
(1969) 02 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 783 of 1968

Ramkrishna Ramnath

APPELLANT

Vs

Income Tax Officer, Central Circle-III, Nagpur

RESPONDENT

Date of Decision : 18-02-1969

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 148(2)

Citation : (1970) 77 ITR 995 : (1969) MhLj 574

Hon'ble Judges : J.R. Vimadalal, J;D.B. Padhye, J

Bench : Division Bench

Advocate : A.S. Bobde, for the Appellant; S.V. Natu, for the Respondent

Judgement

Vimadalal, J.—The petitioners in this case are a registered firm carrying on the business of manufacturing and marketing bidis. The petitioners filed their return for the assessment year 1960-61 in which they claimed a deduction of Rs. 49,440 in respect of advertisement expenses in the form of the printing and distribution of calendars of the firm for that year, and that deduction was allowed by the Income Tax Officer who made the assessment. As, however, certain other deductions claimed by the petitioners were not allowed by the Income Tax Officer, the petitioners filed an appeal before the Appellate Assistant Commissioner, which, we are informed, is still pending. We are not concerned in this case with the assessment year 1961-62. For the assessment year 1962-63 also the petitioners filed their return in which they claimed a deduction of Rs. 1,17,924 on account of advertisement expenses in the form of the printing and distribution of calendars for that year, and the deduction was also allowed by the Income Tax Officer who made the assessment. Certain other deductions claimed by the petitioners having, however, been disallowed, an appeal was filed by the petitioners before the Appellate Assistant Commissioner which is also still pending. The petitioners were thereafter served with two notices, both dated 15th July, 1968, u/s 148 of the Income Tax Act, 1961, stating that the successor of the Income Tax Officer who made the assessment for the assessment years

1960-61 and 1962-63 had reason to believe that income chargeable to tax for those years had escaped assessment within the meaning of section 147 of that Act. Though the reasons which the Income Tax Officer is required to record u/s 148(2) of the Act were not initially communicated to the petitioners, the same have now been furnished along with the supplement affidavits, and we have looked into the same. As far as assessment year 1960-61 is concerned, what has been recorded by the respondent by way of reasons for issuing the notice u/s 148 in respect of that year is that he had occasion to critically examine the deductions claimed in respect of advertisement expenses for the assessment year 1963-64 and it was noticed that the sum of Rs. 63,000 which was claimed in respect of those expenses during the year 1963-64 was totally bogus and that the respondent had "therefore every reason to hold that fictitious expenses in the form of calendar distributions were made to the profit and loss accounts to reduce the profit". In the reasons, which were recorded by the respondent in respect of assessment year 1962-63 precisely the same statements appear, but there is an additional statement to the effect that the assessee is also found to have inflated their purchases by over Rs. 50,000, showing purchases from one Dullabhai Haribhai who was an intermediary and a man of ordinary means. The short question which arises for our consideration is whether the reasons so recorded by the respondent can sustain the validity of the notices dated 15th July, 1968, which are sought to be impugned in the present petition. At the very outset of the argument of this petition before us, a statement was made from the Bar by Mr. Natu on behalf of the respondent that both the said notices have been issued under clause (b) of section 147 of the Income Tax Act, 1961, and we are, therefore, only concerned with testing the validity of the impugned notices on that footing.

2. Mr. Bobde on behalf of the petitioners has sought to impeach the validity of these notices u/s 148 on two grounds; (1) that the information which is relied upon by the Income Tax Officer for issuing the notice u/s 148 must be information which he has obtained aliunde and not merely by looking at his own order made in proceedings for a subsequent year; and (2) that the information on which the issue of the said notices is founded must relate to the particular year to which the notices themselves relate. It is necessary for us to refer only to two of the cases which were cited before us in the course of the hearing of this petition. The first of them is the decision of the Supreme Court in the case of Commissioner of Income Tax v. A. Raman and Co. which was a case under clause (b) of section 147 of the Income Tax Act, 1961. It has been stated in the judgment in that case (at page 15) that the condition which invests the Income Tax Officer with jurisdiction has two branches : (i) that the Income Tax Officer has reason to believe that income chargeable to tax has escaped assessment, and (ii) that it is in consequence of information that he has reason so to believe. It is further stated in the judgment in the said case that the expression "information" in the context in which it occurred, must mean "instruction or knowledge derived from an external source" concerning facts or particulars, or as

to the law relating to a matter bearing on the assessment. Mr. Bobde's contention that the information which is relied upon for issuing a notice u/s 148 must be information obtained aliunde is, therefore, clearly correct, and, indeed, that is also the plain meaning of the word "information". The Supreme Court has then proceeded to lay down in the said case what is the ambit of the jurisdiction of the High Court in a petition under article 226 of the Constitution in a case in which the validity of a notice u/s 147(b) of the Income Tax Act, 1961, is sought to be challenged. It has been stated in the judgment in that case that the court may, in the exercise of its powers, ascertain whether the Income Tax Officer had in his possession any information, and may also determine whether from that information the Income Tax Officer may have reason to believe that income chargeable to tax had escaped assessment. It is further stated that if the Income Tax Officer 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 (at page 16). It is clarified a little later in the judgment in the said case that in a petition under article 226 of the Constitution the taxpayer may challenge the validity of a notice u/s 147 of the Income Tax Act, 1961, on the ground that either branch of the condition precedent does not exist, but an investigation as to whether the inferences raised by the Income Tax Officer from the information are correct or proper cannot be made. Another decision that was cited before us was that of a Division Bench of this court in the case of Commissioner of Income Tax v. A. J. Zavery, but all that was held in that case was (at page 613) that a decision of a higher tribunal as to the correct factual or legal conclusion would constitute information within the meaning of section 34(1) (b) of the Indian Income Tax Act, 1922, which, it may be stated corresponded to section 147(b) of the Income Tax Act, 1961. We do not think it necessary to discuss that decision, as no such question arises in the present case, but what has been relied upon by Mr. Bobde is the observation which has been made in that case that this court has always been inclined to take the view that a mere change of the opinion on the part of the Income Tax Officer or his successor in office will not amount to information which entitled him to reopen the assessment u/s 34(1)(b) of the Indian Income Tax Act, 1922. In our opinion, what the respondent has sought to do in the present case is not the result of a mere change of opinion, but he has professed to act on the footing of information which has come to his hands in the assessment for the year 1963-64.

3. We must, therefore, proceed to consider the present case in the light of the tests laid down by the Supreme Court in A. Raman & Co.'s case. It has been strongly contended by Mr. Bobde that the information on which the respondent has claimed to issue the impugned notices u/s 148 being information relating to a different year, and not to the years in respect of which the impugned notices were issued, it cannot be said that he had, even prima facie, any reason to believe that income chargeable to tax had escaped assessment in the years to

which those notices relate. Mr. Bobde has contended that the circumstances existing in a later year may not exist in a previous year and that the respondent could not possibly have any reason to believe that income chargeable to tax had escaped assessment in the assessment year 1960-61 or 1962-63, merely because of some information which came to his hands in respect of the assessment year 1963-64. In our opinion, this contention of Mr. Bobde is clearly right and we hold that the information on which a notice u/s 147(b) is issued must relate to the assessment year to which that notice relates though, of course, it might very well have been obtained at any time subsequent thereto and may have come to the knowledge of the Income Tax Officer in the course of the assessment proceedings relating to a subsequent year. If from information which relates to a subsequent assessment year, the respondent sought to resort to proceedings u/s 147, clause (b), against the petitioners in respect of earlier years, in our opinion, he could not be said, even prima facie, to have had reason to believe that income chargeable to tax had escaped assessment in the years to which the impugned notices relate.

4. In the result, this petition must succeed and we make the rule absolute in terms of prayer (i) of the petition. The respondent must pay the petitioner's costs of this petition.

5. At this stage, Mr. Natu applies orally for a certificate under article 133(1)(b) and (c) of the Constitution for the purpose of filing an appeal to the Supreme Court from our decision. There is no material before us as far as clause (b) of article 133(1) is concerned and we cannot grant a certificate under that clause. We are prepared to give Mr. Natu an opportunity of filing an affidavit for that purpose, but we are asked to decide the application, as it stands. As far as clause (c) of article 133(1) is concerned, it is not every question of law decided by a High Court that would bring the matter within that clause and we are unable to certify that the present case is a fit one for appeal to the Supreme Court within the terms of clause (c).