

(1990) 07 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 1394, 1395, 1396 and 1397 of 1989 (T) and

Pramod Kumar Rakesh Kumar and Co., Pramod Kumar
Maheshwari, Girraj Kishore and Rakesh Kumar Jain

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

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

Citation : (1990) 89 CTR 31 : (1990) 186 ITR 637 : (1991) 54 TAXMAN 161

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;R.A. Sharma, J

Bench : Division Bench

Advocate : Vikram Gulati, for the Appellant;

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—These four writ petitions can be considered and disposed of together. For the sake of convenience, we shall take up the facts of Civil Miscellaneous Writ Petition No. 1396 of 1989, as suggested by counsel for the petitioners. The prayer in this writ petition is to quash the notices issued u/s 148 of the Income Tax Act for the assessment years 1984-85 to 1986-87 and also to quash the notices issued u/s 142(1) of the Act for the assessment years 1982-83 to 1986-87. At the time of arguments, however, the attack was confined only to the notices u/s 148.

2. Civil Miscellaneous Writ Petition No. 1396 of 1989 is filed by the association of persons, Messrs. Pramod Kumar Rakesh Kumar and Co. The members of this association are Pramod Kumar (40%), Rakesh Kumar (40%) and Girraj Kishore (20%). Those three persons have filed separate writ petitions being Civil Miscellaneous Writ Petitions Nos. 1394, 1397 and 1395 of 1989, respectively. The prayers in these writ petitions are practically the same as those contained in Civil Miscellaneous Writ Petition No: 1396 of 1989 with minor variations.

3. According to the petitions in Civil Miscellaneous Writ Petition No. 1396 of 1989, the petitioners filed returns under the Amnesty Scheme on September 30, 1986, with respect to the assessment years 1982-83 to 1986-87. Taxes were also paid on the same day. Returns were accompanied by a letter stating specifically that the returns were filed under and in pursuance of the Amnesty Scheme (promulgated by the Central Board of Direct Taxes in various circulars issued from time to time). The Income Tax Officer completed the assessment for all these years by his order dated January 28, 1987. Inasmuch as the returns relating to the assessment years 1982-83 and 1983-84 were barred by time, notices u/s 148 were issued to regularise the same and assessments made. Two years later, notices under Sections 147(a) and 148 were issued. The notices are dated March 27, 1989. Under the notice impugned in Civil Miscellaneous Writ Petition No. 1396 of 1989, the Income Tax Officer proposed to reopen the assessment with respect to the assessment year 1984-85 (Notices were issued to the individual members of the association of persons with respect to the assessment years 1986-87 and 1984-85). Upon receiving the said notices, the petitioners filed objections questioning the validity of the same. It was submitted, inter alia, that the returns having been filed under the Amnesty Scheme and an assessment order having been made on that basis, it is not open to the Income Tax Officer to reopen the assessment. Such reopening is barred under the Amnesty Scheme as clarified from time to time. The Income Tax Officer, however, refused to drop the proceedings and proposed to proceed further in pursuance of the impugned notices, whereupon the present writ petitions were filed.

4. The main ground urged in the writ petitions is that the returns having been filed and the assessment having been made under and in pursuance of the Amnesty Scheme, it is not open to the Income Tax Officer to make a fishing inquiry or to reopen the assessment. The Income Tax Officer had no jurisdiction to reopen the assessment, it is argued.

5. A counter-affidavit has been filed on behalf of the respondents denying that the returns were filed under the Amnesty Scheme. It is stated that even before the filing of the returns, a letter of inquiry was issued to one of the members of the association of persons, Sri Rakesh Jain, on September 5, 1986, requiring him to prove the source of money utilised for purchasing bank drafts involving several lakhs of rupees. He replied that he was a member of the association of persons (petitioner herein) and that the association of persons had purchased bank drafts from banks at Muzaffarnagar, but failed to prove the source of the said money. It is at this stage that the returns were filed. The returns filed cannot be regarded as voluntary, nor can they be treated as having been filed under the Amnesty Scheme. Even otherwise, since the assessee had not disclosed its true income for the aforesaid years, notices u/s 148 were issued with respect to the assessment years 1984-85 to 1986-87. It is further stated in the counter-affidavit, "The Income Tax Officer had definite information that the assessee had indulged in the business of purchase and sale of coal and, for this purpose, he used to purchase

bank drafts for payment of coal purchases. These enquiries relating to purchase of bank drafts had been made by the Department prior to the filing of the returns by the assessee and claimed to be under the Amnesty Scheme." Along with the counter-affidavit the respondents have filed a copy of the "reasons recorded" for the issue of the notices u/s 148/147(a) of the Income Tax Act, 1961, for the assessment year 1984-85. It first recites that the assessments in respect of the assessment years 1984-85 to 1986-87 were made on January 28, 1987, u/s 143(1) and the income disclosed was accepted. Then it states, "Some enquiries were made and the assessee also furnished a list of drafts got issued by Messrs. Pramod Kumar Rakesh Kumar and Co. (association of persons), New Mandi, M. Nagar, during the financial year 1985-86 relevant to the assessment year 1986-87. This list shows bank drafts for the amount of Rs. 37,95,000 which were encashed by the assessee within 3 or 4 days. Information was collected from banks. The assessee has not maintained arty books or records regarding the cash flow position and the day-to-day purchases of drafts and source thereof." It is further stated in the counter-affidavit that the income which was disclosed in the returns filed under Voluntary Disclosure Scheme may not be a subject of reopening, but the income, which does not form part of the disclosure under the Voluntary Disclosure Scheme, can always be investigated and, for that purpose, assessment reopened.

6. The petitioners have filed a rejoinder-affidavit reiterating the submissions made in the writ petition and stating further that the list referred to in the "reasons recorded" was filed by the assessee itself before the assessment was made and that there was no other material before the Income Tax Officer for reopening the assessment.

7. These writ petitions were heard at an earlier stage by a Division Bench comprising N. M. Mithal and A. P. Misra JJ. In so far it is relevant, the order dated March 7, 1990, passed by the Bench reads :

"Rejoinder-affidavit filed today may be placed on record.

On a perusal of the rejoinder-affidavit, it appears that the details of the drafts given in annexure 3 to the rejoinder-affidavit had been supplied by the petitioner even prior to the completion of the assessment by the Income Tax authorities. This position is, however, controverted by Sri Markandey Katju, appearing for the Revenue. He is, however, not in a position to make a categorical statement in this regard. He submitted that these facts have come for the first time in the rejoinder-affidavit, and, therefore, a reasonable time should be granted to him to ascertain the truth of these facts and to file a reply to the rejoinder-affidavit as supplementary counter-affidavit. As prayed, three weeks" time is granted to enable him to do so."

8. The Revenue has, however, not filed any supplementary counter-affidavit to the rejoinder-affidavit filed by the petitioners. We did not think it appropriate to give any further time to the Revenue and we proceeded to hear the cases.

9. The attack is upon the validity of the notices u/s 147(a) read with Section 148. The main ground of challenge was that inasmuch as the returns had been filed under the Amnesty Scheme and also because the assessments had also been made, accepting the said returns, there is no power in the Income Tax Officer to reopen the assessment u/s 147(a). In support of this contention, no specific provision or any circular of the Central Board of Direct Taxes has been brought to our notice. Firstly, it is disputed by the Revenue that the returns can be said to have been filed under the Amnesty Scheme. Moreover, it is stated by the respondents that assessments have been reopened in respect of income not disclosed by the assessee in these returns. It is also stated in the "reasons recorded" that some inquiries were made and information collected from banks. In the absence of any specific provision in the circulars issued by the Central Board of Direct Taxes we are not inclined to hold that just because an assessment was made u/s 143(1)(a) on the basis of the returns said to have been filed under the Amnesty Scheme, the power of the Income Tax Officer under Sections 147 and 148 is taken away. It is, therefore, not possible for us to quash the impugned notices on the said ground.

10. It was then argued by Sri Vikram Gulati that the list of bank drafts was filed by the assessee even before the assessment was made and that there was no other material before Income Tax Officer, nor had he received any other information which could constitute the basis for issuing the impugned notices. We, however, find that this ground was neither urged in the objections filed before the Income Tax Officer against the impugned notices, nor was it raised in the writ petition. This contention has been raised only in the rejoinder-affidavit. It is true that the Revenue offered to file a supplementary counter-affidavit to this allegation made in the rejoinder-affidavit and but has failed to do so, yet we are of the opinion that the petitioners are not entitled to succeed. The "reasons recorded" clearly recite that some inquiries were made and information was collected from banks. There are no reasons to believe that these inquiries were made and information was collected from banks even before the assessment was made. On the contrary, it appears from the "reasons recorded" that they were subsequent to the assessment order. It is thus clear that even if we proceed on the assumption--we do not express any definite opinion, that being a question of fact to be dealt with in the proceedings to be taken hereafter --that the list of bank drafts was filed before the assessment was made, the impugned notices are not bad because there was some other material and information before the Income Tax Officer on the basis of which the said notices were issued. It, therefore, cannot be said that the impugned notices merely represented a change of opinion or that the Income Tax Officer has tried to review the assessment order.

11. In the above circumstances, we do not think any interference is called for at this juncture. It cannot be said that the impugned notices are incompetent and without jurisdiction. We make it clear that we are not, concerned with the factual aspects which would be gone into in proceedings to be taken hereafter in

pursuance of the impugned notices. We may record that inasmuch as affidavits were exchanged and all material was filed, we disposed of the matter finally at the admission stage. The writ petitions are, accordingly, dismissed. No costs.