

(1971) 07 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 316-D of 1965

R. Dalmia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-1971

Acts Referred:

Citation : (1971) 07 DEL CK 0001

Hon'ble Judges : H.R. Khanna, C.J;S.N. Shankar, J

Bench : Division Bench

Advocate : V.S. Desai, Bishambar Lal, N. Khaitan and Krishna Sen, for the Appellant; G.C. Sharma, V. Kumaria, Randhir Chawla and B.R. Dewan, for the Respondent

Judgement

Shankar, J.—This order will dispose of C. Ws. 316-D of 1965 and 318-D of 1965. In these petitions, under articles 226 and 227 of the Constitution, the petitioner, R. Dalmia, has prayed that notices dated March 20, 1965, issued by the Income Tax Officer, Special Investigation Circle "B", New Delhi, u/s 148 of the Income Tax Act, 1961 (hereafter called " the Act"), to him personally and also to him and J. Dalmia and S.P. Jain as members of an association of persons be quashed.

2. The petitioner was assessed by the Income Tax Officer, Special Circle, Charge IV, Patna, by assessment order dated March 27, 1950, in respect of his individual income for the year ending September 30, 1947, relevant to the year 1948-49. Notices u/s 34(1)(a) of the Indian Income Tax Act, 1922, for the assessment years 1940-41 to 1949-50 were also issued to him as also to J. Dalmia, Hindu undivided family, and S. P. Jain (in his individual capacity). In the course of proceedings in pursuance of these notices, the petitioner, along with J, Dalmia and S. P. Jain, submitted proposals for settlement u/s 34(1B) of that Act which were accepted by the Central Board of Revenue with the previous approval of the Central Government. The petitioner claims that the impugned notices issued in spite of the previous assessments and the settlement are illegal, invalid and without jurisdiction. Both the petitioners are contested by the respondents.

3. Shri V. S. Desai argued Civil Writ No. 316-D of 1965 challenging the notices issued to the association of persons while Shri S. C. Manchanda argued Civil Writ No. 318-D of 1965 in which the petitioner has assailed the notice issued to him individually. The petitions involved several common questions of law and fact. The learned counsel for the petitioners, Therefore, argued them together.

4. In view of the nature of the points involved, both the petitions were directed to be heard by the Division Bench.

5. The main argument of the learned counsel for the petitioner in both the petitions was that there was no material before the Income Tax Officer to have reason to believe that the income of the petitioner liable to tax, whether as member of the alleged association of persons or as an individual, had escaped assessment for the year mentioned in the impugned notices ; or that any association of persons named in the impugned notice did exist. Secondly, it was maintained that proceedings u/s 147 of the Act could not be initiated against the petitioner on the facts of this case. These contentions can conveniently be examined together before dealing with the other points canvassed before us.

6. The argument in support of the first contention is that the association of persons, within the meaning of the Act, means an association in which two or more persons joined in a common purpose with the object to produce incomes, profits or gains. Before issuance of the impugned notice to the association of persons u/s 148 of the Act, according to the learned counsel, two conditions were necessary to be satisfied : (1) that the Income Tax Officer had reason to believe that there existed an association of persons as named in the notice; and (2) that income earned by the assessed chargeable to tax had escaped assessment for the year mentioned in the notice. The latter, the learned counsel said, was also the condition precedent to the issuance of the notice to the petitioner as an individual. There can be no dispute with this proposition and Shri G.C. Sharma, learned counsel appearing for the respondents, maintained that both these conditions were satisfied in the case of notice to association of persons and the latter condition was also satisfied in the case of notice to the petitioner as an individual. He, however, submitted that the expression " reason to believe " occurring in Section 147 of the Act (which authorised assessment in case of income escaping assessment) did not mean that the Income Tax Officer at the stage of issuing the notice had to be fully satisfied about the correctness of the information available to him. If there were reasonable grounds for the Income Tax Officer, he said, to believe at that stage, that there existed such an association and that there had been non-disclosure of taxable income either of the association or of the assessed as an individual, it would be sufficient to give him jurisdiction to issue the notice. There is substance in this submission. AH that Clause (a) of Section 147 of the Act requires, on this aspect, is that the Income Tax Officer must have reason to believe and not that he should launch an investigation and come to a positive finding before issuing the notice. There should be facts before him that reasonably give rise to the belief. The belief held

by him must of course be in good faith. It cannot be a mere pretence ; but the facts on the basis of which he entertained the belief need not at this stage be irrefutably conclusive to support his tentative conclusion. In case of challenge, it is open to the court to examine whether there was material before the Income Tax Officer having a rational connection or relevant bearing to the formation of the belief that is claimed to have been held at the time when he issued the notice ; but the court cannot for the purpose of ascertaining the validity of the notice examine the sufficiency of the reasons for the belief. (See S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, .

7. Reference in this connection may also be made to Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, . In that case, notices u/s 147 of the Act were issued requiring the assessed to show cause why the assessment for the years 1959-60, 1960-61 and 1961-62 should not be reopened. The High Court quashed these notices and restrained the Income Tax Officer from taking proceedings in pursuance of them. On appeal, Shah J., as he then was, speaking for the court, on page 15 of the report, said :

"The High Court exercising jurisdiction under Article 226 of the Constitution has power to set aside a notice issued u/s 147(b) of the Income Tax Act, 1961, if the condition precedent to the exercise of the jurisdiction does not exist. The court may, in exercise of its powers, ascertain whether the Income Tax Officer had in his possession any information : the court may also determine whether from that information the Income Tax Officer may have reason to believe that income chargeable to tax had escaped assessment. But the jurisdiction of the court extends no further Whether on the information in his possession he should commence proceeding for assessment or reassessment must be decided by the Income Tax Officer and not by the High Court. The Income Tax Officer alone is entrusted with the power to administer the Act: if he has information from which it may be said, *prima facie*, that he had reason to believe that income chargeable to tax had escaped assessment, it is not open to the High Court, exercising powers under Article 226 of the Constitution, to set aside or vacate the notice for reassessment on a reappraisal of the evidence."

8. The question for determination, Therefore, is whether the Income Tax Officer in this case had any such facts or material before him on the basis of which he could, *prima facie*, have reason to believe that the income of the petitioner or the association of persons named in the notice had escaped assessment and that such an association of persons did presumably exist.

9. The respondents along with their return have filed a statement of brief reasons for issuing the impugned notices. Action is sought to be taken in pursuance of these notices in respect of four items: (1) the cost of 1,16,214 shares of Punjab National Bank of Rs. 25, each of the estimated cost of Rs. 65,36,900. This lot of shares, according to the statement, was shown to have been acquired by the assessed on August 30, 1951, from Express Newspapers Ltd. but the Income Tax Officer says that a study of the movement of these

shares showed that these shares had in fact been acquired by the assessed during October, 1947, along with another lot of 13,743 shares of Rs. 100, each costing Rs. 60,91,585. Facts in support of this averment are given in the statement. Amongst others, it is stated that the document, exhibit 1043/S-75, reproduced on Appendix II on page 181 of the Vivian Bose Commission Report which is a photostat copy of a piece of paper and which, according to the assesseds, was "written some time in April, 1948, at the time of partition to show which companies were mutually partitioned, showed that Punjab National Bank and National Investment Trust had been assigned to the petitioner in this partition. This fact, the statement says, showed that Punjab National Bank was already an asset of the assesseds before May, 1948. In October and December, 1948, it is further stated, that Dalmia Cement Marketing Company Ltd. allegedly purchased 7,325 shares of Madhusudan Mills from National Finance Ltd. and National Construction and Development Ltd. at a price which was considerably higher than the market rate. These shares, were sold on January 19, 1951, to Express Newspapers Ltd and Dalmia Cement Paper Marketing Company was shown to have suffered a loss of Rs. 18,72,875 on this transaction, but it was found by the Vivian Bose Commission that these shares in fact never changed hands and the fictitious loss was manipulated simply to cloak payment of equivalent amount by Dalmia Cement Paper Marketing Company towards the consideration for the transfer of the shares of the Punjab National Bank. Evidence of the assessed so acquiring a controlling interest in the Punjab National Bank in 1947. it is stated, is also available from the fact that liberal loans were given to the Dalmia Cement Paper Marketing Company Ltd. and the other concerns of the assessed. Dalmia Cement Paper Marketing Company, it is stated, was in doldrums and its liability exceeded its assets and it had, subsequently, to be liquidated but still an overdraft was allowed to it by the Punjab National Bank, and the bank accepted pledge of shares with nil margin. In addition to these facts, it is further stated that the Reserve Bank report on the Punjab National Bank in 1953 also mentioned that the petitioner " had acquired controlling interest in the bank as far back as in 1948, but, for various reasons, this fact was kept a secret between Yodh Raj and Shri Dalmia ", the petitioner herein. The records of Yodh Raj Bhalla group controlling the Punjab National Bank were also referred to in the statement and it was stated that they showed that the control of Punjab National Bank had passed on to the Dalmia Jain group with the first purchase of shares by them in the year 1947. Besides these, other facts are also mentioned in the statement of reasons which led the Income Tax Officer to believe that the assessed concealed at least 1,16,214 shares in Punjab National Bank, which they acquired before December, 1947, and that the cost of the acquisition of these shares had thus escaped assessment for this year.

10. The second item in respect of which action is proposed in pursuance of the notice related to the cost for the purchase of 13,743 shares in the Punjab National Bank of Rs. 100 each, valued at Rs. 60,91,585. Those shares, it is stated, were admitted by the assessed to have been acquired in October, 1947,

but they were not shown in the statement of concealed income as on December 31, 1947, given by the assessed at the time of settlement. According to the assessed, the cost of these shares was said to have been paid out of the funds got from Bharat Bank on hundis drawn on Shapurji Brocha Mills Ltd. and Madhowji Dharamsi Manufacturing Co. Ltd. But this Explanation, it is stated, was not borne out by the account books of the named parties. The assessed in consequence, it is claimed, was under-assessed to the tune of Rs. 60,91,585, being the cost of these shares.

11. The third item relates to the joint venture between Dalmia Jain Airways and Alien Berrys Ltd. It is stated in the statement of reasons that the assesseds admitted the income from this venture as their income for the purpose of taxation for the period ending December 31, 1947. Transactions of the same nature existed during the period after December 31, 1947, but no profits in respect of them were shown by the "assesseds.

12. The last item mentioned in the statement of reasons is "asset left out of wealth statement". It is stated that the wealth statement, as worked out by the assesseds for the period ending December 31, 1947, did not contain particulars of their further holdings in Dalmia Jain Airways Ltd. and part of holdings of Bennet Coleman and Co. Ltd. which in the year 1948 were the subject-matter of partition between them. Reliance in this connection is again placed on the document of partition referred to earlier which shows that these assets were assigned to the petitioner at the time of partition.

13. The respondents have also placed on record a statement of their reasons to hold the belief that, prima facie, there existed the association of persons referred to in the impugned notice. It is stated in the statement that the petitioner and his associates, J. Dalmia and S. P. Jain, controlled various companies and joint business activity. Before the Investigation Commission they filed a list of assets purchased out of concealed funds as standing on September 30, 1949, which all three of them signed. They were also, assessed jointly and severally for their income earned between January 1, 1939, and December 31, 1947. The petitioner, J. Dalmia and S. P. Jain were further stated to be describing themselves as Dalmia Jain group. They, it is stated, admitted that such a group did exist at one time and also held certain joint assets like L. Auriya Farm. Specific reference was also made to an agreement executed between the petitioner, J. Dalmia and S. P. Jain reproduced in the Vivian Bose Commission Report which indicated the existence of an association of persons consisting of the petitioner and the other two associates named in the notice. The petitioner, it was stated on evidence referred to in the statement, was the principal man behind all the activities and that he had his place of business at 10, Darya Ganj, Delhi, where the various other undertakings of his group also functioned.

14. After a careful consideration, we are of the view that all the facts mentioned in the statement of reasons, both for having reason to believe that the income escaped assessment and that there presumably existed an association of persons

named in the impugned notice, are facts relevant to the formation of the belief that the Income Tax Officer has formed, namely, that there was income of the assessed mentioned in the notices which escaped assessment and that there was an association of persons. It cannot, Therefore, be said that the Income Tax Officer while issuing the notice had no reason to believe to initiate proceedings by the impugned notices and, Therefore, had no jurisdiction to issue them. Whether the facts before the Income Tax Officer were in fact true or not and whether these grounds were adequate or not is not a matter for the court to investigate at this stage. The sufficiency of the grounds which induced the Income tax Officer to take action and to issue the impugned notices is not a justiciable issue as ruled by the Supreme Court in *Madhya Pradesh Industries Ltd. Vs. The Income Tax Officer, Nagpur*, .

15. It was then urged by the learned counsel that, after the settlement u/s 34(1B) of the Indian Income Tax Act, 1922, it was not open to the respondents to start any proceedings under Sections 147 and 148 of the Act and there remained no valid grounds for the initiation of these proceedings. The plea cannot be sustained. Copy of the settlement is annexure " C " on the record. Clause (2) of the settlement reads as under:

" It is further agreed that the concealed income mentioned in Clause (1), supra, shall be deemed to have been accrued and arisen to the assesseds in accounting years relevant to the assessment years 1941-42 to 1947-48, both inclusive."

16. The assessment proposed in the impugned notices is for the period subsequent to this. The settlement cannot, Therefore, be set up as a bar to the proposed assessment. Besides, Clause (10) of this settlement further provides that in case any item of concealed income not considered and/or covered by this settlement comes to light in future from any inquiry conducted by the Government or on behalf of the Government or otherwise, the Income Tax department shall be free to tax the same and take such other action as may be necessary in accordance with law. The proposed assessment is in respect of the alleged income not considered or covered by the settlement. Attached to the settlement is schedule " A " which enumerates the extent of the concealed profits of the assesseds during the period from January 1, 1939, to December 31, 1947. None of the four items of income in respect of which assessment is proposed by the impugned notices is included in this schedule. It cannot, Therefore, be said that the settlement is a bar to the proposed assessment and that proceedings u/s 147 of the Act could not be initiated.

17. The income sought to be assessed according to the Income Tax Officer is from undisclosed sources. The Supreme Court in *Baladin Ram Vs. Commissioner of Income Tax, Uttar Pradesh*, has laid down that such an income can be assessed or reassessed on the basis that the previous year for such an income would be the ordinary financial year and that is the year to which the impugned notice in the case of the petitioner as an individual relates. The escaped income is relatable to this year.

18. For all these reasons, it is not possible to accept the contentions referred to above raised on behalf of the petitioner.

19. The learned counsel next contended that the department proposed to initiate simultaneous proceedings in respect of the same income both against the association of persons as well as the petitioner individually which showed that the proceedings sought to be initiated were in the nature of a fishing or roving inquiry and this is not permitted by law. The submission cannot be accepted. As stated earlier, the items of escaped income in respect of which the assessment is proposed are specific and the question as to whether this income, if earned, was earned by one person singly or by him along with others is a matter of inquiry. If the Income Tax Officer has reason to believe that it could have been earned either by one person singly or by him along with others there is nothing to prevent him from initiating proceedings against the concerned assessed in both capacities. In case where it appears to the Income Tax Officer that certain income had been received during a particular year but it is not clear who has received that income it is open to the Income Tax Officer to start proceedings against all the persons individually or collectively to ascertain the correct position. Reference in this connection may be made to *Lalji Haridas Vs. Income Tax Officer and Another*, where it was held that:

" In cases where it appears to the Income Tax authorities that certain income has been received during the relevant year but it is not clear who has received that income and, prima facie, it appears that the income may have been received either by A or by B or by both together, it would be open to the Income Tax authorities to determine the question who is responsible to pay tax by taking assessment proceedings both against A and B."

20. This contention of the petitioner, Therefore, has no merits and has to be repelled.

21. It was next contended that the previous assessment of the petitioner, as an individual, had been made by the Income Tax Officer, Special Circle, Charge IV, Patna, and the Income Tax Officer, Special Investigation Circle, New Delhi, who issued the impugned notice had, Therefore, no jurisdiction to issue the same. In answer to this objection, Shri Sharma pointed out that the question of jurisdiction had already been determined by the Commissioner of Income Tax by his order dated May 25, 1964, on an objection taken by the petitioner on this score. There is no rebuttal to this. According to Section 124(1) of the Act, Income Tax Officers have to perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as the Commissioner may direct. Under Sub-section (4) of Section 124, the question as to whether an Income Tax Officer has jurisdiction to assess any person has to be determined by the Commissioner. It is stated at the bar that the petitioner himself raised objection to the jurisdiction. It is in the counter-affidavit of the respondents that this matter was determined by the Commissioner by order dated May 24, 1964. Nothing has been said as to

why this order of the Commissioner does not operate to settle the controversy between the parties. It is not, Therefore, correct to say that the Income Tax Officer who issued the notice did not have jurisdiction to do so.

22. The last contention raised on behalf of the petitioner was that according to Clause (c) of Sub-section (2) of Section 282 of the Act, the impugned notice issued to the association of persons had to be addressed to the principal officer of the association, but as it was addressed to the association of persons through the petitioner, the same was illegal and bad. There appears to be no substance in this submission. The notice to an individual or body of individuals, according to this clause, could also be addressed to any member of the association. The petitioner is stated to be member of this association by the Income Tax Officer. There is, Therefore, no infirmity in the notice.

23. In the result, we find that there is no merit in C. Ws. 316-D/65 and 318-D/65 and the same are, Therefore, dismissed but with no order as to costs.