(1976) 02 CAL CK 0019

In the Calcutta High Court

Case No : Matter No. 165 of 1975

Rajinder Mohan Bhandari APPELLANT

Vs

Income Tax Officer and Others RESPONDENT

Date of Decision : 24-02-1976

Acts Referred:
Income Tax Act, 1961 — Section 147

Citation : (1978) 111 ITR 407

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Judgement

Sabyasachi Mukharji, J.—The subject-matter of challenge in this application under article 226 of the Constitution is the notices issued on the 29th March, 1975, u/s 148 of the Income Tax Act, 1961, for the assessment years 1966-67 and 1970-71 to 1973-74. The said notices have been issued on the petitioner, Rajinder Mohan Bhandari, the heir and legal representative of Prem Gopal Bhandari. It appears that on the 28th March, 1973, assessment orders were passed for the assessment years 1967-68 to 1969-70, on Prem Gopal Bhandari as the karta of a Hindu undivided family, the original returns were not filed and there was best judgment assessment. Thereupon the said best judgment assessments were set aside. Returns were filed by the Hindu undivided family. Upon the said returns the Income Tax Officer made protective assessment. The only income was income from house property. The impugned notices have been given to the legal heir and representative of Prem Gopal Bhandari on the basis that the income belonged to Prem Gopal Bhandari as individual. In explanation of the ground for issue of the impugned notices the Income Tax Officer, in the affidavit filed in answer to the rule nisi has stated, inter alia, as follows :

"4. With reference to paragraphs 2 to 5 of the petition I say that from the copy of the Income Tax assessment order for the assessment year 1967-68, in respect of M/s. P. G. Bhandari & Sons made u/s 143(3)/146 of the Income Tax Act, 1961, made by the Income Tax Officer, Survey Ward, District-VII, Calcutta, forwarded to me by the Income Tax Officer, ''C'' Ward, District V(2), it is found that the said assessment was completed as a protective measure in the status of H.U.K. The said assessing Income Tax Officer held that the house properties and the income thereof belonged solely and exclusively to P. G. Bhandari as an individual. From the said assessment order the following facts amongst others emerged :

(a) The alleged H.U.F. had income from house properties at 64, Bentinck Street, Calcutta, 15, Free School Street and 30A, Marquis Street, Calcutta, and 29, Kalutolla Street, Calcutta.

(b) These properties were exchanged with the properties belonging to Shri P. G. Bhandari (registered in his name) at No. 6, Race Course Road, and No. 1, Bank Square, Lahore, Pakistan.

(c) The property at 6, Race Course Road, Lahore, was stated to be an ancestral property and the property at No. 1, Bank Square, Lahore, was stated to have been constructed with the money belonging to the H.U.F. No evidence as to the ownership of the alleged H.U.F. over the house property at No. 6, Race Course Road, and of construction of the house property at No. 1, Bank Square, Lahore, Pakistan, with the H.U.F. fund was produced. At Lahore, these properties were registered in the name of Shri P. G. Bhandari,

(d) Shri P. G. Bhandari was the son of late Rai Achru Ram who had four sons, viz., Shri P. G. Bhandari, late Ramgopal Bhandari, late Madangopal Bhandari and late Joygopal Bhandari. P. G. Bhandari stayed in Pakistan up to May, 1969, and thereafter migrated to India.

(e) It was observed in the said assessment order that no evidence as to the division of H.U.F. property among four brothers was produced. It was not known how the properties came into possession of P. G. Bhandari to the exclusion of co-sharers. As the properties stood in the name of Shri P. G. Bhandari, Income Tax Officer, Survey Ward, Dist. VII, considered that the same properties belonged to him and not to any H.U.F. as claimed.

(f) Shri Rajinder Mohan Bhandari (R. M. Bhandari), legal representative of P. G. Bhandari, also could not produce the deeds of exchange of properties in original though it has been alleged that the Pakistan properties were exchanged with those of Indian properties on 23-1-67. In the said assessment order of the Income Tax Officer, Survey Ward, Dist. VII, it was further observed that initially the authorised representative confessed that the assessments of P. G. Bhandari were made in the status of individual at Lahore but later on it was noted in the order sheet before signing that ''the status of assessments at Lahore is not ascertainable''. As there was no evidence that Pakistan properties were assessed in the status of H.U.F. it could hardly be accepted that the Indian properties exchanged with those of the Pakistan properties should belong to the alleged H.U.F."

2. Counsel for the assessee contended that, on the facts, it cannot be said that

the income has escaped assessment. It was argued that income had been assessed in the hands of the Hindu undivided family. The self same income is being sought to be assessed in the hands of the individual. Therefore, it was argued that it could not be urged that income had escaped assessment in terms of Clause (a) of Section 147 of the Income Tax Act. It was secondly urged that escapement, if there has been any, that was by reason of not the omission or failure on the part of the assessee to make a return in this case or to disclose fully or truly the material or relevant facts. Escapement, if any, was due to the failure of the Income Tax Officer to determine the correct status at the time of assessment. It was submitted that the status was a factor which might be and should have been determined in the assessment proceedings. In aid of this submission, reliance had been placed on the decisions in the case of Gordon Woodroffe and Co. Ltd., London Vs. Income Tax Officer, Madras., ; in the case of Estate of the Late A.M.K.M. Karuppan Chettiar Vs. Commissioner of Income Tax, Madras, ; in the case of Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, ; in the case of Mahabir Prasad Poddar Vs. Income Tax Officer, "B" Ward and Others, and in the case of Anil Kumar Roy Chowdhury and Others Vs. Commissioner of Income Tax, West Bengal-II, . I am unable to accept this contention. If the individual income really belonged to the individual, the income of that individual has escaped assessment and furthermore that individual has failed to file any return which it was his duty to file. The fact that the income might have been assessed in the hands of a different entity about whom more information is now available does not detract from the decision that the income has escaped assessment. Furthermore, as it is evident that the income if it properly belonged to any individual would have been subjected to tax, portion of which might have earned the benefit of exemption in the case of Hindu undivided family because the exemption limits of a Hindu undivided family are a little higher for the purpose, if the income has been assessed wrongly at the hands of an assessable unit to which it did not belong, that does not prevent from properly assessing in the hands of a unit to which it belonged by process of reopening u/s 148 of the Income Tax Act, 1961. Reliance may be placed on the observations of the Supreme Court in the case of Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor, and in the case of Manji Dana Vs. Commissioner of Income Tax, Madhya Pradesh Bhandara and Nagpur, . Counsel for the petitioner drew my attention to certain observations of mine where I had observed that the status could be determined in assessment proceeding. That observation, in my opinion, does not mean that if any individual has been assessed under wrong status, the income would not be said to have escaped assessment. In this background I have to consider the reasons as indicated in the affidavit-in-opposition. From the said reasons it could not be said that, prima facie, there is no material for thinking that there is escapement of income due to failure on the part of the assessee to fife return in this case. It was secondly contended that the notice had been issued to one heir of the legal representative. That is true. The circumstances under which the notice had been issued to one heir of legal representatives had been explained in the affidavit-in-opposition on behalf of the revenue. The infirmity of that notice cannot, in my opinion, be challenged by the petitioner who is admittedly served with a notice. If aggrieved, the other heirs, if any, of Premgopal Bhandari can challenge the said fact. In the aforesaid view of the matter, the observations of the courts in the case of First Additional Income Tax Officer, Kozhikode Vs. Susheela Sadanandan and Another, and in the case of Commissioner of Income Tax (Central), Bombay Vs. Gannon Dunkerley and Co. Ltd., are not quite relevant in the facts and circumstances of the case. In that view of the matter, this challenge to the reopening cannot be sustained.

3. The application, therefore, fails and is accordingly dismissed. Rule nisi is discharged. Interim order, if any, is vacated. There will be no order as to costs. Operation of this order is stayed for four weeks.