, DISTRICT III(I), AND ANOTHER., , by which he made the petitioner's rule absolute, quashing the notice issued by the respondent, Income Tax, Officer, u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated February 22, 1966, which is set out in the judgment.

2. The notice is to the effect that the Income Tax Officer has reason to believe that the income of the petitioner chargeable for the assessment year has "escaped assessment", that the assessment was accordingly proposed to be reopened and that the petitioner was therefore called upon to submit a fresh return of his assessable income for that year within a given time. The petitioner, in reply, wrote the letter at page 16 of the paper book, dated March 21, 1966, challenging the jurisdiction of the respondent to issue the notice and asked him to furnish the materials upon which his belief that the petitioner's income had escaped assessment was based. Not receiving any reply to that letter, the petitioner moved this court under Article 226 of the Constitution on March 23, 1966, and obtained this rule.

3. Sen J. held that the respondent had no jurisdiction to issue the notice, upon findings which will appear from below. The Income Tax Officer (hereinafter referred to as "the officer") and the Commissioner have preferred this appeal against that judgment.

4. As usual, the notice itself did not disclose, as it was not necessary under the law to disclose, the reasons upon which the Income Tax Officer's belief under Sub-section (1) of Section 147 (corresponding to Section 34 of the Act of 1922) was founded. But, in the affidavit-in-opposition to the petition, it was stated in paragraph (5) by the officer that his action was based upon the failure of the petitioner to fill in Part VII of the return which the petitioner had admittedly filed, in respect of the relevant year. Sen J. rejected this plea of the respondent on two-fold grounds :

(i) that omission to fill in Part VII of the return under the Act does not amount to any failure or omission within the meaning of Section 147(a) of the Act.

(ii) that there was no legal obligation on the part of an assessee to fill in Part VII of the return "when the assessee believes that there is no question of any capital gain"

5. Mr. Mitra, on behalf of the appellant, has challenged the soundness of each of the foregoing findings of Sen J. and it is around these two propositions that the controversy at the hearing before us mainly centered.

6. There is no doubt that a notice cannot be issued u/s 147(a) unless the conditions precedent to the exercise of the power conferred by that section are satisfied. This provision says :

" If the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139. . .or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year,he may, subject to the provisions of Sections 148 to 153, assess or reassess such income. . . "

7. Since, in the instant case, there was admittedly no failure on the part of the assessee to make a return for the relevant year, the officer has to rely on the second part of the provision, namely, that--

the assessee failed to disclose fully and truly all material facts necessary for the assessment for the relevant year.

8. Two questions, therefore, arise--

(a) Was the petitioner-respondent under any legal obligation to disclose the particulars specified on Part VII of the return ?

(b) Whether there was any failure on the part of the petitioner to discharge that obligation ?

9. There is no denying the fact that the petitioner had kept Part VII of the form for the relevant year blank. We have therefore to see whether the particulars which are required by Form VII are " material " for the assessment of Income Tax for the year. It has been held in various cases that where an assessee has filed a return but that such return is incomplete, action may be taken against him under the latter part of the aforesaid provision on the ground that he has failed to disclose all material facts. (AKULA VENKATASUBBAIAH Vs. COMMISSIONER OF Income Tax., , BIBI GURDARSHAN KAUR (DECEASED) (THROUGH LEGAL HEIRS) Vs. COMMISSIONER OF Income Tax, NEW DELHI., , Commissioner of Income Tax, Bombay Vs. A.J. Zaveri,).

10. Part VII of the form of return (Form No. 3) speaks of " particulars of capital gains ". It relates to the acquisition of "capital gains" by the assessee by transfer of properties, such as " house properties " or " other assets " and requires the assessee to state the date of acquisition, cost of acquisition, value of the consideration for which the transfer was made and ancillary information.

11. Sen J. has held that in a case involving capital gains, "the fact of sale, the price at which the property has been sold, the price at which the property has been acquired by the assessee, the costs, charges and expenses of and incidental to the sale are all primary facts relevant and material. for the purpose of assessment and it is the duty of the assessee to disclose all these facts."

12. Nevertheless, according to Sen J., there has been no breach of this obligation on the part of the respondent-assessee for two reasons--

(a) That the respondent had in fact disclosed these particulars in respect of the transaction of transfer of the house property in question made by him on August 5, 1960, at the hearing before the Income Tax Officer, at which the respondent appeared personally and discussed the particulars.

(b) That neither in the impugned notice nor in the correspondence between the parties, the Income Tax Officer has ever made a complaint that the respondent has failed to disclose the purchase price or fair market price of the property as on the 1st January, 1954, as well as the expenses incurred, etc., as required by the form.

(c) A third ground has been added at the hearing before us, on behalf of the respondent, that where the assessee believes, bona fide, as in the instant case, that no capital gain was actually involved in a transaction of transfer, the assessee was under no legal obligation to fill in Part VII.

13. The last-mentioned ground may be disposed of at once. It has been laid down by the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , that it is the duty of the assessee to disclose all primary facts, and, if he does that, his duty is at an end and it is the duty of the Income Tax Officer to make the inferences, which are legitimate under the law, from the primary facts so disclosed. As has been explained by the

Supreme Court in the Calcutta Discount case.

".... if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any primary fact, which could have a material bearing on the question of "underassessment", that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notices u/s 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a non-disclosure of material facts would not be open for the court's investigation. In other words, all that is necessary to give this special jurisdiction is that the Income Tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material facts. "

14. It has, therefore, been rightly contended on behalf of the appellants that the question before this court at the present stage is whether the officer has jurisdiction to issue the notice and nothing beyond that. On that point, the very fact that the respondent-assessee failed to fill up Part VII of the return may be prima facie evidence of non-disclosure of (1). material facts to give jurisdiction to the officer. The question whether there was in fact any capital gain made by the assessee is immaterial at this stage. The question whether the respondent's belief was bona fide (assuming that it was so in the instant case) is also immaterial inasmuch as the non-disclosure need not be wilful or deliberate in order to give jurisdiction to the officer u/s 34, as held by this court in P.R. Mukherjee Vs. Commissioner of Income Tax, West Bengal, .

15. As to the plea of the respondent that though he might have omitted to fill in Part VII, he discharged his duty by disclosing the material facts to the Income Tax Officer during the assessment proceeding for the relevant year, it must be said that the jurisdiction of the Income Tax Officer to issue notice u/s 147 arises immediately after the omission to file the return or the failure to disclose all the material facts therein and that no subsequent act on the part of the assessee can take away that jurisdiction. In Balchand Vs. Income Tax Officer, Sagar, , the Supreme Court has held that where the assessee fails to file a return in due time, and the officer issues notice u/s 34 of the old Act, the notice is not rendered invalid even if the assessee files a return voluntarily, in respect of the relevant year.

16. In the case before us, it has been pointed out that in the assessment proceeding for the relevant year, the respondent did in fact appear before the Income Tax Officer and the latter accepted the return as it was, so that it is not open to the appellant to say now that the respondent failed in his duty to disclose all relevant materials. It is to be noted, however, that there is nothing at annexure A-1 (at page 10 of the paper book) to show that in this proceeding the respondent had furnished, at the hearing before the income tax Officer, the particulars of the disputed transaction of sale of the house property. But it is not the case of the petitioner himself that he had disclosed the particulars of the transaction regarding the disputed sale, in the Income Tax assessment

proceeding. His definite case, in para graphs 3 and 4 of the petition under Article 226, is that he had made the disclosure in the wealth-tax proceeding. To this, we shall advert presently. In the present context, the question is whether the very fact of completion of the return by the order at annexure A-1 precludes the respondent from proceeding u/s 34(1)(a) (of the old Act) to reopen the assessment on the ground that the respondent had not filled in Part VII of the return or failed to make a disclosure of the particulars relating to the disputed transaction. The answer to this question must be in the negative because there cannot be any estoppel against a statute. A question similar to this was in fact raised before the Allahabad High Court in the case of R. B. RAM RATTAN PREM NATH Vs. COMMISSIONER OF Income Tax, U.P., and answered in the negative. In that case, the assessment had been completed in July, 1947. In November, 1955, the Income Tax Officer issued a notice u/s 34(1)(a) for the assessment year 1946-47. Despite the notice requiring the assessee to produce its account books, they were riot produced, on the plea that they were not available. The Income Tax Officer made an assessment order including the sum of Rs. 2,00,000 in the total income of the assessee on the ground that the assessee had failed to make a full disclosure of all the material facts in the assessment proceedings. It was held that the acceptance of an incomplete statement by the Income Tax Officer during the assessment proceedings was no bar to the issue of a notice u/s 34(1)(a) subsequently.

17. The facts in the case of ANNE NAGENDRAM AND BOMMA REDDI VENKAYYA AND CO. Vs. COMMISSIONER OF Income Tax A. P., were stronger. In that case, one Income Tax Officer had accepted the return of the assessee as correct and completed the assessment on that basis. His successor had reason to believe that the cash credits shown in the return were not genuine and issued the notice u/s 34(1)(a). This case has special importance in view of the fact that in the case before us, too, the impugned notice has been issued by an officer other than the officer who had initially accepted the return of the assessee. It was held by the Andhra Pradesh High Court that even if the Income Tax Officer had accepted the cash credits as genuine, his successor was not debarred from issuing a notice u/s 34(1)(a) on the ground that they were not genuine. The question whether they were genuine or not was to be determined in the proceedings initiated by the notice.

18. The decision of the Supreme Court in Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor, is also authority for the proposition that the acceptance of a return or the completion of an assessment proceeding does not take away the jurisdiction of the Income Tax authorities to issue a notice u/s 34(1)(a) on the ground that the information supplied by the return was not correct. This principle was also laid down by the Supreme Court, in the earlier case of Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, , under the comparable provisions of the Bihar Agricultural Income Tax Act.

19. On behalf of the respondent-assessee, strong reliance has been placed on

the observation of the Assam High Court in the case of DWIJENDRA CHANDRA CHOWDHURY Vs. COMMISSIONER OF Income Tax, ASSAM. SUBODH CHANDRA DUTTA v. COMMISSIONER OF Income Tax, ASSAM., to the effect that the duty of disclosure may be discharged by an assessee not only by making a return but also by other means. In coming to this conclusion, the High Court relied upon the Supreme Court decision in two cases which, with respect, do not appear to lead to the conclusion that a person who does not file a return at all or submits a blank return can be exonerated from his statutory duty if he furnishes other materials from which the Income Tax Officer could have "found but the truth", in the words of the Supreme Court in the later case of Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, . The first case relied upon by the Assam High Court, namely, S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, throws no light upon this question inasmuch as in that case, there had been no failure on the part of the assessee to file a return and there was no "averment on behalf of the appellants that the assessee failed to disclose fully and truly all material facts necessary for his assessment". The other case of Commissioner of Income Tax Bombay North Vs. Lakhiram Ramdas, came up to the Supreme Court under article 136 of the Constitution from the judgment of the Appellate Tribunal, and the court confined its observations as to how far it should go in an appeal by special leave under that provision. The court held that the Supreme Court would not interfere where the Tribunal, upon a consideration of all the relevant materials, came to the finding that there has been no failure on the part of the assessee to disclose all material facts, because that finding of the Tribunal was a finding of fact. These cases do not, therefore, support the conclusion that after filing a blank return, the assessee can discharge his statutory onus by placing other materials before the officer. That statutory obligation arises out of Section 139(1) of the Act of 1961 (corresponding to Section 22(1) of the old Act), which requires an assessee to "furnish a return in the prescribed form. . . and setting forth such other particulars". The section also provides that the return has to be verified in the prescribed manner, and that verification is to the effect that "the information given" in the return is "correct and complete". Apart from the other consequences which may follow from non-submission of a return or submission of an incorrect or incomplete return, it would render the assessee liable to incur statutory penalty u/s 271(1)(a) which says that the penalty may be imposed, inter alia, for failure to furnish the return "in the manner required by Sub-section (1) of Section 139", which, read with the Rules, required the assessee to furnish a correct and complete return. Section 147 contains one of the other consequences arising from contravention of the requirements of Section 139 and the two parts of Clause (a) of Section 147 deal with the situation referred to in the different parts of Section 139(1). The first part of Section 147(A) deals with non-submission of return and the second part deals with the submission of a return which is not in conformity with the manner prescribed; but a different and wider phraseology is used in the second part of Section 147(A) to cover cases where the assessee has furnished a return which

is prima facie in conformity with the form prescribed, and yet lacks in all the primary material facts which the assessee should disclose, as explained by the Supreme Court in Calcutta Discount Co's. case. We cannot, therefore, agree that after failing to submit a return or a return in the manner required by Section 139, the assessee can resist the issue of a notice u/s 147(1) contending that he has furnished the particulars by other means. He can, of course, establish in the proceeding initiated by the notice u/s 147 that he had disclosed all the materials, but, as held by the Supreme Court in the case of Kantamani Venkata Narayana and Sons v. First Addl. Income Tax Officer, Rajahmundry, that question does not arise in a proceeding under Article 226, challenging the issue of the notice itself.

20. Nor is the contention of the respondent that he had disclosed all material particulars correct, on his own showing. In paragraph 3 of his petition under Article 226, the petitioner admits that in his Income Tax return for 1961-62, he had not mentioned the factum of sale of the house property at all, but had only mentioned the interest accruing from the securities which he had purchased from the sale proceeds of the house. This is no compliance with the requirements of Part VII of the return form which requires the assessee to give not only the particulars of transfer of the property but also particulars relating to its initial acquisition by the assessee, so that the Income Tax Officer might determine whether the assessee had, in fact, made any capital gain out of the transaction by applying the provisions in Section 45 et seq. of the new Act.

21. The plea in paragraph 6 of the petition that the petitioner explained the particulars of the transaction to the Income Tax Officer, while he was making the assessment of the petitioner under the Wealth-tax Act is also of no legal importance, because the obligations of the assessee under the income tax Act cannot be discharged by doing anything under a different statute, even though the same officer might be in charge of administration of both Acts. To accede to this contention of the respondent would usher in complete chaos and confusion in the administration of the revenue law of the country, though it would be ideal if the revenue officers could be diligent enough to make this possible.

22. In fact, no such plea is tenable in view of the decision of the Andhra Pradesh High Court in Sowdagar Ahmad Khan v. Income Tax Officer, Nellore [1967] 66 ITR 55, 62 (A.P.), (Appendix), and of the Supreme Court in the case of Kantamani Venkaba Narayana and Sons v. First Addl. Income Tax Officer, that the jurisdiction of an Income Tax Officer to issue notice u/s 34(1)(a) cannot be challenged on the ground that he had produced before the officer materials, otherwise than through the return, which, if pursued by the officer, would have enabled him to gather all the material facts necessary for the assessment. If this be the situation relating to the same proceedings, the position cannot be better if such materials are brought to the notice of the officer acting in another proceeding under a different law.

23. In fact, even according to the respondent's plea at its best, he had not disclosed before the Wealth-tax. Officer all the particulars required by Part VII of

the Income Tax return form. In paragraph 4 of the petition, it is stated that the respondent had disclosed to the Wealth-tax Officer the factum of sale of the house in question and the amount of its sale price.

24. The case of the appellants is that the respondent never disclosed the information required as to (a) when he had acquired the property which he had sold as well as (b) its cost of acquisition, even after he was required to furnish that information by the letter at annexure B, at page 12 of the paper book. In his reply per annexure C (page 13, *ibid*), the assessee simply said that " the enquiries made by you can all be ascertained from the records of the assessment for the Income Tax and wealth-tax proceedings ". But no materials could be pointed out from the records before us to show that the information on the points aforesaid had ever been supplied by the respondent. Not much is gained by the assessee by pointing out the letter at page 23 of the paper book, because in this letter it was categorically stated that the assessee had failed to fill in Part VII of the Income Tax return for the relevant year. The only thing that is admitted herein is that " at the time of the wealth-tax assessment. .. the Income Tax Officer was informed that the sale price was Rs. 17,000 ". This is no disclosure as to the cost of acquisition even if it be accepted as a disclosure of the factum of sale. As observed by the Supreme Court in *Kantamani's* case, such disclosure is no constructive notice to the Income Tax Officer to put him to inquiry to gather other particulars before issuing the notice u/s 147.

25. We are satisfied that the Income Tax Officer had *prima facie* reasons to issue the impugned notice.

26. Nor is the other plea of the respondent that the officer did not disclose that the respondent had not made a full disclosure about the purchase price, etc., relating to the transaction in question in his correspondence or in the impugned notice, of any avail by reason of the propositions of law laid down by the Supreme Court in several cases, as follows :

(i) The assessee becomes a party to the proceeding for reopening the assessment only after issue of the notice u/s 34. The Income Tax authorities are under no obligation to communicate the reasons for issuing the notice at any earlier stage (*S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, . (ii) A proceeding u/s 34 is not vitiated merely for want of reference to the particular Clause (*Kantamani Venkata Narayana and Sons v. First Addl. Income Tax Officer, Rajahmundry*).

(iii) Once the High Court, in a proceeding under Article 226 of the Constitution, is satisfied that the officer had *prima facie* reasons to issue the notice u/s 34, it is not for the court to decide, further, whether the assessee could be held to have disclosed all the material facts in the circumstances of the case. The only point for decision of the court at that stage is whether the Income Tax Officer had jurisdiction to issue the notice (*Kantamani's* case).

(iv) The court has jurisdiction to see whether the *prima facie* reasons for the

belief of the officer were relevant to the question of escape of assessment, but the court has no jurisdiction to determine the adequacy of those reasons (Narayanappa's case, followed in Kantamani's case).

27. The contention of the respondent that the duty of disclosure can be discharged otherwise than by furnishing particulars in the return cannot also be accepted in view of the observation in Kantamani's case that the duty of the assessee to disclose material facts is not discharged by producing some materials from which the Income Tax Officer, if he had been circumspect, could have found out the truth.

28. Having given our anxious consideration to the circumstances of this case, thus, we cannot uphold the finding of the court below that the Income Tax Officer had no jurisdiction to issue the impugned notice because the conditions specified in Section 147(A) of the Act were not satisfied.

29. The appeal is accordingly allowed and the judgment of the court below is set aside and the rule discharged. Nothing herein observed will, however, be taken as any pronouncement on any of the questions arising in the proceeding subsequent to the impugned notice.

30. We make no order as to costs.

31. As prayed for on behalf of the respondent, the operation of this judgment will remain stayed for a period of eight weeks from this date.

A.K. Basu, J.

32. I agree.