
(1971) 10 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1398 of 1971

Karam Chand Kakkar

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 22-10-1971

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 149

Citation : (1974) 93 ITR 198

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Bhagirath Dass, B.K. Jhingan and S.K. Hirajee, for the Appellant;
D.N. Awasthy, for the Respondent

Judgement

Bal Raj Tuli, J.—This judgment will dispose of C.Ws. Nos. 1398 and 1399 of 1971, as the facts are identical and the relief claimed is also the same. Two writ petitions have been filed because two different assessment years are involved. C.W. No. 1398 of 1971 relates to the assessment year 1964-65, while C.W. No. 1399 of 1971 relates to the assessment year 1963-64. It is only necessary to refer to the facts in C.W. No. 1399 of 1971 to decide the matter in dispute.

2. The petitioner-firm filed its return for the assessment year 1963-64 on September 30, 1963, as required u/s 139 of the Income Tax Act, 1961 (hereinafter called "the Act"). Along with the return of income, the balance-sheet was filed in which credit entries in the names of the following firms were shown:

Rs. 25,000 against M/s. Tola Singh Sohan Singh. Rs. 20,000 against M/s. Amir Chand Moti Ram. Rs. 23,000 against M/s. Mool Chand Chander Bhan. Rs. 10,000 against M/s. Gurdit Singh Kataria. Rs. 30,000 against M/s. Didar Singh Charan Singh.

3. The taxable income was shown as Rs. 43,170.

4. On March 3, 1964, the Income Tax Officer issued a notice u/s 143(2) of the Act to the petitioner-firm for appearance before him on March 23, 1964. On that

date, the case was adjourned at the request of the petitioner on the ground that the accountant was not keeping fit. The Income Tax Officer again issued a notice u/s 143(2) of the Act on March 31, 1964, to the petitioner-firm for appearance before him on April 10, 1964. On that date the accountant of the petitioner-firm appeared along with an advocate and the Income Tax Officer asked them to prove the cash credits which were appearing in the balance-sheets of the petitioner-firm and file the account of zeera, etc. The case was then adjourned to April 22, 1964. It may be mentioned that the cash credits shown in the names of five firms mentioned above were amongst the cash credits which were required by the Income Tax Officer to be proved. On April 22, 1964, the petitioner-firm submitted the details of the credit entries of all the parties in whose names the credits stood in its books along with dates of payment, letters of confirmation and copies of accounts. The Income Tax Officer felt satisfied with respect to the cash credits of the five firms mentioned above and directed the petitioner-firm to prove the genuineness of payments made on behalf of the following firms :

- (i) M/s. Pishori Lal Tirath Ram,
- (ii) M/s. Narain Dass Ishar Dass,
- (iii) M/s. Tara Singh Dyal Singh.

5. On the next date of hearing, that is, July 21, 1964, the petitioner-firm produced the discharged pronotes, confirmatory letters and certificates of these three firms which were placed on the file. The case was further discussed on July 25, 1964, and July 27, 1964, when the accountant appeared and the account books were examined. Thereafter, the Income Tax Officer passed the assessment order on July 27, 1964. In that order he definitely stated:

"The balance-sheet was examined and loans were satisfactorily proved by the assessee."

6. Thereafter, he worked out the net profit of the firm for the purposes of assessment.

7. On December 23, 1970, the Income Tax Officer issued a notice to the petitioner-firm under Section 148 of the Act stating that he had reason to believe that the firm's income chargeable to tax for the assessment year 1963-64 had escaped assessment within the meaning of Section 147 of the Act and he proposed to reassess the income for the said assessment year and required the petitioner-firm to deliver to him within thirty days from the date of service of the notice, a return in the prescribed form of its income in respect of which it was assessable for the said assessment year. That notice has been challenged by the petitioner-firm in this petition on the ground that it had been issued after the period of limitation prescribed in Section 149 of the Act.

8. Written statement has been filed by Shri S. L. Malhotra, Income Tax Officer, and not by the Income Tax Officer who passed the original assessment order nor the Income Tax Officer who issued the impugned notice. In the written statement

all the facts mentioned above have been admitted but it is contended that Section 147(a) and not Section 147(b) applied and, therefore, the notice was issued within time. It may be pointed out here that the period of limitation for issue of notice u/s 147(a) is eight years if the amount of tax escaped is less than Rs. 50,000 and sixteen years if the amount of tax escaped is more than Rs. 50,000 and the period of limitation u/s 147(b) is four years from the date of the expiry of the assessment year. If Section 147(a) applied, the notices issued in both cases were within time, but if Section 147(b) applied, the notices were barred by time as they had admittedly been issued more than four years after the expiry of the relevant assessment year.

9. The learned counsel for the petitioner-firm has submitted that the petitioner-firm had disclosed fully and truly all material facts necessary for its assessment in each year of assessment and, therefore, it could not be said that there was an omission or failure on its part to do that. He has relied on the judgment of their Lordships of the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, where Das Gupta J., speaking on behalf of the majority said :

"..... it is necessary to examine the precise scope of disclosure which the Section demands. The words used are "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee Does the duty, however, extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else--far less the assessee--to tell the assessing authority what inferences, whether of facts or law, should be drawn. We have, therefore, come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this."

10. From this observation it follows that the "material facts" which the assessee is required to disclose at the time of assessment are the primary facts material and necessary for the purpose of his assessment. The assessee is under no obligation of further informing the Income Tax Officer that some of the entries in his account books or in the balance-sheet are false. It is for the Income Tax Officer to scrutinise the accounts of the assessee and after being satisfied as to their correctness to make the assessment. It is true that as stated in Explanation 2 to Section 147 of the Act, the mere production before the Income Tax Officer of the account books or other evidence from which material evidence could, with due diligence, have been discovered by the Income Tax Officer, will not necessarily amount to disclosure within the meaning of that section. But, in the present case, the Income Tax Officer, at the time of original assessment, specifically required the assessee to prove the cash credits standing in the names of all the firms including the five firms mentioned in the earlier part of this judgment and the petitioner-firm satisfied the Income Tax Officer, about the genuineness of those accounts. The background for the issue of notice u/s 148 of the Act by the Income Tax Officer has been explained in the return as follows:

"The background of this action of the Income Tax Officer was the discovery of the facts, as a result of the search and seizure conducted by the local sales tax authorities, which revealed that a large number of parties including (1) M/s. Tola Singh Sohan Singh, (2) M/s. Amir Chand Moti Ram, (3) M/s. Mool Chand Chander Bhan, (4) M/s. Gurdit Singh Kataria, (5) M/s. Didar Singh Charan Singh and (6) M/s. Pishori Lal Tirath Ram, were carrying on the business of bogus hundis in order to facilitate concealment of the real income of traders like the petitioner-firm. On receipt of this information, the Income Tax Officer made enquiries with regard to the various cash credits appearing in the balance-sheet of the assessee for the year under consideration. He was satisfied that the cash credits mentioned in the names of the above-mentioned five parties were bogus and that the amounts shown against their names were really the assessee's income from undisclosed sources which he had successfully concealed from the revenue at the original assessment proceedings. There is ample material in the possession of the respondents which shows that these amounts are in fact the concealed income of the petitioner-firm. Hence, the impugned action against it."

11. It is thus apparent that the Income Tax Officer has changed his Opinion on account of subsequent information which has come into his possession. It was the duty of the Income Tax Officer making the assessment order in 1964 to hold the enquiry and find the genuineness or otherwise of the cash credits. He, in fact, held the enquiry by asking the petitioner-firm to prove the genuineness of those cash credits. It is not open to him to commence proceedings for reassessment u/s 148 of the Act on a change of opinion in such circumstances. It was held by their Lordships of the Supreme Court in *Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar*, :

"When the primary facts necessary for assessment are fully and truly disclosed,

he is not entitled, on a change of opinion, to commence proceedings for reassessment u/s 34(1)(a) (of the Indian Income Tax Act, 1922, which now corresponds to Section 147 of the Act)."

12. The appeal before their Lordships was from a judgment of the Gujarat High Court in Bhanji Lavji Vs. Commissioner of Income Tax, Gujarat, wherein the facts have been given in detail. The assessee was a ghee merchant residing in Porbandar which was an Indian State. He used to sell ghee in British India and the sale proceeds were credited in his account with the Bank of India Ltd., Bombay. He had an account also with M/s. Shamji Kalidas & Company and used to receive interest from that firm. In the assessment years 1947-48 and 1948-49, he only disclosed his income on account of interest received from M/s. Shamji Kalidas & Company and stated that he did not do any other business in British India. On that basis, the sale proceeds received by the assessee and deposited in his bank account with the Bank of India Ltd. or the deposits with M/s. Shamji Kalidas & Company were not subject to tax on the ground that they included the profit of the assessee which constituted his income earned in British India. Later on, the notices u/s 34(1)(a) of the Indian Income Tax Act, 1922, for reassessment were issued to the assessee on March 28, 1957, and March 8, 1958, with respect to the assessment years 1947-48 and 1948-49. It was held by the learned judges of the Gujarat High Court that the notices issued more than four years after the expiry of the assessment years were not valid and quashed those notices. That judgment was confirmed in appeal by their Lordships of the Supreme Court.

13. For the reasons given above, I am of the opinion that it cannot be said in the instant case that the petitioner-firm had omitted or failed to disclose fully and truly all material facts necessary for its assessment for the relevant years and, therefore, the income chargeable to tax had escaped assessment. The case is clearly covered by Clause (b) of Section 147 of the Act whereunder the Income Tax Officer, in consequence of information in his possession, had reason to believe that income chargeable to tax had escaped assessment for the two assessment years in question. The impugned notices having been issued more than four years after the expiry of the assessment years 1963-64 and 1964-65 were void and without jurisdiction and no proceedings on their basis can be taken. These petitions are consequently accepted with costs and the impugned notices are quashed. Counsel's fee Rs. 100, in each case