
(1990) 08 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 2316 of 1987 with Writ Petition No. 1876 of 1988
and Writ Petition No. 3190 of 1987

Nirmalkumar Ashokkumar and another

APPELLANT

Vs

K.V. Gopi, Income Tax Officer and another

RESPONDENT

Date of Decision : 03-08-1990

Acts Referred:

Income Tax Act, 1961 — Section 143, 147, 147(A), 148

Citation : (1991) 187 ITR 329

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

Bench : Single Bench

Advocate : Pradeep Jetley, for the Appellant; Dr. V. Balasubramanian, for the Respondent

Judgement

T.D. Sugla, J.—By these petitions under article 226 of the Constitution of India, the petitioners have challenged the jurisdiction of the Income Tax Officer to issue notices u/s 148 read with section 147(a) of the Income Tax Act, 1961, dated March 26, 1987, March 22, 1988, and September 1, 1987, for assessment years 1978-79, 1979-89 and 1981-82, respectively.

2. During the course of assessment proceedings, the assessee had, inter alia, filed copies of loan accounts with confirmation letters. On that basis, the genuineness of the loans was accepted without making any further enquiry and the assessments were completed u/s 143(3).

3. Some time in the year 1984, the premises of one Shri Satyanarayan Kedia were searched by the Department. Certain books and documents were seized. One such book was red copy/diary in which the names of the petitioners were noted at pages 53 and 261. Shri Kedia stated before the officers of the Department who had come to search his premises that transactions noted by him in that red copy/diary were bogus and that he was arranging havalas only for his clients. The said information eventually came to the notice of the Income Tax Officer who assessed the petitioners. On the basis aforesaid information, he

formed a reason to believe that certain loans taken by the petitioners during the relevant previous years were not genuine and that the petitioners' income for those years, had, thus, escaped assessment. He also held that happened as a result of the petitioners' not disclosing fully and truly all material facts necessary for the assessments.

4. The first question is whether the statement of Shri Satyanarayan Kedia constitutes any material, and, if so, whether that material has a direct nexus or live with the formation of the belief that the petitioners' income had or could have escaped assessment. The Supreme Court held in the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, , that the reasons for the formation of the belief contemplated by section 147(a) of the Income-Act, 1961, for the reopening of an assessment must have a rational connection or relevant bearing on the formation of a belief, rational connection postulating that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of the belief that there has been escapement of income. Observing that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point, it was held that it is not any and every material, however vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to the escapement of income. The case of Income Tax Officer and Others Vs. Madhani Engineering Works Ltd., Calcutta, , the Supreme Court further held, following its earlier decision in the case of The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., , that the assessee having produced in the original assessment proceedings all the hundis on the strength of which it had obtained loans from the creditors as also entries in the books of account showing payment of interest, the assessee could not be said to have failed to make a true and full disclosure of the material facts by not confessing that the hundis and the entries in the books of account produced were bogus. It was for the Income Tax Officer to investigate and determine whether these documents were genuine or not.

5. In the present case, as stated above, the copy of the loan accounts and the confirmation letters were filed during the course of the original assessment proceedings. The petitioners had no further obligation. It was for the Income Tax Officer to investigate and determine whether such loans were genuine. It was admittedly not done during the original assessment proceedings. It cannot be held that the petitioners had failed to disclose fully and truly all material facts necessary for assessment. On the basis of the information indicated by me above, viz., the statement of Shri Kedia in the year 1984 before the raiding party, the Income Tax Officer formed the belief that the income of the petitioners had escaped assessment. Shri Kedia has not said a word about the creditors in the books of the petitioners. In that record exercise book/diary at pages 53 and 261, the names of the petitioners were merely noted. No details of loans or hawala transactions were noted therein. Assuming that the said information constituted material, the material will be, to say the least, very

vague and general. It can have no connection, far less a live link or a direct nexus, with the loans taken by the petitioners. In the circumstances, the formation of the belief that income had or might have escaped assessment is unwarranted in this case. Accordingly, it has to be held that the Income Tax Officer had not acquired valid jurisdiction to reopen the assessments u/s 148 of the Income Tax Act, 1961, for the three years involved herein. The notices are, accordingly, quashed. Rule is made absolute in terms of prayer clause (a) in each of the three petitions with no order as to costs.