
(1980) 03 CAL CK 0009
In the Calcutta High Court

Case No : Appeal from Original Order No's. 9, 10 and 11 of 1976

Income Tax Officer, I-Ward and Others	APPELLANT
Vs	
A.R. Private Ltd.	RESPONDENT

Date of Decision : 20-03-1980

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (1980) 125 ITR 177

Hon'ble Judges : Ramkrishna Sharma, J; Murari Mohan Dutt, J

Bench : Division Bench

Advocate : Balai Lal Pal and Rupendra Nath Mitra, for the Appellant; Debi Pal and Animesh Kanti Ghosal, for the Respondent

Judgement

M.M. Dutt, J.—In these three appeals, the revenue is the appellant and it has challenged the propriety of the judgment of A. K. Mookerjee J., making the rules nisi obtained by the respondent on its application under Article 226 of the Constitution, absolute.

2. The respondent challenged the legality of three notices issued by the ITO u/s 148 of the I.T. Act, 1961, relating to the assessment years 1959-60, 1960-61 and 1961-62. The ITO sought to reopen the proceedings for those years alleging that he had reasons to believe that the income of the respondent had escaped assessment due to the omission or failure on the part of the respondent to disclose fully and truly all material facts necessary for the assessment of its income for the relevant assessment years. The reasons that were recorded by the ITO are set out below:

"In the course of assessment proceedings for 1962-63, it is found during the year of account the assessee introduced various cash credits in its books of accounts as hundi loans. It appears that in the course of original assessment proceedings no enquiries were made to verify the genuineness of these loans. It is now found that most of these creditors were not genuine lenders and as such I have reason to believe that the assessee's income from revenue sources

escaped assessment owing to failure on its part to disclose fully and truly all material facts necessary for its assessment."

3. At the hearing of the rule, the revenue had produced before the learned judge the relevant records. It transpired from the records that on February 19, 1966, the IAC, Survey Range, issued a cyclostyled secret circular to all the ITOs mentioning therein the names of some persons and stating that those persons confessed that they had acted as name-lenders for bogus hundi transactions to help the parties who wanted to introduce their secret trade profit in their books in the form of bogus loans.

4. The learned judge took the view that the said secret circular was not a material that could be relied on by the ITO for the purpose of forming the reasonable belief within the meaning of Section 147 of the I.T. Act, 1961. In that view of the matter, the learned judge quashed the notices u/s 148 of the I.T. Act and made the rules nisi absolute. Hence these appeals.

5. The only question involved in these appeals is whether there were materials before the ITO justifying him to form a reasonable belief that the income of the assessee for the relevant assessment years had escaped assessment on account of the failure of the assessee to disclose fully and truly all material facts necessary for the assessment. In the case of *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, , it has been observed by the Supreme Court that the reasons for the formation of the belief must have a rational connection with, or relevant bearing to, the formation of the belief. Rational connection postulates 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 is no doubt true that the court cannot 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 should be borne in mind that it is 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 the escapement of the income of the assessee from assessment. In that case, the Supreme Court could not accept that there were materials before the ITO to reopen the assessment u/s 147(a) of the I.T. Act. The reasons which weighed with the Supreme Court in not accepting the contention of the revenue that there were materials before the ITO to form a reasonable belief within the meaning of Section 147 will appear from the following (p. 447):

" We may now deal with the first ground mentioned in the report of the Income Tax Officer to the Commissioner of Income Tax. This ground relates to Mohansingh Kanayalal, against whose name there was an entry about the payment of Rs. 74, annas 3, as interest in the books of the assessee, having made a confession that he was doing only name-lending. There is nothing to

show that the above confession related to a loan to the assessee and not to someone else, much less to the loan of Rs. 2,500 which was shown to have been advanced by that person to the assessee-respondent. There is also no indication as to when that confession was made and whether it relates to the period from April 1, 1957, to March 31, 1958, which is the subject-matter of the assessment sought to be reopened. The report was made on February 13, 1967. In the absence of the date of the alleged confession, it would not be unreasonable to assume that the confession was made a few weeks or months before the report. To infer from that confession that it relates to the period from April 1, 1957, to March 31, 1958, and that it pertains to the loan shown to have been advanced to the assessee, in our opinion, would be rather far-fetched."

6. In the instant case, the ITO placed reliance on the said secret circular containing the names of certain name-lenders alleged to have carried on bogus hundi transactions. The names of some of such name-lenders were entered in the books of account of the assessee for the relevant assessment years as having advanced loans against hundis. There is no indication whatsoever that, for the relevant period, those alleged name-lenders had entered into bogus transactions with the assessee, nor is there any indication anywhere that the confession that was alleged to have been made by such name-lenders related to the assessee or to the relevant assessment years. In the circumstances, we do not think that the facts of the above Supreme Court decision can be distinguished from those of the instant case before us. Accordingly, we hold that the said secret circular could not constitute a material so as to justify the formation of a reasonable belief by the ITO that the income of the assessee had escaped assessment for the relevant assessment years on account of its failure to disclose fully and truly all material facts necessary for the assessment.

7. For the reasons aforesaid, the judgment of the learned judge is affirmed and these appeals are dismissed, but there will be no order for costs.

8. Mr. Pal prays for a certificate for appeal under Article 133 of the Constitution. In our view, the case is covered by the above Supreme Court decision. In the circumstances, now, it cannot be said to involve a substantial question of law of general importance, so that the same is required to be decided by the Supreme Court. The prayer for a certificate is disallowed.

Sharma , J.

9. I agree.