

(1990) 03 BOM CK 0085
In the Bombay High Court

Khan Bhadur Hormashi Maneckji Dossabhoy Hormashi
Bhiwandiwalla and Co.

APPELLANT

Vs

B.K. Sahu Inspecting Assistant Commissioner and others

RESPONDENT

Date of Decision : 26-03-1990

Acts Referred:

Income Tax Act, 1961 — Section 147, 147(A)

Citation : (1990) 92 BOMLR 340 : (1991) 188 ITR 203

Hon'ble Judges : T.D. Sugla, J

Bench : Single Bench

Advocate : D.H. Dwarkadas, for the Appellant; G.S. Jetley, for the Respondent

Judgement

T.D. Sugla, J.—By this petition under article 226 of the Constitution of India, the petitioners, a registered partnership firm, have challenged the legality and validity of the notice dated March 21, 1984, issued u/s 148 read with section 147(a) of the Income Tax Act. 1961. for the petitioners" assessment for the assessment year 1975-76. The assessment was originally completed u/s 143(3) read with section 144B on December 30, 1977. This assessment was set aside by the Commissioner of Income Tax (Appeals), Bombay, by his order dated March 24, 1979. Fresh assessment was completed u/s 143(3) read with section 144B on September 24, 1981. Both in this and the original assessment, the assessee's income under the head "Capital gains" on sale of shares was computed at Rs. 69,09,658. This was on the basis of the assessee's statement as under :

Statement showing the basis of computation of capital gains in respect of shares of the Great Eastern Shipping Co. Ltd.

Original Bonus Year	How allotted	Rate	Total Cost	Rs. 60		1953		10	600
6,549		1957		10	65,490		11,105	1952	
11,762	1956	1 SHARE FOR EVERY 5 SHARES HELD	2	23,524		36,249	1965	1	
SHARE FOR EVERY 3 SHARES HELD	3	1,08,747		41,422	1967	1 SHARE FOR EVERY 5 SHARES HELD	2	82,844	
21,849	1968	1 SHARE FOR EVERY 3 SHARES HELD	3	65,547	1,004	10	10,040	-----	-----
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1,22,387 = 1,30,000 shares 4,67,842 ----- 1,30,000
shares were sold at the rate of Rs. 56.75 realising Rs. 73,77,500 as against the cost price of Rs. 4,67,842. Subsequently, the Income Tax Officer felt that full details as to how the value of the bonus shares was computed by the assessee was not furnished at the time of the original assessment. He required the petitioners to furnish necessary details. When the assessee did not furnish the details as required, the Income Tax Officer issued the impugned notice u/s 148 read with section 147(a) to file a return of income in response thereto. However, during the pendency of this writ petition, the reassessment was completed as a result of which the income under the head "capital gains" was computed at Rs. 69,93,658 computed originally.

The first question that requires consideration is whether the reasons recorded by the Income Tax Officer for reopening the assessment u/s 147(a) have a direct nexus or live link with the formation of the belief that the income of the assessee chargeable to tax had escaped assessment. For this purpose, it is desirable to refer to the reasons recorded by the Income Tax Officer. They are :

"it is seen from the records that the assessee has shown long-term capital gains of Rs. 69,09,658 on the sale of the shares of the Great Eastern Shipping Co. Ltd. The shares sold include bonus shares also. the details of the basis on which the cost of the bonus shares have been calculated has not been furnished by the assessee. Accordingly, the assessee was asked to furnish the details, vide letter of even No. dated February 22, 1984, fixing the case for February 29, 1984 (11 A.M.). No. details have been furnished in this respect till date. Therefore, I have reason to believe that, by reason of commissioner failure on the part, of the assessee to disclose truly and fully all the material facts necessary for the assessment year 1975-1976, income chargeable to tax has escaped assessment for the assessment year 1975-76."

2. It is evident that the Income Tax Officer merely observed that the assessee had not filed complete particulars as regards computation of the valuation of the bonus shares. From that fact, he assumed that the assessee's income chargeable to tax must have escaped assessment. For the present, it may be assumed that the petitioners had not given the basis as to how they had valued their bonus shares at Rs2 per share in some years and at Rs. 3 per share in other years and this amounted to non-disclosure of full particulars. However, this court is not in agreement with Shri Jetley that non-disclosure of certain facts must necessarily lead to the formation of belief that income chargeable to tax had escaped assessment. At best, such a non-disclosure could lead to suspicion that the income assessed might or might not have been the correct income. To illustrate the point, let, us assume the case of an assessee who does not file returns of income. the mere fact that returns of income were not filed cannot, by any stretch of imagination, lead to the belief that income assessable to tax had escaped assessment. For the formation of that belief, you require something more than the mere fact of non-filing of return or non-disclosure of what is

considered by the Income Tax Officer to be full particulars. Indirect support for the view is available in the decisions of the Supreme Court in the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, and in the case of Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, .

3. In the above view of the matter, the notice issued is without jurisdiction and is hereby quashed. As a consequence thereof, the assessment made in pursuance thereof will also have to be quashed.

4. In the result, the rule is made absolute in terms of prayer clause (a) and the amended prayer(c) (i) No. order as to