

(2016) 03 CAL CK 0146
In the Calcutta High Court

Case No : GA No. 2488 of 2006 and ITA No. 297 of 2006

Prem Chand Shaw

APPELLANT

Vs

Assistant Commissioner and Others

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Income Tax Act, 1961 — Section 139, Section 143, Section 143(3), Section 147, Section 148, Section 151, Section 151 (2), Section 151(2), Section 260A, Section 292B, Section 34, Section 34(1)(a), Section 34(1)(b)

Citation : (2016) 286 CurTR 252

Hon'ble Judges : G.C. Gupta and Asha Arora, JJ.

Bench : Division Bench

Advocate : Ananda Sen, Advocate, for the Appellant; M.P. Agarwal and Ranjan Sinha, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Gupta, J.—1. The assessee has come up in appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") against an order of the Income Tax Appellate Tribunal, "C" - Bench, Kolkata dated 7th July, 2005 in ITA Nos. 1421, 1422 and 1423 (Kolkata) of 2004 for the assessment years 1990-91, 1991-92 and 1992-93.

2. By the order dated 18th December, 2006 a Division Bench of this Court admitted this appeal on the following substantial questions of law:--

"I) Whether on the facts and in the circumstances of the case, the learned Tribunal erred in law in upholding the action of reassessment, when admittedly the approval accorded by the concerned authority for such reopening was given in a mechanical manner which was itself without jurisdiction and bad in law?

II) Whether on the facts and in the circumstances of the case when the jurisdictional aspect in according the approval for reopening was absent, the action of the learned Tribunal in upholding such approval and thereafter in

further upholding the assessment which was beyond four years is perverse?"

3. Briefly stated the facts and circumstances of the case are as follows:--

"The assessee an individual is engaged in the business of trading in various goods under the name and style of Ujjwal Steel Udyog which is a proprietorship concern. Along with the return of income for the assessment year 1995-96 the assessee enclosed the particulars of accounts relating to earlier years claiming that there was no taxable income with respect to those years. The assessing officer on the basis of the information supplied by the assessee and other information in his possession came to the conclusion that income had escaped assessment for the assessment years 1990-91, 1991-92 and 1992-93. By the order dated 26th March, 2001 the assessing officer recorded the reasons for initiating the reassessment proceedings under Section 147 of the Act for the aforesaid years. Thereafter, the assessing officer obtained approval of the Additional CIT under Section 151(2) of the Act by the order dated 29th March 2001. Thereafter the assessing officer issued notice under Section 148 of the Act dated 30th March 2001 to the assessee. The assessee filed his return consequent to the aforesaid notice. After hearing the assessee the assessing officer completed the assessment for all three years 1990-91, 1991-92 and 1992-93 by separate orders passed, u/s. 143(3) read with s.147 of the Act, on 31st March, 2003. The assessee preferred an appeal against the order of the assessing officer before the Commissioner of Income Tax (Appeals) (hereinafter referred to as the "CIT(A)"). The assessee challenged the validity of the notice under Section 148 and the additions or disallowance made by the assessing officer. The CIT(A) by an order dated 9th June, 2004 while granting partial relief to the assessee rejected the assessee's plea as regards the validity of the notice issued under Section 148 and held as follows:--

"The Ld. AR has referred a case law reported in , 79 ITR 603 SC (1971) in the case of Chhugamal RajPal v. S.P. Chaliha & Ors.

The particular case referred to above deals with different facts as to whether the communication, required investigation, can be a basis for reopening an assessment and that was the moot point in that case. The Supreme Court has observed that Commissioner has mechanically accorded permission to reopen the assessment and thereby notice issued u/s. 148 was treated as invalid. In the said case the Hon"ble Supreme Court has observed that if only the Commissioner had read the report carefully, he could never have come to conclusion on the material before him that it is a fit case to issue notice u/s. 148.

The issue of the present case is totally different. In the instant case, for the AY 90-91 it was found by the AO that investment to the extent of Rs. 77,910/- for purchasing of truck was not disclosed before the I.T. Authorities, hence the appellant had taxable income for the relevant period but the same was not shown before the Department. In fact, the appellant did not file any return for any of the 3 assessment years under question before receipt of notice u/s. 148 of

the Act from the Department. The balance sheet and P & L A/c for all the assessment years under consideration were filed along with the return for the assessment year 1995-96 only. The AO after duly recording the reasons has sent his proposal to the higher authority i.e. Addl. CIT and after scrutinizing the case, the Addl. CIT was also satisfied that the income has escaped assessment for the relevant assessment years and thereby she concluded that it was a fit case for reopening and thereby accorded her approval. The case cited by the Ld. AR apparently suggests that there is no material fact which may lead to the conclusion as derived by the Addl. Commissioner for according her approval. But in the instant case, the income has actually escaped assessment. Investment made towards purchase of truck was never disclosed before the I.T. Authorities. Hence I think that the present case is clearly distinguishable and there was enough reason for the AO to send proposal before the Addl. CIT and the Addl. CIT has rightly given her approval for reopening the case. Thereafter, notice were issued by the AO to the appellant. The Addl. CIT has put her signature on 29.03.01 and thereafter the AO issued notice u/s. 148 to the appellant before expiry of 31.03.01 and the said notice was served within 10 days which is quite reasonable time, according to my opinion.

The Apex Court is also of the same view stating that though the notices were served beyond the prescribed time, they were saved u/s. 4 of the Amending Act as held by the Hon''ble Supreme Court.

And thereafter before expiry of the due date, the notice was issued by the AO and it was served within 10 days which is quite reasonable period and to this extent, the submission made by the appellant is incorrect and not sustainable. Accordingly, I reject the ground of the appellant on the issue of validity of notice."

4. Aggrieved by the order of the CIT(A) the assessee came up in appeal before the Tribunal and challenged the validity of the notices issued under Section 148 with respect to all the assessment years and the sustainability of the additions and disallowances made. However, subsequently, the assessee revised his ground of appeal and restricted his challenge only to the following ground:--

"Ground No. 2

That the Ld. CIT(A) erred in upholding the validity of notice issued under Section 148 when the mandatory requirement of satisfaction of the sanctioning authority as envisaged under Section 151 was not complied with".

5. The assessee thus restricted his challenge only to the aforesaid ground and did not make any submission on the other ground which were originally taken in the memorandum of appeal before the Tribunal. The Tribunal by an order dated 7th July, 2005 dismissed the appeal of the assessee and held as follows:--

"... in the case before us the assessee has brought no other contrary material except that no satisfaction was recorded by the Addl. C.I.T.. while giving sanction as envisaged u/s. 151 (2) at the Income Tax Act.

It is also not the case of the assessee that the Assessing Officer has no reason to believe that any income chargeable to tax has escaped assessment nor any assessment year under appeal. It is also not the case of the assessee that the reasons recorded by the Assessing Officer are not sufficient for initiating proceeding u/s. 148 or they are barred by limitation. It is also not the case of the assessee that the assessee has disclosed fully or truly all materials facts necessary for its assessment for the assessment years under appeal. Since all other conditions are fulfilled and the Addl. C.I.T. has signed question No. .12 after verifying the contents of the form for recording of reasons and the assessee has not challenged the recording of reasons for reopening of the assessment as recorded by the Assessing Officer vide his order sheet entry dated 26.03.2001 as reproduced in Para 2 of this order and keeping in view the provision of section 292B of the Act, we are of the view that the notices issued the Assessing officer u/s. 148 are valid in law. Accordingly, the ground and the pleas taken by the assessee are rejected."

6. The assessee has come up in appeal before this Court.

7. Mr. Ananda Sen, learned advocate appearing for the appellant submitted that in according approval to notice under Section 148 of the Act, the Commissioner has to apply his mind independently and he cannot accord approval mechanically. In support of his submissions, he relied on the judgement in the case of Chhugamal Rajpal v. S.P. Chaliha & Ors., reported in , (1971) 79 ITR 603. He also relied on the judgement in the case of Johri Lal v. Commissioner of Income Tax reported in , (1973) 88 ITR 439 (SC).

8. Mr. Sen contended that since the approval was accorded without applying mind, the initiation of proceeding itself was bad and therefore, the judgement of the learned Tribunal should be set aside and the questions formulated be answered in favour of the assessee.

9. Mr. Agarwal, learned advocate for the revenue submitted that the judgement in the case of Chhugamal Rajpal v. S.P. Chaliha & Ors. (supra) does not lend any assistance to the assessee because in that case the reasons assigned by the Assessing Officer for issuance of notice under Section 148 did not amount to any reason at all. It is, in those circumstances of the case, that the observations were made by the Apex Court.

10. With respect to the judgement in the case of Johri Lal v. Commissioner of Income Tax (supra) he submitted that the Income Tax Officer had proceeded on the basis of Section 34(1)(b) but the Tribunal sought to justify the step on the basis of Section 34(1)(a). It is on this basis that the Apex Court interfered and therefore, that judgement has no manner of application to the facts and circumstances of the case.

11. We have heard the arguments advanced at the bar and perused the record. To appreciate the rival contentions it is necessary to set out the relevant provisions of the Act. Section 151 of the Act which is as under:

"151. Sanction for issue of notice.--(1) In a case where an assessment under sub-section (3) of Section 143 or Section 147 has been made for the relevant assessment year, no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice:

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

[Explanation.--For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under Section 148, need not issue such notice himself.]"

12. During the course of arguments Mr. Sen learned Advocate appearing for the assessee drew our attention to the form for recording the reasons for initiating proceedings u/s. 148 and for obtaining the approval of the Commissioner of Income Tax/CBDT (appearing at page no 91-93 of the paperbook filed before the Tribunal), question number 12 whereof is as follows:--

"12. Whether the Commissioner/Board is satisfied on the reasons recorded by the ITO/IAC(A) that it is a fit case for the issue of a notice u/s. 148."

13. He contended that in response to question no 12 the Additional CIT mechanically granted approval by affixing his signature without recording any satisfaction and therefore in view of section 151(2) it is not a valid sanction. He therefore contends that the notice issued u/s. 148 is bad in law and the subsequent assessment u/s. 143(3) and 147 are without jurisdiction.

14. In the instant case no prior assessment had been done for the three assessment years under consideration. Hence the assessing officer before issuing notice u/s. 148 of the Act had to obtain sanction u/s. 151(2) of the Act from the competent authority. The only contention raised by the assessee in the instant appeal is that the Additional C.I.T. while according his approval u/s. 151(2) of the Act did not apply his mind and mechanically granted sanction. The assessee has not contended that the reasons cited by the assessing officer for initiating reassessment proceedings u/s. 147 of the Act were irrelevant or that the assessing officer had no reason to believe that income chargeable to tax had

escaped assessment. The tribunal moreover has found that the assessee without objecting to the validity of the impugned notice filed his return in compliance thereof and participated in the re-assessment proceedings. It was only after receiving the assessment order that the assessee objected to the validity of the impugned notice first before CIT(A) and then before the tribunal.

15. In *Chhugamal Rajpal* (supra) the assessing officer submitted a report to the Commissioner for initiating proceeding u/s. 147 of the Act and to obtain sanction for issuing notice u/s. 148 of the Act. In his report the assessing officer had made the following observations:--

"During the year the assessee has shown to have taken loans from various parties of Calcutta. From D.I.'s Inv. No. A/P/Misc.(5)D.I./63-64/5623, dated 13-8-65, forwarded to this office under CIT, Bihar and Orissa, Patna's letter No. Inv.(Inv.)15/65-66/1953-2017, dated Patna 24-9-65, it appears that these persons are name lenders and the transactions are bogus. Hence proper investigation regarding these loans is necessary. The name of some of the persons from whom money is alleged to have taken on loan on Hundis are:

1. Seth Bhagwan Singh Sricharan.
2. Lakha Singh Lal Singh.
3. Radhakissen Shyam Sunder.

The amount of escapement involved amounts to Rs. 1,00,000."

The Apex Court held as follows:

"In his report the Income Tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under Section 148. The material that he had before him for issuing notice under Section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the CIT, Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name lenders and the transactions are bogus". He has not even come to a prima facie conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions. Such a conclusion does not fulfil the requirements of Section 151(2). What that provision requires is that he must give reasons for issuing a notice under Section 148. In other words he must have some prima facie grounds before him for taking action under Section 148. further his report mentions: "Hence proper investigation regarding these loans is necessary". In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under Section 148. Before issuing a notice under Section 148, the Income Tax Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under

Section 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or (b) of Section 147 are satisfied, the Income Tax Officer has no jurisdiction to issue a notice under Section 148. From the report submitted by the Income Tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income Tax Officer had any material before him which could satisfy the requirements of either clause (a) or (b) of Section 147. Therefore he could not have issued a notice under Section 148. Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

16. The judgment in *Johri Lal* (supra) was rendered with respect to the provisions of section 34 of the Income Tax Act, 1922, which dealt with income escaping assessment. In the facts of that case proceedings u/s. 34(1)(b) of the Income Tax Act 1922 were initiated by the assessing officer. The assessee challenged the same before the Commissioner (Appeals) by contending that the proceeding u/s. 34(1)(b) was barred by limitation. The Commissioner held that the proceedings were not barred by limitation. In an appeal by the assessee the Tribunal upheld the order of the Commissioner and further held that the proceedings were also justified u/s. 34(1)(a). In a reference the High Court held that the proceedings were validly initiated u/s. 34(1)(a). In further appeal before the Apex Court the question which inter-alia arose for determination was whether the proceedings which were commenced by a notice under Section 34(1)

(b) could have been converted into proceedings under Section 34(1)(a) by the Income Tax Appellate Tribunal. It was in this context that the Apex Court held as follows:

"In the instant case, as seen earlier, the Income Tax Officer did not choose to proceed under Section 34(1)(a). Consequently, he may or may not have recorded the reasons as required by this section nor do we know whether those reasons were submitted to the required authority and his sanction obtained on the basis of those reasons. This Court also has ruled that the Commissioner or the Board of Revenue, while granting sanction will have to examine the reasons given by the Income Tax Officer and come to an independent decision and the authority in question should not act mechanically. From the material on record there is no basis to hold that those requirements had been fulfilled. Possibly they could not have been fulfilled because the Income Tax Officer proceeded only on the basis of Section 34(1)(b) and not on the basis of Section 34(1)(a). He himself had declined to proceed on the basis of Section 34(1)(a) for whatever reason it may be. Therefore, it was not open to the Tribunal to justify the proceedings taken by the Income Tax Officer under Section 34(1)(a). The Tribunal could not have initiated proceedings under Section 34(1)(a). If the Tribunal converts the proceedings into one under Section 34(1)(a) then the conditions prescribed in Section 34(1)(a) cannot be satisfied."

17. The case of Chhugamal Rajpal (supra) was relied upon by the assessee both before the CIT(A) and the tribunal. Both the authorities below have rightly held that the said case has no manner of application to the facts of this case. In Chhugamal Rajpal (supra) the assessing officer did not have adequate material before him to satisfy the requirement of either clause (a) or (b) of section 147. It was in this backdrop that the court held that the Commissioner had mechanically accorded sanction without first recording that he was satisfied that it was a fit case for the issue of a notice under Section 148. In the instant case the assessee has not even contended that the reasons recorded by the assessing officer were irrelevant and as such he had no reason to believe that any income chargeable to tax had escaped assessment.

18. In United Electrical Co. P. Ltd. v CIT reported in , (2002) 258 ITR 317 (Del) the Delhi High Court while explaining the circumstances where a notice u/s. 148 may be quashed held as follows:--

"It is, thus, trite, that when a challenge is made to the action under Section 147 of the Act what the Court is required to examine is whether some material exists on record for the Assessing Officer to form the requisite belief and the reasons for the belief have a rational nexus or a relevant bearing to the formation of such belief and are not extraneous or irrelevant for the purpose of the said section. But the sufficiency of the grounds, which induced the Assessing Officer to act under the said section is not a justiciable issue."

19. Even before the tribunal the assessee restricted his challenge only to the

validity of notice u/s. 148 on ground that sanction u/s. 151 was not valid. Basis for the reasons furnished by the assessing officer in the notice u/s. 148 was never in dispute. Hence the judgment in the case of Chhugamal Rajpal (supra) does not advance the cause of the assessee. Furthermore the judgment in Johri Lal (supra) is also of no assistance to the assessee as the issue in that case was whether a proceeding u/s. 34(1)(b) of Income Tax Act, 1922 could be converted to a proceeding u/s. 34(1)(a) of the said Act.

20. In the case of Stock Exchange v. Asst CIT, reported in , (1997) 227 ITR 906, the Gujarat High Court held as follows:--

"Similarly, for the asst. yrs. 1990-91 and 1993-94 the AO separately recorded his reasons for issuing the reassessment notices. For these two years, since the matter fell beyond four years and sanction envisaged by s. 151 of the Act was, therefore, required, the sanction was obtained from the Dy. CIT for each of these two years which is on record. The grievance of the petitioner is that merely by saying "yes, I agree with the reasons recorded by the AO" it cannot be said that the requirements of the provisions of s. 151(2) was fulfilled. Under the said provisions, the Dy. CIT has to satisfy himself on the reasons recorded by the AO as to whether it is a fit case for issuance of notice. Therefore, he is required to apply his mind to the reasons which have been recorded by the AO. In the present case, the endorsements made by the Dy. CIT clearly show that he was in agreement with the reasons recorded by the AO. Therefore, the requirements of s. 151(2) have been clearly satisfied and it cannot be said that the Dy. CIT had acted mechanically in the matter. Reliance placed on behalf of the petitioner on the decision of Chhugamal Rajpal v. S.P. Chaliha & Ors. (supra) is wholly misconceived because in that matter the AO had not recorded any reason and the authority had affirmed such an action under s. 151(2) of the Act."

21. In the case of CIT v. Norton Motors reported in , (2005) 275 ITR 595 the Punjab & Haryana High Court has explained the scope of Section 292B in the following words:--

"A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceeding is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. To put it differently, section 292B can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same cannot be cured by having resort to section 292B."

22. In the case of CIT v. T.O. Abraham & Co. reported in , (2011) 333 ITR 182 (Ker.) the Kerala High Court held that the whole purpose of Section 292B is not to defeat on technicalities the object of the statute that is to assess and collect the tax legitimately due under the Act. The mere fact that the Additional Commissioner did not record his satisfaction in so many words would not render invalid the sanction granted under Section 151(2) when the reasons on the basis of which sanction was sought for could not be assailed. Even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires. We are supported in our view by the Judgment of the Apex Court in R.P. Bhatt v. Union of India, reported in , AIR 1986 SC 1040. In R.P. Bhatt (supra) the Apex Court relied on judgment rendered by a Constitutional Bench in the case of Som Datt Datta v. Union of India reported in , AIR 1969 SC 414 wherein their lordships held as follows:

"Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is no legal obligation that the statutory tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision."

23. In view of the aforesaid discussion the questions No. 1 and 2 are answered in the negative and in favour of the revenue.

24. The appeal is, thus dismissed.

Asha Arora, J.—I agree.