

(1981) 02 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 41 of 1979

Jamnalal Nathani

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-02-1981

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1982) 134 ITR 686

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; S.C. Bagadia, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion:

" Whether, on the facts and in the circumstances of the case, the instant case falls within the ambit of Section 147(b) of the Income Tax Act, 1961?"

2. The material facts giving rise to this reference, briefly, are as follows : The assessee was at the material time a partner in the firm carrying on business at Ujjain under the name and style of Vimalchand Premchand. During the assessment year 1971-72, the assessee constructed a house and in the return filed by him disclosed an investment of Rs. 71,864 in connection with the construction of the house. The ITO completed the assessment on August 27, 1974. Thereafter, the ITO received some complaint about evasion of tax by some partners of the firm of which the assessee was a partner. The ITO made inquiries and as a result of the inquiry the ITO came to the conclusion that the cost of construction of the house built by the assessee was Rs. 1,12,300. The ITO, therefore, initiated proceedings u/s 147(b) of the Act. The assessee showed cause; but the ITO included in the total income of the assessee a sum of Rs. 52,196 as income from undisclosed sources. On appeal before the AAC, it was

contended by the assessee that the reassessment proceedings initiated by the ITO u/s 147(b) of the Act were invalid. This contention was rejected by the AAC and, on further appeal, by the Tribunal. Hence, at the instance of the assessee, the aforesaid question of law has been referred to this court for its opinion.

3. Shri Chaphekar, learned counsel for the assessee, contended that the ITO had no jurisdiction to initiate proceedings u/s 147(b) as all the material was present before the ITO in the original assessment proceedings. Relying on the decision of the Supreme Court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, it was contended that the ITO did not have jurisdiction u/s 147(b) of the Act to reopen the assessment if on a reappraisal of the material considered by him during the original assessment, the ITO discovered a mistake in consequence of which income had escaped assessment.

4. From a perusal of Section 147(b) of the Act it is clear that two conditions must be satisfied before the ITO can take action under Clause (b) of Section 147 of the Act: (i) he should have reason to believe that income has escaped assessment and, (ii) it should be in consequence of information received after the original assessment. If either condition is not satisfied, the action of the ITO in initiating proceedings u/s 147(b) of the Act would be without jurisdiction. In *CIT v. A. Rantan and Co.* [1968] 67 ITR 2, the Supreme Court observed that even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on record or the facts disclosed thereby or from other inquiry or research into the facts or law but was not in fact obtained, the jurisdiction of the ITO was not affected. The Supreme Court further observed that the expression "information", in the context in which it occurs, must mean instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. It is true that in view of the decision of the Supreme Court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, an error discovered on a consideration of the same material and no more does not give the ITO power to reopen the assessment u/s 147(b) of the Act. But in the instant case the Tribunal has found that it was as a result of information received by the ITO, regarding evasion of tax by the partners of the firm of which the assessee was a partner, that the ITO had reason to believe that the income of the assessee had escaped assessment and that he had accordingly initiated proceedings u/s 147(b) of the Act for reopening the assessment. It was not a case of discovery of an error on a reconsideration of the same material as was present in the original assessment proceedings. In these circumstances, the Tribunal was justified in holding that the proceedings u/s 147(b) of the Act initiated against the assessee, in the instant case, were valid.

5. For all these reasons, our answer to the question referred to us is in the affirmative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.