

**(1972) 02 CAL CK 0013**  
**In the Calcutta High Court**  
**Case No : Matter No. 495 of 1969**

Madanlal Chowdhury

APPELLANT

Vs

Income Tax Officer

RESPONDENT

**Date of Decision :** 16-02-1972

**Acts Referred:**

Income Tax Act, 1961 — Section 148

**Citation :** (1979) 119 ITR 351

**Hon'ble Judges :** Sabyasachi Mukharji, J

**Bench :** Single Bench

## **Judgement**

Sabyasachi Mukharji, J.—This is an application challenging a notice u/s 148 of the I.T. Act, 1961. The notice appears at page 47, annex. "G". The notice was addressed to Messrs. Surajmal Behadurmull, I, Convent Road, Calcutta. The notice was in respect of the assessment year 1957-58. In the said assessment year, there were two HUFs by the said name for the two periods--one was for the period from November 14, 1955 to December 31, 1955, and the other was for the period from January 1, 1956 to November 2, 1956. During that period it is also said that there was disruption of the smaller HUF which formed into a partnership firm. That position, however, had not been accepted by the Tribunal. The notice having been issued, the partnership firm made an application challenging the notice. The Income Tax department made a statement before T.K. Basu J. that the said notice was not intended to be used against the partnership firm. Two points were urged in support of this application; one was that the notice was vague and, as such, invalid. Secondly, it was contended that the ITO did not have materials to form any belief and he did not in fact form any belief. It was contended that from the notice it was not clear whether the notice was intended for the bigger HUF or the smaller HUF or partnership firm. The notice was not addressed to any person in any particular capacity. Reliance was placed on the Division Bench decision of this court in the case of SEWLAL DAGA Vs. COMMISSIONER OF Income Tax, CALCUTTA., . Reliance was also placed on the unreported judgment of mine in Matter No. 542 of 1968, Shyam Sundar

Bajaj Vs. Income Tax Officer, "A" Ward and Others, . It has been held by the Supreme Court that the service of the notice u/s 148 is a condition precedent for the initiation of the proceedings. It is, therefore, vital that a valid notice should be served. In the instant case, it does not appear in what capacity the notice was served nor is it clear from the notice itself whether the notice was being served on the bigger HUF or the smaller HUF. At that time, admittedly, during the relevant assessment year there were two HUFs and two assessment orders had been passed. It is not clear from the notice whose income was alleged to have escaped assessment. Reliance was also placed for this proposition on the decision of the Supreme Court in the case of Commissioner of Income Tax, Gujarat II Vs. Kurban Hussain Ibrahimji Mithiborwala, . Counsel for the respondent contended that the petitioner was in no way misled by the aforesaid notice. I am of the opinion that that is not a valid consideration. The question is not whether the petitioner was misled or not. The question is whether the notice was vague or not. The fact that the respondents had to make a statement before T.K. Basu J. to clarify the position that the notice was not intended to be used against the partnership firm indicated, in my opinion, that it was capable of being so construed and that itself is sufficient ground for holding that the notice was vague. Quite apart from that it is not clear, as mentioned hereinbefore, whether the notice was intended for the smaller HUF or the bigger HUF. On this ground, the notice is liable to be quashed.

2. It was next contended that there were no materials before the ITO to form the belief and he did not in fact form any belief. Pursuant to the directions of this court one Sunil Kumar Banerjee affirmed an affidavit on behalf of the respondents wherein he has stated the reasons for reopening of the assessment. The reasons stated were that the petitioner had certain loan transactions with one Messrs. Srikishendas Ghanshyamdas who was a name-lender. The basis of the knowledge of the ITO that Srikishendas Ghanshyamdas was merely a name-lender and did not lend money has not been stated. It has not been further stated what enquiries, if any, were made to form the belief. It is not clear also from the materials that the ITO did form actually any belief that there was omission or failure on the part of the assessee to disclose fully or truly all material facts. It is necessary in cases of reopening of assessments that there should be formation of belief not only on the question that there has been escapement of income but that such escapement of income was due to omission or failure on the part of the assessee. In this connection, counsel for the petitioner drew my attention to the recent decision of the Supreme Court in the case of Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, . In the aforesaid view of the fact and in view of the materials in the affidavit, it must be held that there were no materials for the formation of belief. Upon this ground, the notice is liable to be quashed.

3. In the premises, the notice u/s 148 of the I.T. Act, 1961, issued to the petitioner which is annex. "G" to the petition is hereby quashed and set aside and the respondents are restrained from giving any effect to the said notice. Let

writs in the nature of mandamus and certiorari issue accordingly. If any assessment has been made pursuant to the said notice, the said assessment is also hereby quashed and set aside. Let writs in the nature of mandamus and certiorari issue also in respect of such assessment order.

4. The rule is made absolute to the extent indicated above. There will be no order as to costs. Stay of operation of this order for a period of six weeks is granted.