

(1984) 06 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 1033 of 1980

Rajan Silk

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 22-06-1984

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (1985) 154 ITR 474

Hon'ble Judges : D.H. Shukla, J;B.K. Mehta, J

Bench : Division Bench

Advocate : J.P. Shah, for the Appellant; S.N. Shelat, for the Respondent

Judgement

Mehta, J.—The petitioner-firm by this petition moves this court for an appropriate writ, order and direction to quash and set aside the reassessment order dated March 31, 1980, passed by the ITO, Surat, in respect of the assessment year 1975-76. A few facts need be notice in order to appreciate the challenge to the impugned assessment.

2. The petitioner-firm made a return of Rs. 61,460 for the assessment year 1975-76 to which the statement of total income was annexed. At the end of the said statement, three notes were appended, one of which was to the effect that the assessee had purchased automatic printing machinery in the year of account corresponding to the assessment year in question, and that it worked the said machinery for some time in the said period and the petitioner-firm had claim development rebate, depreciation, extra shift allowance on the cost of said machinery. It appears that the petitioners has also furnished along with the profit and loss account which it had filed for the accounting year corresponding to the assessment year, the particulars of the interest paid by the petitioner-firm to different creditors which, inter alia, included an amount of Rs. 8,057 which the petitioner claims to have paid to the Life Insurance Corporation on loans raised and secured on the policies on the lives of the partners of the firm. The ITO concerned by his order of September 18, 1976, assessed the petitioner-firm

granting depreciation, development rebate, extra shift allowances and interest as claimed by the petitioner-firm. It appears that by a notice dated January 20, 1979, issued under s. 148 of the I.T. Act, 1961, which was received by the petitioner-firm on January 24, 1979, the petitioner was intimated that the ITO had reason to believe that the income chargeable to tax for the assessment year 1975-76 had escaped assessment and, therefore, he proposed to reassess the income for the said assessment year, and the assessee should, therefore, file within thirty days of the receipt of the notice, a return in the prescribed form for the said year. The assessee-firm by its letter of January 28, 1979, objected to the proposed action for reassessment, inter alia, on the ground that the ITO had no jurisdiction to reopen the assessment. The assessee by another letter of February 12, 1979, addressed to the ITO stated that there was no reason or ground in fact or in law for issuing a notice under s. 148 of the said Act. The assessee also requested the ITO to treat the original return as the return of the assessee in response to the aforesaid notice. The assessee by the said letter also requested the ITO to furnish reasons for issuance of the aforesaid notice.

3. The ITO, however, in spite of the objection to his jurisdiction, fixed an appointment of January 22, 1980, and intimate the assessee accordingly by his letter of January 11, 1980. It appears that the assessee, therefore, before appearing the person addressed a letter on January 21, 1980, that is, day immediately prior to the date of the appointment that the ITO had informed his representative in the earlier hearing that the reopening was sequel to some audit objection in that behalf and the assessee, therefore, invited that the attention of the ITO to the decision of the Supreme Court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, where the Supreme Court ruled that an audit objection did not constitute information and, therefore, the action of the ITO in acting on such an audit objection would virtually amount to a change of opinion. The assessee, therefore, requested the ITO to drop the proceedings.

4. The ITO did not respond favorably to this objection of the petitioners firm and fixed an appointment on February 15, 1980, vide his letter of February 5, 1980. It appears that the petitioners was thereafter filed the return to avoid the consequences of penal interest and penalty though we have not been able to appreciate how the income returned by the assessee by that return which was Rs. 57,205 has been described in the petitioners of income disclosed in the original return. We must, however, add that nothing turns upon this discrepancy. The ITO was not impressed with the objection raised by the assessee-firm as to his jurisdiction and he, therefore, proceeded to pass the reassessment order on March 31, 1980, by which he had withdrawn the depreciation in the sum of Rs. 56,458 and the allowance of interest of Rs. 8,037 paid to the Life Insurance Corporation. This order is impugned in this petition.

5. The only short point which has a bearing so far as this petition is concerned is as to whether the audit note can be said to constitute an information within the

terms of s. 147(b) of the I.T. Act, 1961. So far as the question is concerned, the point is not res integra and we do not think that it would be open to Revenue to contend that the audit note constitutes an information so as to invest the ITO with the jurisdiction or authority to initiate reassessment proceedings under s. 147(b).

6. In *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, the Supreme Court held that the opinion of an internal audit party of the Income Tax Department on a point of law cannot be regarded as "information" within the meaning of s. 147(b) of the I.T. Act, 1961, for the purpose of reopening an assessment, since a statement by a person or body not competent to create or define the law cannot be regarded as law, and the suggested integration of enacted legislation and the elaboration of legal principles in text books and journals do not enjoy the status of law and they are merely opinions. The Supreme Court emphasised that if the distinction between the source of the law and the communication of the law is carefully maintained, the confusion which often results in applying s. 147(b) may be avoided. We are, therefore, of the opinion that it is not possible to contend otherwise in view of the position of law being declared by the Supreme Court in the aforesaid decision. The attention of the ITO concerned was invited to this decision but he could not be persuaded, since in his opinion, once the initiation is with authority, the proceedings cannot be vitiated by any subsequent event such as the exposition of law by the Supreme Court or the amendment of a legal provision. The ITO found support for his opinion from the decision of this court in *Commissioner of Income Tax, Gujarat III Vs. Maneklal Harilal Spg. and Mfg. Co. Ltd.*, . We are of the opinion that the ITO was clearly in error in placing reliance on this decision for the obvious reason that this court was not concerned in *Commissioner of Income Tax, Gujarat III Vs. Maneklal Harilal Spg. and Mfg. Co. Ltd.*, , with the effect of a subsequent decision of the Supreme Court on the initiation of proceedings for reassessment. The decision of the Supreme Court in *Commissioner of Income Tax, Madras Vs. Mir Mohammad Ali. Aruna Mills Ltd. : Intervener.*, , which held that development rebate was admissible on parts of machinery also, was pronounced within a month after the ITO issued the notice, virtually upholding the original assessment. This enunciation of the legal position in the opinion of this court did not necessarily result in the basis or foundation of reassessment proceedings disappearing and that the effect of a subsequent Supreme Court decision cannot be equated with retrospective effect being given to a statute. This was not the question before the ITO in so far as he had initiated reassessment proceedings on basis of the information received in the nature of an audit note, which has been held by the subsequent Supreme Court decision in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, , to be no information at all on a point of law. In other words, the very basis on which the initiation of reassessment proceedings rested disappeared. In that view of the matter, we are of the opinion that the ITO had no jurisdiction or authority or power to reassess the

proceedings since with all the materials before which were considered by the ITO in the original assessment proceedings and assessment made accordingly could not be reopened since it would for all intents and purposes be a change of opinion and not a case of escaped assessment.

7. In the result, this petition is allowed and writ of certiorari is issued quashing and setting aside the impugned reassessment made by the ITO which was without any jurisdiction or authority of law. Rule is made absolute accordingly with costs.