
(2004) 03 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1444 of 2004

Shri Pal Jain

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (2004) 188 CTR 82 : (2004) 267 ITR 540

Hon'ble Judges : N.K. Sud, J; Hemant Gupta, J

Bench : Division Bench

Advocate : P.C. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sud, J.—Challenge in this writ petition is to the validity of notice u/s 148 of the IT Act, 1961 (for short "the Act"), dt. 31st March, 2003 by which proceedings u/s 147 of the Act have been initiated to reassess the income of the petitioner which is alleged to have escaped assessment.

2. Before advertng to the dispute, the relevant facts may first be noticed.

Petitioner claims to be carrying on trading business. He filed his return of income for the asst. yr. 1996-97 on 31st March, 1998 declaring an income of Rs. 51,850. In the documents accompanying the return, he had disclosed that he had earned long-term capital gains of Rs. 1,93,492 on sale of 5,000 shares of Nilamber Holdings Ltd. These shares were shown to have been purchased through M/s Maheshwari Sons on 24th March, 1994 for Rs. 17,750. The sale was also shown to have been made through the same party on 25th May, 1995 for Rs. 2,12,750. The capital gain was computed by adopting the indexed cost of shares at Rs. 19,258. Income from capital gains was claimed to be exempt u/s 54F of the Act, on account of the same having, been invested in construction of a residential house. The return stood accepted as no assessment u/s 143(3) of the Act was made. Petitioner, thereafter, received the impugned notice u/s 148 of the Act, dt.

31st March, 2003 wherein the AO claimed that he had reason to believe that the petitioner's income chargeable to tax for the asst. yr. 1996-97 had escaped assessment within the meaning of Section 147 of the Act and, accordingly, he proposed to reassess the petitioner's income for the said assessment year. For this purpose, the petitioner was required to file his return within 30 days from the date of service of notice. In response to this notice, the petitioner filed his return on 30th April, 2003 repeating the same income as had been shown in the original return filed on 31st March, 1998. Petitioner, thereafter, filed an application for obtaining a copy of the reasons recorded by the AO for issuing the notice u/s 148 of the Act. The same were duly supplied to him. A copy of the same has been filed as Annex. P-6 with the writ petition.

3. Mr. P.C. Jain, learned counsel for the petitioner, contended that the assessee had disclosed all the material facts necessary for his assessment in the original return filed on 31st March, 1998 and the reassessment was being proposed on the basis of a reappraisal of the same material. Thus, it was claimed that it was merely a case of change of opinion which could not be a valid ground for initiation of proceedings u/s 147 of the Act. He further submitted that the proceedings had been initiated on the basis of investigation report of the DDI (Investigation), Gurgaon. This report, according to him, did not lead to inference that income of the petitioner for asst. yr. 1996-97 had escaped assessment and that the escapement was attributable to failure on the part of the petitioner to make a full and true disclosure of the material facts necessary for his assessment. According to him, the material before the AO must have a rational connection with or relevant bearing on the formation of the belief about escapement of income. In other words, he pleaded that there has to be a direct nexus or live link between the material coming to the notice of the AO and the formation of his belief that there has been an escapement of income of the assessee for a particular assessment year. Learned counsel pointed out that the statements of Shankar Hari Maheshwari, the proprietor of M/s Maheshwari Sons, and that of Shri Parveen Mittal, chartered accountant, on which the report of the DDI (Investigation) is based, are totally general in nature and do not specifically brand the transactions with the petitioner as bogus. He further submitted that Shri Parveen Mittal in his statement had merely stated that "more than 95 per cent of the transactions from A/c were pertaining to bogus capital gains of shares which were given to different clients/assessee". Thus, it was pleaded, that even on the basis of this statement, it could not be concluded that all the transactions in the bank account of M/s Maheshwari Sons were bogus. He, therefore, contended that it was incumbent upon the AO to make further probe into the transactions relating to the petitioner before recording satisfaction that the same were bogus, In support of his contention, counsel placed reliance on the judgments of the Supreme Court in Chhugamal Rajpal Vs. S.P. Chaliha and Others, and Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . He also relied on the judgment of this Court in Commissioner of Income Tax Vs. Narinder Nath Parveen Chand, .

4. We have heard counsel for the petitioner and have perused the relevant material.

5. Before issuing the impugned notice u/s 148 of the Act, the AO had recorded the following reasons, as required under Sub-section (2) of Section 148 of the Act:

"Shri Pal Jam s/o Sh. Faquir Chand, 396, Karta Ram Street, Ludhiana; asst. yr. 1996-97.

As per the information available on record, the assessee had received an amount of Rs. 99,800 vide DD No. 195/203095 and deposited the same into its account No. 6927 maintained in Dena Bank, Chowk Mata Rani, Ludhiana. This DD was received by the assessee from Sh. Shankar Hari Maheshwari, Prop. M/s Maheshwari Sons, M.B. 15, Antriksh Bhawan, Kasturba Gandhi Marg, Delhi, against the cash payment of Rs. 99,800 and a commission of Rs. 4,990 i.e. at 5 per cent of the amount of draft total Rs. 1,04,790 (99,800 + 4,990).

An investigation made by the DDI (Inv.), Gurgaon, revealed that such transactions shown as income from capital gains from the sale purchase of shares are not genuine, Actually the assessee has simply taken an accommodation entry by way of cheque/draft by paying in cash the amount equal to the cheque of the sale proceeds of shares and certain amount of commission on a transaction.

In this case the assessee introduced its income from undisclosed sources through the bank draft entry and avoided payment of tax on this amount of Rs. 1,04,790.

In view of the above facts I have reasons for belief that an income of Rs. 1,04,790 for the previous year 1995-96 relevant to the asst. yr. 1996-97 has escaped assessment."

6. The scope of challenge to the jurisdiction of the AO u/s 148 of the Act has been explained by the apex Court in the case of Lakhmani Mewal Das (supra) at p. 445, as under:

"The grounds of 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 ITO 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 ITO to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the ITO 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 "reason to believe" does not mean a purely subjective satisfaction on the part of the ITO. 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 purpose of the section. To this limited extent, the action of the ITO in starting proceedings in respect of income escaping assessment is open to challenge in a Court of law. (See observations of this Court in the cases of Calcutta Discount Co. Ltd. v. ITO and S. Narayanappa v. CIT, while dealing with the corresponding provisions of the Indian IT Act, 1922)."

7. It has been correctly pointed out by the learned counsel for the petitioner that for forming a valid reason to believe about the escapement of income, there has to be some material before the AO having a rational connection or live nexus with the formation of such belief. It is on this touchstone that the validity of the initiation of proceedings u/s 147 of the Act have to be adjudged.

8. It is true that the assessee had disclosed the transactions about sale and purchase of shares through M/s Maheshwari Sons in his original return filed on 31st March, 1998. It is also not in dispute that the proprietor of M/s Maheshwari Sons is Shankar Hari Maheshwari. It is again not in dispute that the transactions of sale and purchase of shares had been routed through Current Account No. 8627 in Punjab National Bank, Karol Bagh, Gurudwara Road, Delhi, standing in the name of M/s Maheshwari Sons. During the investigation before the DDI (Investigation), Shankar Hari Maheshwari had totally disowned this account and had stated that if there was such an account, it was a Farzi account. His response to questions 9, 10 and 11 was as under:

"Q. 9. Have you ever had any kind of bank account in Delhi or not?

Ans. Yes, I have an account in Bank of Baroda, Ashok Ali Road, Delhi. But the last five years no transaction has taken place from that account. This account is in the name of Maheshwari Sons with current account no. 8813. I opened this account in 1989 the copy of which was attached with the IT return which was filed in Aligarh. Apart from this I have no account in any other bank in Delhi.

Q. 10, Do you know about Hasiya Gulati & Associates, 4/3-A 3 Chamber, Gali No. 4 Karol Bagh, Delhi or not?

Ans. I do not know anything about this party neither I am concerned with this party in anyway.

Q. 11. According to my information you have a current account no. 8627 in Punjab National Bank, Karol Bagh, Gurudwara Road, Delhi since 1994 in the name of Maheshwari Sons which is still operational and in which lot of money is deposited. What is say about this?

Ans. I have not a bank account in Punjab National Bank in Karol Bagh in Delhi.

It might be possible that some one might have opened a Farzi Account in my name but I have no concerned with it."

From the categorical denial of Shankar Hari Maheshwari about having, current account No. 8627 in Punjab National Bank, Delhi, a clear inference flows that the transactions routed through the said bank account in his name were not genuine. Thus, no fault can be found with the prima facie satisfaction recorded by the AO on the basis of this denial that the transactions of sale and purchase of shares alleged to have been transacted through M/s Maheshwari Sons in this account were not genuine. Thus, the disclosure of these transactions with the original return cannot be said to be disclosure of "true" facts of the case. Petitioner cannot derive any support from the statement of Shri Parveen Mittal, chartered accountant, as in the information supplied with the original return, the transactions had not been shown to have been entered into through him. Even otherwise, in the face of the total denial of account-holder Shankar Hari Maheshwari, his statement cannot carry much weight.

9. In M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, , the validity of a notice u/s 148 of the Act in somewhat similar circumstances, had come up for consideration. In that case, the assessee at Azamgarh had claimed that it had borrowed a loan from a Calcutta company in the year 1962. The loan was stated to have been repaid in cash in 1968, but the interest thereon was paid during the asst. yrs. 1963-64 to 1968-69 by cheques or by bank drafts. In order to prove the loan transaction, the assessee produced copy of account of the Calcutta company and also its confirmation letter. The AO completed the assessment accepting the genuineness of the loan and allowed deduction of interest. Thereafter, upon inquiry, the AO having jurisdiction to assess the Calcutta company informed the AO at Azamgarh that the managing director of the company had made a confessional statement that the company was only a name lender and had never advanced any loans to any persons. On the basis of this letter, the AO at Azamgarh issued notices to the assessee for reassessment u/s 147 of the Act on the ground that income had escaped assessment to tax as a result of the failure of the assessee to fully and truly disclose the material facts. The assessee thereupon filed a writ petition challenging the validity of the notices on the ground that it had disclosed all material facts necessary for its assessment at the original stage itself and that the information received was wholly vague and had no live link or nexus with the satisfaction recorded in its case about escapement of income. In that case also, the assessee had placed reliance on the earlier judgments of the apex Court in Chhugamal Rajpal's case (supra) and Lakhmani Mewal Das case (supra). These contentions were repelled by the apex Court (at p. 473) as under:

"In the present case, as already noticed, the ITO, Azamgarh, subsequent to the completion of the original assessment proceedings, on making an enquiry from the jurisdiction ITO at Calcutta, learnt that the Calcutta company from whom the assessee claimed to have borrowed the loan of Rs. 50,000 in cash had not really lent any money but only its name to cover up a bogus transaction and, after recording his satisfaction as required by the provisions of Section 147 of the Act, proposed to reopen the assessment proceedings. The present is thus not a case

where the ITO sought to draw any fresh inference which could have been raised at the time of the original assessment on the basis of the material placed before him by the assessee relating to the loan from the Calcutta company and which he failed to draw at that time. Acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment which goes to expose the falsity of the statement made by the assessee at the time of the original assessment is different from drawing a fresh inference from the same facts and material which were available with the ITO at the time of the original assessment proceedings. The two situations are distinct and different. Thus, where the transaction itself, on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings cannot be said to be a disclosure of the "true" and "full" facts in the case and the ITO would have the jurisdiction to reopen the concluded assessment in such a case. It is correct that the assessing authority could have deferred the completion of the original assessment proceedings for further enquiry and investigation into the genuineness of the loan transaction but, in our opinion, his failure to do so and complete the original assessment proceedings would not take away his jurisdiction to act u/s 147 of the Act, on receipt of the information subsequently. The subsequent information on the basis of which the ITO acquired reasons to believe that income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts was relevant, reliable and specific. It was not at all vague or non-specific."

The apex Court distinguished its judgment in Chhugamal Rajpal's case (supra) on the ground that reassessment proceedings in that case had been initiated on the basis of a "circular" issued from the office of CIT, Bihar and Orissa, which stated that three persons named in that circular were merely name lenders and their transactions were bogus and proper investigation regarding the loans from such persons was necessary before accepting the returns. The apex Court observed that such a circular "by itself, without any other material and investigation, could not afford any basis" for forming a reasonable belief that the assessee had not fully and truly disclosed all the relevant facts. As against such a general circular, the information received by the AO in Phool Chand Bajrang Lal's case (supra) was specific and went to show that the Calcutta company was not a name lender. This information was held to be vastly different, both in content and character, from the circular in Chhugamal Rajpal's case (supra).

10. Similarly, the apex Court distinguished the case of Lakhmani Mewal Das (supra) in which the proceedings had been initiated on the basis of a confessional statement by a creditor to the effect that he had only lent his name. The Supreme Court observed that there was nothing to show that the confession related to any loan advanced to the assessee or even the period during which name, and not loan, was lent. It was further observed that there was also no material to show that the confession made was in relation to the period which was subject-matter of the assessment sought to be reopened. It was under these

circumstances, that the information received in Lakhmani Mewal Das (supra) was held to be vague, indefinite, remote and far-fetched.

11. However, in the present case, the proceedings have not been initiated on the basis of a general circular. It is on the basis of an inquiry conducted by the DDI (Investigation). Further, the statement of Shankar Hari Maheshwari cannot be said to be vague. He had clearly denied having any account in the Punjab National Bank, Karol Bagh, Delhi, and had further stated that if there was such an account, it might have been opened by someone Farzi in his name with which he had no concern. In view of this categorical stand, it was not necessary for the AO to further confront him with any specific transaction in the said account for recording a prima facie satisfaction about escapement of income. Thus, according to us, the present case is fully covered by the ratio of the judgment of the apex Court in Phool Chand Bajrang Lal's case (supra).

12. We may also mention that counsel for the petitioner had also made an attempt to show that the view taken by the apex Court in Phool Chand Bajrang Lal's case (supra) was in conflict with its earlier view in Chhugamal Rajpal's case (supra). He, therefore, contended that since Chhugamal Rajpal's case (supra) was decided by a larger Bench of three Judges, the ratio of Phool Chand Bajrang Lal's case (supra) be not applied.

13. There is no merit in this contention. As already noticed above, the Supreme Court in Phool Chand Bajrang Lal's case (supra) has clearly distinguished its judgment in Chhugamal Rajpal's case (supra).

14. The judgment of this Court in Narinder Nath Parveen Chand's case (supra) is also clearly distinguishable as in that case also, the proceedings had been initiated on the basis of a circular letter issued by the Department.

15. In view of the above, we find no merit in this writ petition. The same is, accordingly, dismissed.

16. However before parting, we would like to make it clear that we have only rejected the prayer of the petitioner to quash the proceedings initiated u/s 147 of the Act at the threshold itself. In view of the limited scope of interference by this Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, nothing observed herein shall be used against the assessee while dealing with the case on merits by the AO.