(1991) 03 MP CK 0040

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 377 of 1990

Milan Supari Stores — APPELLANT

Vs

Assistant Income Tax Commissioner — RESPONDENT

Date of Decision : 08-03-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148, 186

Citation : (1992) 106 CTR 311 : (1992) 194 ITR 72 : (1991) 57 TAXMAN 159

Hon'ble Judges : V.S. Kokje, J;V.D. Gyani, J

Bench : Division Bench

Advocate : J.W. Mahajan, for the Appellant;

Judgement

V.S. Kokje, J.—The petitioner is a registered partnership-firm carrying on the business of sale and purchase of supari, pan, masala, tobacco and related products. The petitioner is being regularly assessed by the Income Tax Department as a "registered firm" since 1973-74. The petitioner-firm filed returns for the assessment year 1977-78 in the status of a registered firm. After hearing the petitioner, examining the books of account, obtaining various clarifications at such hearings, the assessment proceedings were completed and final assessment orders were awaited. It appears that, on December 17, 1986, House No. 12, Daulatganj, Indore, was raided. Certain stocks and other things were seized from the premises. On the basis of bank pass-books found on the premises, a garnishee order prohibiting the Canara Bank from releasing the money in the accounts was passed under purported exercise of powers u/s 132(3) of the Income Tax Act, 1961 (for short "the Act").

2. The aforesaid orders were challenged before the High Court and the High Court quashed the same. On June 10, 1987, respondent No. 1, the Assistant Income Tax Commissioner, Ward-2(1), Indore, passed an order under the purported exercise of powers u/s 132(5) of the Act against (i) Shri Habib Musa, (ii) Noor Mohd., (iii) Messrs. Milan Supari Stores, (iv) Messrs. Sarvottam Supari

Stores, (v) Hilman Traders, and (vi) New Hilman Traders, treating them as an association of persons (AOP). Respondents Nos. 4 and 5, Messrs. Sarvottam Supari Stores and Messrs. Hilman Traders, filed objections against the order dated June 10, 1987. Respondent No. 1, thereafter, served a notice under the purported exercise of powers u/s 148 of the Act on the petitioner and respondents Nos. 4 and 5, treating them as an association of persons and calling upon the petitioner to file returns in that capacity for the assessment years 1983-84 and 1985-86.

3. In the said notice, it was stated that respondent No. 1 had reasons to believe that income had escaped assessment within the meaning of Section 147 of the Act. The petitioner applied to respondent No. 1 for supply of reasons which led him to believe that income had escaped assessment in the said assessment year, No reply was received by the petitioner. The petitioner had, therefore, filed petitions challenging the notices u/s 147/148 of the Act Miscellaneous Petition No. 317 of 1988 related to the assessment years 1979-80 to 1982-83 and, in this case, Messrs. Sarvottam Supari Stores alone was included in the status of an association of persons. Miscellaneous Petition No. 318 of 1988 related to the assessment years 1983 84, 1984-85 and 1985-86. In this case, respondents Nos. 4 and 5 were also included as members of an association of persons. Miscellaneous Petition No. 420 of 1989 related to the assessment years 1979-80 to 1982-83. In this case, Messrs. Sarvottam Supari Stores, 5, Jawahar Marg, Indore, and Messrs. Hilman Traders, 12, Daulatganj, Indore, Messrs. Sarvottam Supari Stores, 167, Ranipura, Indore and Messrs. Hilman Traders, 96, Siyaganj, Indore, were treated to be members of an association of persons. All these petitions were decided by this court by a common order on January 29, 1990 Milan Supari Stores Vs. Income Tax Officer and Others,

4. The petitioner received a notice on March 15, 1990, purporting to be issued in exercise of powers u/s 147/148 of the Act, calling upon the petitioner as well as respondents Nos. 4 and 5 to file a return for the assessment year 1987-88 in the capacity of an association of persons. The petitioner filed a return under protest on March 19, 1990, and requested respondent No. 1 to supply the reasons which led him to believe that income chargeable to tax has escaped assessment. No reply was received till the filing of the petition. The petitioner has, therefore, filed this petition challenging the said notice u/s 147/148 of the Act contending that the notice was void ab initio and without jurisdiction. Despite service of notice, no return has been filed in the case.

5. Shri J. W. Mahajan, learned counsel for the petitioner, submitted that the case was squarely covered by the judgment of this court in Miscellaneous Petition No. 317 of 1988 decided on January 1, 1990 Milan Supari Stores Vs. Income Tax Officer and Others,), a copy of which is annexed to the petition as annexure ''B''. A perusal of the aforesaid judgment would show that the court has held that merely because at the time of the raid in the particular year some unaccounted stock or money was found in the possession of one of the partners of the firms or

the stock found cannot be separately identified as belonging to separate firms, it would not automatically lead to the conclusion that the stock was accumulated as a result of suppression of the full and true material facts of the firms in the previous years. The court has also held in this decision that the Income Tax authority had completely ignored the provisions of Section 186 of the Act before passing the impugned order. In that case, u/s 186 of the Act, the Income Tax Officer had to serve a notice on the firm if he was of the opinion that in fact no genuine firm was in existence before its registration as such. If the reply to the notice was not satisfactory, the registration of the firm could be cancelled for that assessment year or it could be cancelled under Sub-section (2) of Section 186 of the Act. The court further observed that as the first step before passing an order treating the petitioner and the respondents'' firm as an association of persons, notice u/s 186 was necessary. As no such notice u/s 186 of the Act was given, on that ground also, the order held the notice u/s 148 of the Act to be without jurisdiction.

6. In the present case also, the notice u/s 148 of the Act does not disclose any reasons on the basis of which it was believed by the Income Tax Officers that income had escaped assessment. Reasons were not supplied to the petitioner despite a specific request being made, vide annexure to the petition. Moreover, the provisions of Section 186 of the Act were also not followed before issuing notice to the alleged association of persons said to be including the petitioner/ respondents Nos. 4 and 5 and others. We, therefore, have no option but to quash the notice dated March 15, 1990 (annexure ''C'' to the petition), issued by the Assistant Commissioner of Income Tax (Investigation Circle-II (Indore)).

7. We, therefore, quash the aforesaid notice (annexure ''C'' to the petition) and all the proceedings instituted upon that notice. This petition is allowed with no order as to costs. The security deposit shall be refunded to the petitioner after verification.

