

(1968) 12 CAL CK 0020
In the Calcutta High Court
Case No : Matter No. 150 of 1966

Ramnarain Bhojnagarwalla

APPELLANT

Vs

Income Tax Officer, A-Ward and Another

RESPONDENT

Date of Decision : 02-12-1968

Acts Referred:

Income Tax Act, 1922 — Section 22, 34

Citation : (1970) 2 ILR (Cal) 326 : (1970) 77 ITR 653

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : Subimal C. Roy, for the Appellant; Gouri Mitter, for the Respondent

Judgement

1. The petitioner, Ramnarain Bhojnagarwalla, was assessed to Income Tax for the assessment year 1948-49 in the usual course. Thereafter, on or about the 19th March, 1965, the Income Tax Officer, A-Ward, District IV(i), Calcutta, the respondent No. 1 herein, addressed a letter to the petitioner stating therein, inter alia, that in the course of inquiries, it has been found that the petitioner operated a bank account in the United Commercial Bank Ltd , 2 Royal Exchange Place, Calcutta, in the name of his nephew, Madhanlal Agarwalla, of 12, Nirmal Lohia Lane. It was further stated that it has been found that the petitioner had been operating the said account by getting his nephew, Madanlal Agarwalla, to sign cheques and other papers with regard to the said account and that there was evidence to suggest that the said account belonged solely to the petitioner. According to the said letter, diverse amounts had been put in the said account in the accounting year 1947-48 corresponding to the assessment year 1948-49. The petitioner was asked to show cause why the said amounts totalling Rs. 2,51,502 should not be treated as the petitioner's income for the assessment year 1948-49 and why proceedings u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") should not be initiated against the petitioner.

2. By his letter dated the 22nd March, 1965, the petitioner denied the allegations contained in the said letter, dated the 19th March, 1965, and contended that the

respondent-income tax Officer had no reason for coming to the conclusion stated in the said letter.

3. Thereafter, on or about the 27th March, 1965, a notice u/s 148 of the Act was served on the petitioner, wherein it was stated that the Income Tax Officer had reason to believe that the income of the petitioner in respect of which he was chargeable to tax for the assessment year 1948-49, had escaped assessment within the meaning of Section 147 of the Act. By the said notice the petitioner was required to deliver within 30 days from the date of the service of the notice a return in the prescribed form for the said assessment year. It was further stated in the said notice that it was issued after obtaining the necessary satisfaction of the Central Board of Revenue. It is this notice dated the 27th March, 1965, which is challenged before me in this application.

4. Mr. Subimal C. Roy, appearing on behalf of the petitioner, drew my attention, in the first place, to a decision of the Supreme Court in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, .. It has been held in the case that to confer jurisdiction on the Income Tax Officer u/s 34 of the Indian Income Tax Act, 1922, to issue notice in respect of assessments beyond the period of four years, but within a period of eight years from the end of the relevant year, the Income Tax Officer must have reason to believe that income, profits or gains chargeable to Income Tax had been under-assessed and he must also have reason to believe that such "underassessment" has occurred by reason of either, (i) omission or failure on the part of the assessee to make a return of his income u/s 22, or (ii) omission or failure on the part of the assessed to disclose fully and truly all material facts necessary for his assessment for that year. It was held that both these conditions are conditions precedent before the Income Tax Officer can acquire jurisdiction to issue the said notice.

5. My attention was next drawn to another decision of the Supreme Court in the case of S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, .. In that case Ramaswami J., delivering the judgment of the Supreme Court, observed as follows :

"It is true that two conditions must be satisfied in order to confer jurisdiction on the Income Tax Officer to issue the notice u/s 34 in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year. The first condition is that the Income Tax Officer must have reason to believe that the income, profits or gains chargeable to Income Tax had been under-assessed. The second condition is that he must have reason to believe that such "under-assessment" had occurred by reason of either, (i) omission or failure on the part of an assessee to make a return of his income u/s 22, or (ii) omission or failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income Tax Officer acquires jurisdiction to issue a notice under the section. But the legal position is

that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of under assessment that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice u/s 34. Whether these grounds are adequate or not is not a matter for the court to investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again, the expression "reason to believe" in Section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The belief must be held in good faith ; it cannot be merely a pretence. To put it differently, it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the Section. To this limited extent, the action of the Income Tax Officer in starting proceedings u/s 34 of the Act is open to challenge in a court of law."

6. Relying on the aforesaid decisions of the Supreme Court, Mr. Roy contended that, although the court could not go into the adequacy or sufficiency of the reasons which led to the formation on the belief by the Income Tax Officer, it was open to the court to decide whether there were reasonable grounds justifying the belief and also whether the reasons for the belief had a rational connection with or a relevant bearing on the formation of the belief. Mr. Roy contended that since the Income Tax Officer in issuing the said notice dated the 19th March, 1965, had already found as a fact, that the petitioner had opened and operated a bank account in the United Commercial Bank in the benami name of his nephew, there could have been no information or reasons which would have led him to form the belief that income, profits or gains chargeable to Income Tax in the relevant assessment year had escaped assessment due to any omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment for the said assessment year.

7. Mr. Roy further contended that the reason for the Income Tax Officer's belief in the present case is bad on two premises, viz., (a) an erroneous assumption that the assessee has in fact maintained an account in the United Commercial Bank, and (b) a further dependent erroneous assumption that the assessee had not disclosed it. According to Mr. Roy the said reasons were arbitrary as they were based on a fact assumed to be true which, in fact, was not true. An arbitrary reason or ground, he argued, cannot be a reasonable ground and as such the condition precedent for the assumption of jurisdiction in the present case was entirely absent. In the circumstances, the notice u/s 148 of the Act was entirely without jurisdiction.

8. Mr. Roy next drew my attention to Section 151 of the Act which provides that

in cases where eight years have expired from the end of the relevant assessment year, no notice u/s 148 of the Act can be issued unless the Central Board of Revenue is satisfied on the reasons recorded by the Income Tax Officer, that it is a fit case for the issue of such notice. Mr. Roy argued that, as the reasons recorded by the Income Tax Officer were arbitrary," erroneous or unreasonable, the sanction of the Central Board of Revenue based thereon is also vitiated.

9. Mr. Roy contended that since nearly fourteen years have elapsed after the regular assessment of the assessee for the relevant" assessment year and before the impugned notice was issued, the performance of the statutory obligations on the part of the Income Tax authorities must be very strictly construed as an additional burden is sought to be imposed on the assessee after the lapse of such a long time. He further contended that the belief in the present case was a mere pretence and as such could not warrant the assumption of jurisdiction to reopen the proceedings by issuing the impugned notice u/s 148 of the Act.

10. Mr. Gouri Mitter appearing on behalf of the respondents relied on the provisions of Section 147 of the Act in support of the proposition that the Income Tax Officer must have " reason to believe", i.e., acquire a belief before he can assume jurisdiction to issue a notice u/s "148 of the Act. According to Mr. Mitter, the first stage in the process of acquiring such a belief is the receipt of certain information with regard to the activities of the assessee during the relevant period. The mere receipt of such information, however good such information may be, is not sufficient. The Income Tax Officer concerned must take further necessary step in coming to a prima facie finding that the information received by him is reliable and dependable. It is this prima facie finding only that can lead him to form the belief which is a necessary pre-condition for the issue of a valid notice u/s 148 of the Act. In other words, on a scrutiny as to the reliability, dependability and correctness of the information in his possession, the Income Tax Officer must develop a positive mental attitude that such information can be acted upon. This is the belief or " reason to believe" in consequence of information in his possession which would warrant the assumption of jurisdiction by the Income Tax Officer to issue a notice u/s 148 of the Act.

11. Relying on the above chain of reasoning, Mr. Mitter contended before me that the letter dated the 19th March, 1965, clearly indicated that the Income Tax Officer in the present, case had not only gathered the information as a result of enquiries that the assessee. had opened and operated an account in the United Commercial Bank in the benami name of his nephew but had also arrived at the prima facie finding that such information was true and correct and warranted action u/s 147 of the Act by the issue of a notice u/s 148 thereof. Such a prima facie finding, he contended, was absolutely necessary on the part of the Income Tax Officer as otherwise it could not sustain the belief that he must form before issuing a notice u/s 148 of the Act. In the absence of such a finding at that stage of the proceedings there could be no reasonable ground or a rational connection between the grounds or information and the formation of the belief which was a

necessary condition precedent to the assumption of jurisdiction u/s 148 of the Act.

12. In support of the above contentions, Mr. Mitter relied on a decision of the Supreme Court in the case of Sowdagar Ahmed Khan (Deceased) (By his Legal representatives) Vs. Income Tax Officer, Nellore, ., In the said case Ramaswami J., delivering the judgment of the Supreme Court and in the course of a summary of the facts in that case, observed as follows:

"In the course of assessment proceedings for the assessment year 1957-58, Income Tax Officer found that the assessee had a current account in the Imperial Bank of India in the name of his father-in-law till the latter's death. This fact came to the notice of the Income Tax Officer when the assessee was asked to explain a cash credit of Rs. 40,000 found in the assessment year 1950-51. . . It was also detected by the Income Tax Officer that in the relevant returns the assessee had not shown income from property in the names of his SONS, wife and daughter, though many of the properties were purchased by him in their names. The Income Tax Officer had, therefore, reason to believe that, by reason of the omission or failure on the part of the assessee to disclose fully and truly all the basic and material facts necessary for the assessment for those years, income chargeable to tax had escaped assessment or was under-assessed."

13. At page 84 of the report the following passage occurs:

"In paragraph 7 of the counter-affidavit in the High Court, the Income Tax Officer controverted the allegation of the assessee that all material facts were fully and truly disclosed at the original assessment stage. It was asserted by the Income Tax Officer that the assessee had failed to disclose the existence of the bank account in the name of his father-in-law, benami for the benefit of the assessee and to disclose fully and truly the basic facts in respect of the sources of the alleged cash credits. In the context of these facts, we are of opinion that there was some material before the Income Tax Officer on which he formed the prima facie belief that the assessee had omitted to disclose fully and truly all material facts and that in consequence of such non-disclosure income had escaped assessment. It follows that the Income Tax Officer had jurisdiction to issue notices u/s 34(1)(a) of the Act and Mr. S. T. Desai, on behalf of the appellant, is unable to make good his argument on this aspect of the case".

14. Relying on the use of the expression "found" and "detected" in the above judgment Mr. Hitter argued that the Supreme Court in the above case was proceeding on the basis that such prima facie finding by the Income Tax Officer was an indispensable and necessary step for acquiring jurisdiction to issue the impugned notice.

15. Mr. Mitter in this connection also drew my attention to the affidavit of Asoke Kumar Banerjee, the respondent No. 1, affirmed by him on 1st July, 1965, In paragraph 6 of the said affidavit it has been stated that it appeared to the Income Tax Officer that the fact that the petitioner maintained a bank account

with the United Commercial Bank Ltd., 2, Royal Exchange Place, Calcutta, in the name of Madanlal Agarwalla was not disclosed at all. This finding of fact, it was argued, was a belief on the basis whereof the impugned notice was issued.

16. In my opinion, the argument of Mr. Mitter is sound and must be accepted. It is quite clear from the decisions of the Supreme Court mentioned hereinabove that the formation of belief or a "reason to believe" which is a condition precedent for the issue of a valid notice is only possible on the basis of certain materials. It is not enough, however, for the Income Tax Officer to have the materials in his possession. He must perform the further necessary mental act of accepting such materials and information as reliable and forming the belief that they can be acted upon. If, as in the present case, the Income Tax Officer had the information, upon enquiries, that the petitioner had an account in the United Commercial Bank Ltd. in the benami name of his nephew and had further found as a fact that such information could be acted upon, as is apparent from the notice dated the 19th March, 1965, I fail to see how it can be contended that the Income Tax Officer had no "reason to believe" within the meaning of Section 148 thereof. I also do not understand how the finding of the Income Tax Officer can be called erroneous or arbitrary or unreasonable at this stage. No doubt, in the course of the reopened assessment proceedings, it would be open to the petitioner to satisfy the Income Tax Officer that the said account is not a benami account of the petitioner and that the deposits made in that account in the relevant assessment year do not represent the undisclosed income of the petitioner. If the petitioner succeeds in establishing the above facts, the Income Tax Officer would have no jurisdiction to impose any additional tax liability on the petitioner. But I do not see how, at this stage, it can be said that the information in the possession of the Income Tax Officer and his further finding that they are reliable and can be acted upon, do not constitute reasonable grounds having a rational connection with the belief of the Income Tax Officer which is requisite before the issue of the impugned notice.

17. Mr. Mitter next argued that the challenge in the present petition is confined to the ground that the Income Tax Officer had no reason to believe that any income had escaped assessment before he issued the impugned notice. According to Mr. Mitter, such a notice can be challenged on two distinct grounds: (a) non existence of any belief on the part of the Income Tax Officer before the issue of the notice, and (b) absence of "reason to believe" before the issue of the notice. The latter ground has been made a ground of challenge in the petition but not the former. As such it was contended that I could not hold in the present case that the impugned notice was bad because of the non-existence of the belief in the Income Tax Officer before the issue thereof.

18. To the argument of Mr. Roy that the challenge on the ground of absence of reason to believe in the present case includes a challenge to the existence of the belief, Mr. Mitter contends that a belief may exist even in the absence of any reason for such belief. The belief in such a case may be entirely fanciful or a

mere pretence to use the language used by the Supreme Court in one of the cases mentioned above. My attention was drawn in this connection to a decision in the case of Income Tax Officer, Alleppey Vs. S. Veeriah Reddiar, . where such a distinction seems to have been drawn.

19. In view of my decision on the other question, I do not think it is necessary for me to decide this point in the present case. I must, however, confess to some difficulty in appreciating how there can be a belief when there are no reasons as the foundation thereof. This nice question of epistemology may, however, be left for consideration in a future case.

20. For the reasons given above, this application must fail. The rule is discharged. All interim orders are vacated. There will be no order as to costs.