

(1990) 03 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 1069 of 1985

Raja Bahadur Motilal P. Ltd.

APPELLANT

Vs

K.R. Vishwanathan, ITO and another

RESPONDENT

Date of Decision : 12-03-1990

Acts Referred:

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

Citation : (1990) 92 BOMLR 178 : (1990) 82 CTR 381 : (1990) 183 ITR 80

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

Bench : Single Bench

Advocate : Jagdish Prem, for the Appellant; Balasubramaniam, for the Respondent

Judgement

T.D. Sugla, J.—The assessee is a company. Its assessment for the assessment year 1980-81 was completed u/s 143(3) of the Income Tax Act, 1961, on the total income of Rs.5,286 on September 16, 1982. It is pertinent to mention that in February, 1981, there was an Income Tax raid in the assessee's premises and the above assessment was completed about one and half years thereafter. By a notice issued on September 20, 1984, u/s 148 of the Income Tax Act, the Income Tax Officer required the assessee to file a return in response to the said notice. The assessee requested the Income Tax Officer to give the reasons for his seeking to reopen the assessment and also the provision under which the assessment was being reopened. By his letter dated January 11, 1985, the Income Tax Officer informed the assessee that the assessment was reopened u/s 147(b) of the Income Tax Act, 1961, and that the reason for reopening the assessment was that the assessee had disclosed during the course of the original assessment proceedings purchases of cloth mainly from Vardhman Trading Co. and Bajrang Overseas. Its sales were mainly to Chordia International. Both the parties from whom the purchases were made also the party to whom the sales were made were found to be non-genuine parties and were known to have indulged in bogus havala transactions. Thereafter, the assessee filed the present writ petition.

2. It is contended by Shri Jagdish Prem, learned counsel for the assessee, that the issue of a notice u/s 148 read with section 147(b) of the Income Tax Act was bad and illegal, inasmuch as the condition precedent for the issue of it was not satisfied. For this purpose, it was stated that the notice was issued not by the same Income Tax Officer who made the assessment but by his successor-in-office who could not possibly know as to whether the information said to have come into his possession subsequently was available even at the time of the original assessment proceedings. Placing reliance on the Supreme Court decision in the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, , Shri Jagdish Prem stated that the information indicated by the Income Tax Officer in his letter dated January 11, 1985, to say the least, was vague and general. It did not have any direct nexus or live link with the formation of belief that the assessee's income has escaped assessment. Accordingly, he contended that the notice issued was without jurisdiction.

3. Dr. Balasubramaniam, learned counsel appearing for the Income Tax Department, on the other hand, stated that when the assessment was completed originally, the statement of purchases and sales furnished by the assessee were accepted without investigation. Subsequently, information was received that the assessee's purchasers as well as the sellers were bogus and were indulging in bogus havala transactions. This was, according to him, a piece of information received subsequent to the completion of the assessment. As to the question of direct nexus between the information and the formation of the belief, it was the case of Dr. Balasubramaniam that the provisions of section 147(a) were involved before the Supreme Court in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . The observations were made in the context of whether the assessee had made a full and true disclosure of relevant material and not in the context of formation of belief. Moreover, according to Dr. Balasubramaniam, it was always open the assessee to agitate all that he wanted to say before this court, before the Income Tax authorities. Mere issue of notice did not mean that the assessment would be made on the assessee. On a proper explanation given, the proceedings could as well be dropped.

4. It is evident from a plain reading of section 147 of the Income Tax Act that the expression "reason to believe that income chargeable to tax has escaped assessment" is common both to clause (a) and clause (b) of section 147. The only difference between the two provisions is that whereas clause (a) requires that the income chargeable to tax must have escaped assessment by reason of (i) omission or failure to make a return or (ii) non-disclosure of all material facts necessary for the assessment fully and truly, clause (b) requires that the belief that income chargeable to tax has escaped assessment must have been in consequence of information in his possession. Therefore, the Supreme Court decision in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, , according to my judgment, will apply both while examining the reopening of assessment under clause (a) or clause (b) of section 147. This is what has been held in another Supreme Court decision in Chhugamal Rajpal Vs. S.P. Chaliha and

Others, .

5. Under the circumstances, it is necessary to examine, assuming for the present that the Income Tax Officer had in his possession some information, whether that information had a direct nexus or live link with the formation of belief that the assessee's income chargeable to tax had escaped assessment. For this purpose, reference may once again be made to the reasons given by the Income Tax Officer in his letter dated January 11, 1985, to the assessee, namely, "Both the parties from whom purchases are made and also the party to whom sales are made are found to be non-genuine parties and are known to have indulged in bogus havala transactions". There is no indication as to whether and in what context these parties were found to be non-genuine parties and how they were known to have indulged in bogus havala transactions. There is also no indication available for the information that those parties had stated that their transactions with the assessee were bogus. The Supreme Court decision, thus, is squarely applicable. It is not possible to say that the formation of belief that income had escaped assessment had any sound basis. Accordingly, it will have to be held that the notice was issued without satisfying the condition precedent for its issue. The notice is, accordingly, quashed.

6. In the result, the rule is made absolute in terms of prayer clause (a). No order as to costs.