
(1993) 09 BOM CK 0006

In the Bombay High Court

Case No : Income-tax Reference No. 441 of 1980

P.M. Shah

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-09-1993

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 148

Citation : (1994) 209 ITR 135

Hon'ble Judges : D.R. Dhanuka, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.J. Mehta, for the Appellant; Dr. V. Balasubramaniam, for the Respondent

Judgement

DR. B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law to this court for opinion at the instance of the assessee :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the reporting of the assessments for the assessment years 1965-66 and 1966-67 was valid and proper in law ?"

The assessee is an individual. The controversy in this case pertains to the assessments years 1965-66 and 1966-67. The original assessment for the assessment year 1965-66 was made u/s 143(3) of the Income Tax Act, 1961 ("the Act"), and the income of the assessee was determined at Rs. 55,760. It appears from the statement of the case that the income as assessed by the Income Tax Officer was enhanced by the Appellate Assistant Commissioner. The enhancement was confirmed by the Tribunal. It was, however, deleted in consequence of the opinion of the High Court in reference. As a result, the income, as originally assessed by the Income Tax Officer, stood final. The fact of enhancement of the income of the assessee by the Appellate Assistant Commissioner and the ultimate deletion of the enhancement has been mentioned only to complete the narration of facts though it is not relevant in view of the

admitted position that non of the amounts for which the proceedings had been initiated u/s 147(a) of the Act was the subject-matter of enhancement by the Appellate Assistant Commissioner. Similarly, the assessment for the assessment years 1966-67 was also completed u/s 143(3) of the Act and the income of the assessee was determined at Rs. 2,73,150. Later, in the course of assessment proceedings for the assessment years 1967-68, one of the partners of a firm, Messrs. Madhusudan Gordhandas, in whose name some loans stood in the books of account of the assessee was examined by the Income Tax Officer. In his examination, the said partner deposed before the Income Tax Officer, inter alia, that the loans to the extent of Rs. 4,50,000 in Samvat years 2020 relevant to the assessment years 1965-66 shown to have been advanced by the said firm to the assessee were bogus and that the entries showing such loans in the said years were only "havala" transactions and made to aid the assessee for introducing his own undisclosed income. On the basis of the above deposition of the partner of the firm, Messrs. Madhusudan Gordhandas, the Income Tax Officer was satisfied that in the original assessments for the assessments years 1965-66 and 1966-67, the assessee had not fully and truly disclosed all material particulars which resulted in escapement of his income. The Income Tax Officer, therefore, initiated proceedings u/s 147(a) of the Act. In what followed, he held the following credit entries in the name of Madhusudan Gordhandas in the assessee's books, which were accepted as genuine originally, to be bogus :

Rs. 12-6-1964	2,50,000	18-8-1964	50,000	26-9-1964	1,00,000	29-9-1964
50,000	-----	4,50,000	-----			

1. In the original assessment for the years 1966-67, the Income Tax Officer had allowed a sum of Rs. 26,834 claimed by the assessee as interest on the above amounts as deduction in the computation of his income. Proceedings were, therefore, initiated u/s 147(a) of the Act for the assessments year 1966-67 also and the amount of interest of Rs. 26,834 allowed as a deduction on account of interest on loans which was now found to be bogus was added back to the income of the assessee on reassessment.

2. Against the order of reassessment, the assessee appealed to the Appellate Assistant Commissioner of Income Tax. The contention before the Appellate Assistant Commissioner was that at the time of the original assessment, the assessee having produced confirmatory letters from the alleged creditors and the same having been accepted by the Income Tax Officer, it was not open to the Income Tax Officer to initiate proceedings u/s 147(a) of the Act because he (the assessee) had made full and true disclosure. The Appellate Assistant Commissioner did not accept this contention as he was of the opinion that the fact of production of confirmatory letters and the acceptance thereof by the Income Tax Officer was of no consequence once the Income Tax Officer came into possession of fresh information to the effect that the loans in question were bogus and not at all genuine. In his opinion, such a case, it cannot be said that the assessee had made a full and true disclosure of the material facts at the time

of the original assessments which he was required to do. The Appellate Assistant Commissioner also noted the fact that the said partner assessment proceedings for further enquiry and investigation into the genuineness of the loan transaction but, in our opinion, his failure to do so and complete the original assessments proceedings would not take away his jurisdiction to act u/s 147 of the Act, on receipt of the information subsequently. The subsequent information on the basis of which the Income Tax Officer acquired reason to believe that income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts was relevant, reliable and specific. It was not at all vague or non-specific."

3. The Supreme Court also repelled the contention of the assessee that the question regarding the truthfulness or falsehood of the transactions reflected in the return could only be examined during the original assessment proceedings and not at any stage subsequent thereto. It was observed (at page 478) :

"The argument is too broad and general in nature and does violence to the plain phraseology of sections 147(a) and 148 of the Act and is against the settled law laid down by this Court. We have to look to the purpose and intent of the provisions. One of the purposes of section 147 appears to us to be to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "your accepted my lie, now your hands are tied and you can do nothing". It would be a travesty of justice to allow the assessee that latitude."

3. In the above decision, the Supreme Court has discussed its earlier decision in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, and *The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd.*, . The Supreme court also explained its earlier decision in *The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd.*, and observed (at page 473) :

"The judgment in *The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd.*, , cannot be understood as laying down any such proposition that even where the Income Tax Officer gets some fresh information which was not available at the time of the original assessment, subsequent to the conclusion of the original assessment proceedings, which enables him to form a reasonable belief that the income of the assessee had escaped assessment because of the omission or failure of the assessee to disclose true and full facts during the assessment proceedings, he cannot reopen the assessment. The observations in *The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd.*, , noticed above, were made in the peculiar fact - situation of that case and cannot be construed to be of universal application irrespective of the facts and circumstances of the particulars case."

4. The decision of the Supreme Court in *M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another*, is a complete answer to all the submissions made by learned counsel for the assessee. The Commissioner of

Income Tax, Calcutta Vs. Burlop Dealers Ltd., , on which much reliance is placed, has already been explained and clarified by the Supreme Court and it has been made clear that the observations in that case were made in the peculiar fact situation of that case and cannot be construed to be of universal application irrespective of the facts and circumstances of the particular case. The Supreme Court has also made it clear that the observations of the Supreme Court in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., are required to be understood in the manner laid down by it in its above-referred judgment (M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another,). The Supreme Court has thus clearly laid down that jurisdiction u/s 147(a) can be exercised by the Income Tax Officer if on the basis of some fresh specific information coming into his possession subsequently, he had reasons to believe that the income of the assessee had escaped assessment because of the omission or failure of the assessee to disclose true and full facts during the assessment proceedings. The facts of the present case are absolutely clear. They have not only stood the scrutiny of the Income Tax Officer but also of the two appellate authorities - the Appellate Assistant Commissioner and the Tribunal. The finding of fact of the Tribunal is to the subject-matter of challenge in this reference. In that view of the matter, we find that this is a case which is fully covered by the decision of the Supreme Court in M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, against the assessee.

5. Learned counsel for the assessee submits that the judgment of the Supreme Court in M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, goes counter to its decision in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, which is a judgment of a five-judge Bench. He, therefore, submits that we should not follow the above decision in preference to Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, which has been followed by the Supreme Court in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., . He cited the decisions of the Supreme Court in Mattulal Vs. Radhe Lal, , and Union of India (UOI) and Another Vs. K.S. Subramanian, , in support of this contention. We have considered the above submission. We, however, do not find any merit in the same. The question of following a larger Bench judgment against a smaller Bench judgment can arise only where there is a conflict between the two decisions. Such is not the case here. In Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , the Supreme Court was required to consider the true meaning of the expression "material facts" used in sub-section (1) (a) of section 34 of the Indian Income Tax Act, 1922 (corresponding to section 147(a) of the Act). The Supreme court held that the expression "material facts" refers only to primary facts. So far as the primary facts are concerned, it was the assessee's duty to disclose all of the them including particular entries in account books, particulars portions of documents, and documents and other evidence which could have been discovered by the assessing authority, from the documents and other evidence

disclosed. The duty did not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts were before the assessing authority, it was for him to decide what inference of facts could be reasonably drawn and what legal inferences had ultimately to be drawn. It was not for somebody else - far less the assessee - to tell the assessing authority what inference, whether of facts or law, should be drawn from the primary facts. It was observed if from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. The above decision postulates disclosure of primary facts "truly". If the disclosure of primary facts appears to be false it will be no disclosure within the meaning of section 147 of the Act. There is thus no conflict case Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, .

6. In that view of the matter, we do not find that the decisions referred to by learned counsel for the assessee are of any assistance to him in persuading us to disregard or not to follow the latest judgment of the Supreme Court on the point which clearly applies to the facts of the present case.

7. Learned counsel for the assessee as a last limb of his arguments submitted that the ratio laid down by the Supreme Court in M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, cannot be applied to the facts of the case before us as, according to learned counsel, the information received by the Income Tax Officer subsequently was not relevant, reliable and specific. On a perusal of the facts of the case we find that no more specific, relevant and reliable information could have come into the possession of the Income Tax Officer than what has come into his possession in this case. If such information is held to be not reliable then there would hardly be any case which could fall within the parameters of the above decisions of the Supreme Court. We, therefore, do not find any merit in the above submission of learned counsel for the assessee.

8. In view of the foregoing discussion we are of the clear opinion that the Tribunal was right in holding that the reopening of the assessments for the years 1965-66 and 1966-67 was valid and proper in law. The question referred to us, is accordingly, answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

9. Having regard to the facts and circumstances of the case, we make no order as to costs.