
(1979) 08 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 43 of 1974

Rajive Textile Mills

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-08-1979

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (1980) 14 CTR 136 : (1980) 125 ITR 581

Hon'ble Judges : Rajendra Nath Mittal, J;J.V. Gupta, J

Bench : Division Bench

Advocate : H.L. Sibal and R.C. Setia, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

Rajendra Nath Mittal, J.—The Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in compliance with the order of this High Court, dated April 17, 1973, referred the following questions of law u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"):

" (i) Whether, on the facts and in the circumstances of the case, the assessment was validly reopened u/s 148 of the Income Tax Act, 1961 ?

(ii) Whether, on the facts and in the circumstances of the case, there was any admissible material for the conclusion that the creditor was "hawala hundi name-lender" and even if it was so, whether there was any material for the finding that the credit of Rs. 10,000 did not belong to him ? "

2. The assessee is a registered firm and carries on the business of manufacture and sale of woollen cloth on wholesale basis. For the assessment year 1966-67, relevant to the accounting period ending June 26, 1965, the assessee filed its return of income declaring its income at Rs. 41,962. During the course of assessment proceedings, the ITO found a cash credit of Rs. 10,000 in the name of M/s. Amin Chand Moti Ram, Amritsar, in the account books of the assessee. The amount was taken on loan by the assessee against a hundi dated August 17,

1964, and it was paid with interest on December 24, 1965, through a cheque No. 884043 dated December 24, 1965, on the Amrit Bank Ltd., Amritsar. The details of the loans were given by the assessee to the ITO in its letter dated December 29, 1966. A certificate from the banker, which was an assessee-firm, was furnished to the ITO. A letter of confirmation from the banker was also produced by the assessee before the ITO. He accepted a cash credit entry and completed the assessment of the assessee on a total income of Rs. 43,560 on February 14, 1967.

3. Later, the ITO reopened the case of the assessee u/s 147 of the Act on the ground that it came to his notice that the banker was a mere name-lender indulging in hawala hundi business, and a notice was served on the assessee u/s 148 on March 22, 1968. In the reassessment proceedings, the ITO directed the assessee to produce the proprietor of the banker but the assessee could not do so, as he was out of India. The ITO did not accept the plea of the assessee and added an amount of Rs. 10,000 to its income as income from undisclosed sources, vide order dated September 10, 1968. The assessee went up in appeal before the AAC who set aside the order of the ITO, vide order dated June 15, 1969, and remanded the case to the ITO with a direction that he should give proper opportunity to the assessee for leading evidence.

4. The assessee, after remand, requested the ITO to summon the proprietor of the banker u/s 131 of the Act. As he had gone out of India and his address was not known, the notice could not be served upon him. The ITO thereafter directed the assessee to produce him at its own responsibility. The assessee expressed its inability to do so. It reiterated that the cash credit entry was a genuine one and relied on the cheque by which the amount had been repaid to the banker. The ITO rejected the plea of the assessee and added the amount of Rs. 10,000 to its income from undisclosed sources, vide order dated January 27, 1970. The assessee went up in appeal before the AAC who upheld the order of the ITO, vide order dated June 4, 1970. It went up in second appeal against the order of the AAC to the Tribunal, which was dismissed on October 28, 1971.

5. The assessee then made an application on December 13, 1971, u/s 256(1) of the Act requesting the Tribunal to refer the questions of law to the High Court which was dismissed on March 17, 1972. Thereafter, it moved the High Court u/s 256(2) of the Act praying that the Tribunal be directed to refer the case to it. The High Court vide its order dated April 17, 1973, accepted the application and directed the Tribunal to state the case under the aforesaid section to it. Consequently, the above-said two questions were referred by the Tribunal.

6. The learned counsel for the assessee has vehemently argued that it had disclosed all the facts at the time of the original assessment and the ITO after due enquiry accepted the entry of Rs. 10,000. According to him, later he changed his opinion on the ground that it was discovered that the banker was a hawala hundi name-lender and on that basis issued notice u/s 148 of the Act. He contends that the ITO was not entitled to do so on the information. In support of

his contention, he places reliance on Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, and Hazi Amir Mohd. Mir Ahmed Vs. Commissioner of Income Tax, .

7. We have given careful consideration to the argument of the learned counsel and find force in it. The facts in the case are not disputed. The ITO in his order dated January 27, 1970, specifically said that the banker was held to be a hawaladar in the case of the other firms and consequently the version of the assessee that it took loan from it was not acceptable. He, therefore, added the amount of Rs. 10,000 to the income of the assessee from undisclosed sources. The same view has been expressed by the AAC and the Tribunal.

8. Section 147 of the Act, inter alia, provides that if the ITO has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the ITO 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, he may assess or reassess such income for the assessment year concerned. The section has been interpreted by the Supreme Court in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, as follows (p. 445) :

" The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is for the Income Tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income Tax Officer with regard to the inference which he should draw from the primary facts. If an Income Tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment.

The grounds or reasons which lead to the formation of the belief contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income Tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of the grounds which induce the Income Tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. The expression "reasons to believe" does not mean a purely subjective satisfaction on the part of the Income- tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purposes of the section. To this limited

extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law."

9. This view was followed by this court in Hazi Amir Mohd. Mir Ahmed Vs. Commissioner of Income Tax, . In that case, the ITO while making the assessment on the assessee enquired about the genuineness of certain cash credits found in the assessee's books and accepted them as true and completed the assessment. Later, a hundi racket operating on an all-India basis was unearthed. Some of the creditors shown in the balance-sheet of the assessee made confessional statements to the effect that they were lending names and not money. Therefore, the ITO reopened the assessment and added Rs. 1,60,000 to the income of the assessee. Appeals against that order to the AAC and the Appellate Tribunal were unsuccessful. O. Chinnappa Reddy J. (as he then was--now a Judge of the Supreme Court) while speaking for the Bench, observed as follows (headnote):

"that if the Income Tax Officer has reason to believe that primary facts were not fully disclosed or that they were not truly disclosed, he may reopen the assessment. This he may do either because fresh facts come to light which were not previously disclosed or because new light thrown on facts previously disclosed tends to expose the untruthfulness of such facts. Where subsequent information comes into the possession of the Income Tax Officer exposing the accounts as false, the Income Tax Officer is not precluded from reopening the assessment. It would not be a case of mere change of opinion as a result of drawing a different inference from the same facts. It would be a case where the Income Tax Officer has reason to believe, on the basis of subsequent information, that the assessee had failed to disclose material facts truly.

On the facts of the case, even though the breaking of a hundi racket on an all-India basis cannot have any rational connection with the loans to the assessee, yet the confessional statements of the creditors might have a rational connection with the loans to the assessee. That depends upon whether the confessional statements were related in any manner with the loans to the assessee. That material was not available in the order of the Tribunal. Therefore, the Tribunal would be justified in upholding the reopening of the assessment u/s 147(a) if the confessional statements were in any manner related to the assessee; otherwise, not."

10. The facts of the present case are similar to the above facts. In this case, as already said above, the assessment was reopened on the ground that the ITO had information that the creditor was a hawala hundi name-lender. This was a general type of information regarding the banker. There was no information with him that no amount was advanced by the banker to the assessee. It is well established that an ITO who drew one inference from the facts and made the assessment cannot later change his opinion and open the assessment on the same set of facts. He can do so if he has reason to believe that the primary facts were not fully and truly disclosed. This can be done if fresh facts come to light

which were not previously disclosed by an assessee. The facts of the present case do not disclose that any fresh material came to the notice of the ITO which was not previously disclosed to him. The observations in the abovesaid cases fully cover the case on hand. In our view, the ITO had no right to reopen the assessment on the basis of the material which came to his notice. Consequently, we decide both the questions in the negative, i.e., in favour of the assessee and against the revenue. No order as to costs.