

(1980) 08 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No's. 12 and 13 of 1979

Lokendra Singh

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 12-08-1980

Acts Referred:

Income Tax Act, 1961 — Section 147, 148
Wealth Tax Act, 1957 — Section 17

Citation : (1981) 128 ITR 450

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : N.K. Dave, for the Appellant;

Judgement

Shukla, J.—This order shall govern disposal of Miscellaneous Petition No. 13/1979 also as the genesis of both these petitions is the same.

2. Petitioner is an Income Tax and wealth-tax assesses. Petitioner owned some agricultural lands in the District of Ratlam. The Govt. of Madhya Pradesh acquired 107 bighas of his agricultural lands, vide notification dated February 26, 1965, published on April 26, 1965. Possession of the lands was taken by the Government on April 2, 1967, and the Collector, Ratlam, determined the compensation for the lands at Rs. 1,28,400 plus solatium at 15%. The petitioner sought a reference against the award before the District Judge, Ratlam, and the amount of compensation was enhanced by the District Judge to Rs. 17,04,038. The District Judge also directed payment of interest at 6% amounting to Rs. 80,958.

3. The State of Madhya Pradesh challenged this order before the High Court and the High Court, vide judgment dated April 26, 1977, reduced the amount of compensation to Rs. 12,78,328 and awarded interest at 6% per annum from February 2, 1967, to May 13, 1977. During the pendency of the litigation, the petitioner did not receive any interest from the State Government.

4. For the assessment years 1969-70, 1970-71, 1971-72 and 1972-73, this petitioner had filed his Income Tax and wealth-tax returns on the due dates. The I.T. and W.T. assessments were completed for all these years by the ITO/WTO, Ratlam.

5. The respondents-ITO/WTO issued notices u/s 148 of the I.T. Act and Section 17 of the W.T. Act for reopening the assessments in respect of the assessment years in question on the ground that income/net wealth of the assessee for the relevant assessment years had escaped assessment. The petitioner has challenged the validity of these notices and the jurisdiction of the ITO/WTO to initiate proceedings for reassessment u/s 148 of the I.T. Act and Section 17 of the W.T. Act.

6. The petitioner has submitted that no income had escaped assessment as a result of any omission or failure on the part of the petitioner to disclose fully or truly all material facts necessary for the assessments of the income and wealth for the above-mentioned assessment years. Petitioner averred that in his returns for Income Tax and wealth-tax he had specifically declared that the income from interest shall be returned on receipt and the matter was sub-judice. Similarly, in the wealth-tax returns, he had mentioned in the relevant columns that the matter of compensation was sub-judice and, therefore, it was not included in the returns. According to the petitioner, with all these material facts before the ITO/WTO and after discussion with the petitioner's I.T. consultant, the said officer framed the assessments for the relevant assessment years. The action taken u/s 147 of the I.T. Act and u/s 17 of the W.T. Act was thus without jurisdiction inasmuch as it amounted only to a change of opinion on the part of the officer concerned as regards the taxability of the income and wealth of the assessee and there was no default on the part of the petitioner which could warrant an action under the above provisions of the I.T. and W.T. Acts. It was further submitted that the petitioner maintained his accounts on cash basis and, therefore, the interest on the amount of compensation which had not been paid was otherwise also not indudible in his income.

7. The respondents-ITO/WTO, Ratlam, in their returns (affidavits) submitted that the petitioner did not make a full and true disclosure of all the particulars of his income and wealth. It was alleged that "the entries in the returns are illegible, cryptic and suspicious...They appear to be made in a different ink". The respondents submitted that the action was taken u/s 147(a) of the I.T. Act and Section 17 of the W.T. Act because the petitioner had failed to disclose fully and truly all material facts for assessment.

8. Respondent No. 1-ITO in Misc. Petition No. 12/1979 did not specifically deny the allegation in the petition that the petitioner maintained his accounts on cash basis and interest had not actually been received by him during the previous years relevant to the assessment years in question.

9. Copies of the Income Tax and wealth-tax returns for the relevant assessment

years were filed by the petitioner. The respondents-ITO/WTO in both the writ petitions also filed the photostat copies of the returns and produced before us the originals for perusal. The allegations in the returns filed in these writ petitions by the ITO/WTO that "the entries in the returns are illegible, cryptic and suspicious" have no substance whatsoever. The entries were not illegible and in no case suspicious. This aspersion was certainly thoughtless and could not be substantiated during arguments. Perusal of these entries leaves no manner of doubt that in the Income Tax returns, the assessee had clearly mentioned that interest was not included as not received and the matter was "in dispute". Similarly, in the wealth-tax returns for assessment years 1969-70, 1970-71 and 1971-72, the assessee had disclosed in the relevant column "Part IV" that the compensation due from the Government on the agricultural lands acquired was "not determined and under dispute".

10. For reopening Income Tax assessments for assessment years 1969-70, 1970-71, 1971-72 and 1972-73, the ITO gave common reasons. Copies are filed as annex. R-5. The reason which led the ITO to believe that income had escaped assessment was that "the assessee had been allowed interest by the District Judge on the compensation awarded and the matter was pending in the High Court. The assessee will receive interest @ 6% per annum to the date of payment on the said amount. Accordingly, estimated interest @ 6% per annum for the year will be Rs. 1,07,124. This amount has escaped assessment." It is manifest that even according to the ITO the matter was not yet decided and interest had not yet been paid. There was no indication that the ITO was not aware of the assessee's claim for interest on compensation to be awarded to him by the District Judge or the High Court. In fact, as already observed, the petitioner in his returns had disclosed clearly that interest payable on the amount of compensation had neither been determined nor received as the matter was in dispute.

11. From these facts two things emerge clearly: (1) the petitioner had disclosed that interest was payable but had not been determined nor received; and (2) the ITO was aware that interest had not yet been determined and received. On these facts it could not be claimed by the department that the assessee had failed to disclose fully or truly all material facts necessary for the assessment. The petitioner/assessee had not only disclosed the primary facts, but the reasons given for reopening the assessment indicate that the ITO was aware of those facts. In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, the principles which warranted reopening of the assessment u/s 34(1 A) of the 1922 Act were laid down by the majority judgment of the Supreme Court. This is a leading case which has been followed subsequently by the Supreme Court and other High Courts. The principle laid down was that "it was the duty of the assessee-company to disclose all the facts which had a bearing on the question. But whether the assessee had the intention to make a business profit as distinguished from the intention to change the form of investments was really an inference to be drawn by the assessing authority

from the material facts. The law did not require the assessee to state the conclusion that could reasonably be drawn from the primary facts". In *Gemini Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others*, , their Lordships of the Supreme Court, reversing the decision of the Allahabad High Court, held thus (headnote):

"After discovery of the primary facts relating to the transactions evidenced by the drafts it was for the officer to make the necessary enquiries and draw proper inference as to whether the amounts represented by the drafts could be treated as part of the total income of the appellant. This the officer did not do. It was plainly a case of oversight and it could not be said that income chargeable to tax had escaped assessment by reason of the omission or failure on the part of the appellant to disclose fully and truly all material facts. He could not, thereafter, take recourse to Section 147(a) to remedy the error resulting from his own oversight."

12. In *Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta*, the same proposition in a different set of circumstances was reiterated by the Supreme Court.

13. The ratio of these decisions is that when primary facts were already before the ITO and after some routine enquiry, the ITO could assess the income on the basis of such information, it was not open to him to invoke the provisions of Section 147(a) of the I.T. Act and reopen the assessment, even though he might have omitted to notice the facts mentioned in the return by oversight. We have already noted that the assessee had indicated in the relevant columns of his returns that the question of compensation and interest on acquisition of his agricultural lands was in dispute and the same had not been determined or received. It was not open for the ITO/WTO to reopen the proceedings u/s 147(a) of the I.T. Act or Section 17 of the W.T. Act. The action taken by the ITO/WTO for the assessment years in question for reopening the I.T. and W.T. assessments for these years was without jurisdiction. The notices issued by the ITO u/s 148 of the I.T. Act, 1961, for assessment years 1969-70 to 1972-73 are quashed and set aside. Similarly, notices issued by the WTO u/s 17 of the W.T. Act, 1957, for assessment years 1969-70 to 1971-72 for reopening the assessments are quashed and set aside. Costs of these petitions will be borne by the respondents. Advocate's fee for each writ petition Rs. 150. The outstanding amount of security deposit be refunded.