

**(1997) 09 GAU CK 0005**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 2596 of 1992**

Krishna Mohan Banik

APPELLANT

Vs

Income Tax Officer

RESPONDENT

**Date of Decision :** 15-09-1997

**Acts Referred:**

Income Tax Act, 1961 — Section 142(1), 143(2)

**Citation :** (1998) 232 ITR 339

**Hon'ble Judges :** A.K. Patnaik, J

**Bench :** Single Bench

**Advocate :** A.F.G. Osmani, H.R.A. Choudhury and M.H. Rajbarbhuiya, for the Appellant; G.K. Joshi and U. Bhuyan, for the Respondent

## Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the petitioner has prayed for quashing the notices dated October 27, 1992, and November 13, 1992, issued by the Income Tax Officer, Ward-II, Silchar, under Sections 143(2) and 142(1), respectively, of the Income Tax Act, 1961, for the assessment year 1990-91.

2. The facts briefly are that the petitioner, Sri Krishna Mohan Banik, is a partner of Jagannath Bhandar which is a partnership firm registered under the Income Tax Act, 1961, (hereinafter referred to as the "petitioner's firm"). For the assessment year 1990-91, the petitioner's firm filed its Income Tax return on March 31, 1992, showing a total income of Rs. 1,16,770 and tax liability of Rs. 16,465 which had been paid as advance tax and self-assessment tax. The Assessing Officer sent an intimation dated August 20, 1992, to the petitioner u/s 143(1)(a) of the Income Tax Act, 1961, demanding a further amount of Rs. 1,361 after computing the tax and interest payable on the basis of the total income returned by the petitioner. But thereafter by the impugned notice dated October 27, 1992, the Assessing Officer required the petitioner to attend his office at Silchar on November 13, 1992, either in person or by a representative and to produce the books of account, documents and any other evidence on

which the petitioner relied in support of the return. On November 13, 1992, the petitioner submitted an adjournment petition before the Income Tax Officer, Ward-II, Silchar, stating therein that as the petitioner's accountant was ill, the matter be adjourned for at least a month. Along with the said adjournment petition, a certificate from the doctor was also filed certifying that the said accountant was suffering from acute bacillary dysentery and was advised to take complete rest for 30 days. The Income Tax Officer, Ward-II, Silchar, however, issued a letter dated November 13, 1992, to the petitioner's firm giving it another opportunity of being heard on December 2, 1992. Along with the said letter, the said Assessing Officer also issued a notice to the petitioner to produce various books of account and other documents relating to the previous years relevant to the assessment years 1988-89, 1989-90 and 1990-91. Aggrieved, the petitioner has filed the present civil rule challenging the aforesaid notices dated October 27, 1992 and November 13, 1992, of the Income Tax Officer, Ward-II, Silchar.

3. Mr A.F.G. Osmani, learned counsel appearing for the petitioner, contended that the proviso to Section 143(2) of the Income Tax Act, 1961, as it stood prior to its amendment with effect from October 1, 1991, fixed the time limit of six months from the end of the month in which the return was furnished within which the Assessing Officer could serve a notice u/s 143(2) on the assessee requiring him to produce or cause to be produced any evidence on which the assessee relied in support of the return. According to Mr Osmani, since the aforesaid return had been filed for the assessment year 1990-91, the said proviso to Section 143(2) of the Act of 1961, prior to its amendment with effect from October 1, 1991, applied to the facts of the present case and as the return had been filed for the assessment year 1990-91 by the petitioner on March 31, 1992, notice u/s 143(2) could be issued by the Assessing Officer on the petitioner for producing evidence or causing to produce evidence in support of the return before the expiry of six months from the end of March, 1992, that is, before September 30, 1992. But in the instant case, the impugned notice u/s 143(2) of the Income Tax Act, 1961, had been issued by the Assessing Officer to the petitioner for the assessment year 1990-91 on October 27, 1992, which was beyond the period of six months and, therefore, the same was liable to be quashed on the ground of limitation.

4. In reply, Mr G.K. Joshi, learned standing counsel, appearing for the Income Tax Department, submitted that Section 143 of the Income Tax Act, 1961, is a procedural provision and hence the law as it stood on the date of the impugned notice dated October 27, 1992, would apply to the facts of the present case and not the law as it stood prior to October 27, 1992. According to Mr. Joshi, the proviso to Section 143(2) was substituted by the Finance (No. 2) Act, 1991, with effect from October 1, 1991, and as per the aforesaid substituted and/or amended proviso, a limitation of 12 months from the end of the month in which the return was furnished by the assessee was provided within which the Assessing Officer could serve on the assessee a notice u/s 143(2) requiring him to produce or cause to be produced any evidence on which the assessee relied in

support of the return. In the facts of the present case, since the return for the assessment year 1990-91 was furnished by the petitioner on March 31, 1992, the said limitation of 12 months for issue of a notice u/s 143(2) by the Assessing Officer was to expire on March 31, 1993 and the impugned notice issued by the Assessing Officer on October 27, 1992, was well within the period of limitation. He cited the judgment of the Supreme Court in the case of State of Maharashtra and another Vs. Sant Joginder Singh Kishan Singh and others, in which the Supreme Court while deciding a case relating to land acquisition held that determination of compensation by applying the appropriate principle is related to a substantive provision, whereas making of award within the prescribed period is basically procedural. Mr. Joshi accordingly contended that the very Chapter-XIV of the Income Tax Act, 1961, in which Section 143 is included has been titled "Procedure for assessment" and thus Section 143(2) is not a substantive provision but a procedural provision and the amendment to the said procedural provision would apply to all pending cases. Mr. Joshi further stated that on October 1, 1991, when the aforesaid amendment to the proviso to Section 143(2) came into force laying down a limitation of 12 months instead of 6 months from the end of the month in which the return was filed, the petitioner had not even filed its return for the assessment year 1990-91 and, therefore, any return filed by the petitioner after October 1, 1991, would be governed by the said amended provision of the proviso to Section 143(2) of the Income Tax Act, 1961. In support of his argument, he also cited the judgment of the Supreme Court in the case of Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, and the judgment of the Bombay High Court in the case of Kudilal Govindram Seksaria and Others Vs. Commissioner of Income Tax (Central), Bombay, Section 143(2) of the Income Tax Act, 1961, and its proviso as it stood prior to its amendment on October 1, 1991, was to the following effect : "(2) Where a return has been made u/s 139, or in response to a notice under Sub-section (1) of Section 142, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner,. . . serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced therein, any evidence on which the assessee may rely in support of the return :

5. Provided that no notice under this sub-section shall be served on the assessee after the expiry of the financial year in which the return is furnished or the expiry of six months from the end of the month in which the return is furnished, whichever is later."

6. With effect from October 1, 1991, the Finance (No. 2) Act, 1991, substituted the following proviso for the aforesaid proviso to Section 143(2) :

"Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return

is furnished."

7. On a reading of the Finance (No. 2) Act, 1991, or the aforesaid substituted proviso, there is nothing to show that Parliament intended that the aforesaid proviso was not to apply to the assessment year 1990-91 and was only to apply to the assessment year 1991-92 onwards as contended by Mr. Osmani. However, it is a well-settled principle of law that a provision under a taxing statute should not be so construed as to affect the finality of a tax assessment or to open up a tax liability which had become barred (see *Income Tax Officer, V Circle, Madras, and Another Vs. S.K. Habibullah*, The question therefore is as to whether the tax liability of the petitioner for the assessment year 1990-91 had become barred or final and could not be opened by the Assessing Officer u/s 143(2) of the Income Tax Act, 1961. The proviso, as it stood prior to its amendment on October 1, 1991, quoted above would show that no notice u/s 143(2) could be served on the assessee after the expiry of the financial year in which the return was furnished or the expiry of six months from the end of the month in which the return was furnished, whichever was later. Before October 1, 1991, the petitioner's firm had not filed its Income Tax return for the assessment year 1990-91 and hence even under the proviso as it stood prior to its amendment with effect from October 1, 1991, the tax liability of the petitioner for the assessment year 1990-91 had not become final for non-issue of notice u/s 143(2) of the Income Tax Act, 1961. With effect from October 1, 1991, the aforesaid proviso was no longer in operation and instead the substituted proviso introduced by the Finance (No. 2) Act, 1991, providing that no notice u/s 143(2) shall be served on the assessee after the expiry of 12 months from the end of the month in which the return is furnished came into force. It is only after the said amended proviso to Section 143(2) came into force that the petitioner's firm filed its return for the assessment year 1990-91 on March 31, 1992, and the liability of the petitioner for the assessment year 1990-91 on the basis of the said return would have become final if no notice had been issued by the Assessing Officer u/s 143(2) within the period of 12 months from March 31, 1992, i.e., before March 31, 1993. But well before March 31, 1993, the impugned notice dated October 27, 1992, was served by the Assessing Officer on the petitioner requiring him to produce evidence or cause production of the evidence u/s 143(2) in support of the return. I am, therefore, of the opinion that the impugned notice dated October 27, 1992, u/s 143(2) of the Income Tax Act, 1961, issued to the petitioner for the assessment year 1990-91 does not open up any liability of the petitioner which had become final, and is not barred by limitation.

8. It was next contended by Mr. Osmani, learned counsel for the petitioner, that the impugned notice dated November 13, 1992, so far as it requires the petitioner to produce books of account relating to the previous years relevant to the assessment years 1988-89 and 1989-90 is bad in law inasmuch as only the books of account relating to the previous year relevant to the assessment year 1990-91 were required for the purpose of assessment for the assessment year

1990-91. Mr. Osmani vehemently contended that the whole approach of the Assessing Officer to call for the books of account for the previous two years without first going through the books of account of the previous year relating to the assessment year 1990-91 amounts to a fishing and roving enquiry and discloses a prejudiced mind of the Assessing Officer against the petitioner. Alternatively, he contended that it is a fit case in which the High Court should direct that some Assessing Officer other than the Income Tax Officer, Ward-11, Silchar, should assess the petitioner on transfer of the assessment file to him.

9. Mr. G.K. Joshi, learned counsel appearing for the Income Tax Department, on the other hand, pointed out that under the provisions of Section 142(1) of the Income Tax Act, 1961, the Assessing Officer has been vested with the power to require production of books of account relating to a period not more than three years prior to the previous year. Hence, the Assessing Officer was well within his jurisdiction to call for the books of account for the previous two years. Relying on the averments in the affidavit-in-opposition, he further contended that in the return for the assessment year 1990-91 the petitioner had disclosed income by way of interest on money lent. But in the relevant balance-sheet investment in money-lending business was not reflected. The liabilities of the petitioner as shown in the balance-sheet as on March 31, 1990, are relatable to the liabilities of the petitioner as on March 31, 1989, and March 31, 1988. It was for these reasons that the books of account of the two preceding years, that is, the two previous years relating to the assessment years 1988-89 and 1989-90 were called for along with the books of account of the previous year relevant to the assessment year 1990-91. He cited the judgment of the Calcutta High Court in the case of Calcutta Chromotype Pvt. Ltd. Vs. Income Tax Officer, , and the judgment of the Allahabad High Court in the case of Juggilal Kamlapat Cotton Spg. and Wvg. Mills Co. Ltd. Vs. Income Tax Officer, "V", in support of his argument that the Income Tax Officer was well within his power and jurisdiction to call for the said books of account. Mr. Joshi argued that normally the High Court should not interfere under Article 226 of the Constitution with the statutory notice issued by the Assessing Officer for production of books of account, etc., for the purpose of assessment Regarding transfer of case, he stated that Section 127 of the Income Tax Act, 1961, provides a remedy to the assessee when he desires transfer of his assessment file.

10. Section 142(1) of the Income Tax Act, 1961, is quoted hereinbelow :

"142. (1) For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return u/s 139 or in whose case the time allowed under Sub-section (1) of that section for furnishing the return has expired a notice requiring him, on a date to be therein specified,--

(i) where such person has not made a return within the time allowed under Sub-section (1) of Section 139, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner and setting forth such

other particulars as may be prescribed, or

(ii) to produce, or cause to be produced, such accounts or documents as the Assessing Officer may require, or

(iii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require :

Provided that-

(a) the previous approval of the Deputy Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts ;

(b) the Assessing Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year."

11. A reading of the aforesaid provisions of Sub-section (1) of Section 142 of the Income Tax Act makes it clear that the Assessing Officer has wide powers to call for any books of account from the assessee and the only bar under proviso (b) to Sub-section (1) of Section 142 of the Act of 1961, is that he will not require production of any accounts relating to a period more than three years prior to the previous year relevant to the assessment year for which enquiry for the assessment is being made. Thus the Assessing Officer was fully within his jurisdiction to issue the impugned notice dated November 13, 1992, requiring the petitioner to produce the books of account relating to the previous years relevant to the assessment years 1988-89 and 1989-90 in the enquiry relating to the assessment for the assessment year 1990-91. In the affidavit-in-opposition, the Income Tax Officer, Ward-II, Silchar, has also shown that the production of the said books of account of the assessee for the previous years relevant to the assessment years 1988-89 and 1989-90 has become necessary in connection with the income from interest on money lent by the petitioner shown in the assessment year 1990-91. Hence, it is difficult to hold that the Assessing Officer was making a roving and fishing enquiry and that the impugned notice dated November 13, 1992, requiring the petitioner to produce the books of account for the two previous years relevant to the assessment years 1988-89 and 1989-90 was issued with a prejudiced mind. Regarding transfer of the assessment to any other Assessing Officer, it is always open to the petitioner to move the concerned authority u/s 127 of the Income Tax Act, 1961.

12. Subject to the aforesaid observations, this writ petition has no merit and is accordingly dismissed. The interim order passed by this court on December 1, 1992, staying the impugned notices dated October 27, 1992, and November 13, 1992, is vacated. Considering the entire facts and circumstances of the case, the parties shall bear their respective costs.