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**(1982) 07 AHC CK 0041**

**In the Allahabad High Court**

**Case No : Civil Miscellaneous Writ No. 110 of 1977**

Satpal Automobile Company

APPELLANT

Vs

Income Tax Officer

RESPONDENT

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**Date of Decision : 16-07-1982**

**Acts Referred:**

Income Tax Act, 1961 — Section 148

**Citation :** (1983) 34 CTR 326 : (1983) 141 ITR 450 : (1982) 11 TAXMAN 221

**Hon'ble Judges :** R.R. Rastogi, J;H.N. Seth, J

**Bench :** Division Bench

**Advocate :** R.K. Gulati, for the Appellant; M. Katju, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Rastogi, J.—By this petition under Article 226 of the Constitution, the petitioner seeks the quashing of notices issued to it u/s 148 of the I.T. Act, 1961 (hereinafter referred to as "the Act"). The petitioner, M/s. Satpal Automobiles Company, is a registered partnership firm. It was constituted of three partners and was granted registration u/s 185 of the Act. During the previous year relevant to the assessment year 1965-66 the wives of the three partners of the petitioner-firm, namely, Smt. Sita Bai, wife of Sobhraj, Smt. Ganga Devi, wife of Damodar Das, and Smt. Mooli Bai, wife of Khem Chand, had each made a deposit of Rs. 1,500 with the petitioner-firm. The ITO while assessing the petitioner-firm for that year did not accept the genuineness of these loans and treated the same as the petitioner's income from undisclosed sources and included the aggregate amount of Rs. 4,500 in the total income of the petitioner-firm. Similarly, in the previous year relevant to the assessment year 1966-67, each of these three ladies made a deposit of Rs. 2,500 with the petitioner-firm, but the genuineness of those deposits was not accepted and they were added in the petitioner's income as income from undisclosed sources.

2. In the previous year relevant to the assessment year 1967-68 further deposits were made in the accounts of Smt. Sita Bai of Rs. 1,975 and Smt. Ganga Devi of

Rs. 1,555 and the petitioner-firm claimed to have paid interest to these three ladies on the-total deposits of each of them, the amount of such payments being :

Rs.

Smt. Sita Bai

528.75

Smt. Ganga Devi

377.50

Smt. Mooli Bai

360.00

3. While computing the total income of the petitioner-firm for this assessment year, that is, 1967-68, these interest payments were allowed as permissible deduction. In the assessment year 1968-69 there were further deposits of Rs. 1,500 each in the accounts of Smt. Sita Bai and Smt. Mooli Bai and there were payments of interest amounts by the petitioner-firm to all the three ladies. While making the assessment for this year the ITO assessed the two deposits as the income of the petitioner-firm from undisclosed sources, but as for interest payments treated the same as allowable deductions in full.

4. In the previous year relevant to the assessment year 1969-70 there were no fresh deposits made in the accounts of these ladies; but, in the assessment, interest amounts paid to them were allowed while computing the total income of the petitioner-firm. In the assessment year 1970-71, apart from disallowing a part of interest amount paid to Smt. Mooli Bai, that is, Rs. 240 out of Rs. 847.56 for the reason that the payment claimed was excessive, the balance amounts of interest paid to these three ladies were fully allowed while computing the total income. Similarly for the assessment years 1971-72 to 1973-74 interest amounts paid to these three ladies were allowed in full except for a small disallowance in respect of interest paid to Smt. Mooli Bai. In the previous year relevant to the assessment year 1974-75 there was a fresh deposit in the account of Smt. Sita Bai of Rs. 750 but within that year the amount itself was withdrawn. Apart from disallowing interest of Rs. 68 on that amount, the remaining amounts of interest paid to the three ladies were allowed by the ITO while computing the income of the petitioner-firm. In the assessment for the assessment year 1975-76 the ITO while making the assessment disallowed the entire interest paid to these three ladies and issued notices u/s 148 of the Act relating to the assessment years 1972-73 to 1974-75.

5. The petitioners challenge the issue of these notices on the grounds, inter alia, that the only reason given, on which the assessment for these years were sought to be reopened, was that the interest paid to the wives of the three partners of the petitioner-firm had escaped assessment in the hands of the petitioner-firm.

According to the petitioner, at the time of the original assessments for all these years the petitioner had filed copies of account of each of these three ladies, as also copy of interest account and the ITO himself disallowed a part of the same in respect of one of the ladies for some of the years. This being so, the view taken by the ITO that no part of the interest paid to the wives of the partners of the petitioner-firm could be allowed was based on a change of opinion and was also erroneous.

6. Counter affidavit has been filed on behalf of the respondents. It has been submitted before us on behalf of the petitioner-firm that the impugned notices were based only on a change of opinion and hence were bad in law. After hearing counsel for the parties we are inclined to agree with this contention. We have already given above the facts of the case in detail and we have shown that in the assessments for the years under consideration, apart from disallowing a part of the interest paid by the petitioner-firm to Smt. Mooli Bai, the remaining payments were accepted and were allowed while computing the total income of the petitioner-firm. The petitioner-firm had filed before the ITO copies of accounts of these ladies as also copy of the interest account, and, therefore, it could not be said that there was any escapement of the petitioner's income by reason of the omission or failure on the part of the petitioner-firm to disclose fully and truly all the material facts necessary for its assessment for the years under consideration. There is also nothing to show that it was in consequence of any information in the possession of the ITO that he had reason to believe that any income chargeable to tax for the years under consideration had escaped assessment. It will appear, therefore, that it was as a result of a change of opinion only that the impugned notices were issued. That being so, the notices are bad in law and cannot be sustained.

7. Accordingly, the petition succeeds and is allowed with costs and the impugned notices issued u/s 148 by the ITO in respect of the assessment years 1972-73, 1973-74 and 1974-75 are quashed.