

(1986) 01 CAL CK 0037
In the Calcutta High Court
Case No : C.R. No. 9414 (w) of 1978

Smt. Tarawati Debi Agarwal

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 15-01-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147

Citation : (1987) 60 CTR 183 : (1986) 162 ITR 606 : (1987) 30 TAXMAN 589

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : Sanjoy Bhattacharya and Dipti Bhattacharya, for the Appellant; N.L. Pal and R.N. Mitra, for the Respondent

Judgement

A.K. Sengupta, J.—In this application, the petitioner has challenged three several notices issued u/s 148 of the Income Tax Act, 1961. Two of the notices are dated March 20, 1975, relating to the assessment years 1966-67 and 1967-68. The other notice dated February 20, 1978, is for the assessment year 1969-70. The ground of challenge is that the Income Tax Officer has no jurisdiction to initiate any proceeding u/s 147(a) of the Income- tax Act, 1961, as the conditions precedent have not been satisfied.

2. The reasons which have been recorded are identical for all the years which are to the following effect I

"The assessee constructed a H.P. at 48-D, Muktaram Babu Street, Calcutta-7, during the accounting years 1964 to 1967 corresponding to the assessment years 1965-66 to 1968-69. The case was referred to the Executive Engineer (Valuation), Unit-II, Calcutta, and report of valuation since received. The total cost of construction up to the assessment year 1969-70 has been shown by the assessee at Rs. 4,20,000 including lift whereas the estimated value as per valuer is Rs. 5,06,900 including lift. There appears to have been no construction during the calendar year 1968. Thus, there is a difference of Rs. 86,864 (Rs.

5,06,864--4,20,000), being the estimated difference. Considering that the assessee had invested equally during 1964 to 1967, i.e., for 4 years in the H.P., the assessee's income to the tune of Rs. 21,716 (Rs. 86,864) has escaped assessment each year.

I have, therefore, reason to believe that the assessee's income of Rs. 21,700 escaped assessment for the assessment year 1966-67, due to the failure on the part of the assessee to disclose truly and fully all material facts necessary for her assessment for that year.

Tax effect Rs. 9,237."

3. In the affidavit-in-opposition, the respondents, in paragraph 3, have stated as follows :

"(a) The original assessment for the assessment years 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70, were completed on September 28, 1969, January 16, 1971, March 25, 1972, March 25, 1972, and March 25, 1972, respectively,

(b) On scrutiny of the Order Sheet dated August 5, 1969, for 1965-66, it appears that predecessor-in-interest in office has stated : "Re. expenses incurred in the construction of Agarwal Bhavan during the year, she is to give detailed particulars." It also appears on the Order Sheet dated August 12, 1969, that the other particulars have been filed.

(c) From the records of the the case, it appears that no details of construction cost are available on record and nothing has been mentioned about the same for the assessment year 1965-66 and no details as to the cost of construction are on record.

(d) During the course of assessment proceedings for the year 1967-68, summons u/s 131 of the Income Tax Act, 1961, was issued on February 21, 1972, and the assessee filed the valuation report and sanction plan of the house property on February 25, 1972. The assessee filed the original, valuation report made by M/s. R.N. Seal and Associates, 5, Russel Street, Calcutta, showing valuation of the house property at Rs. 6,34,646 including the value of the land and old structures.

(e) Being not satisfied with the valuation report, the predecessor-in-interest in office sent an Inspector attached to the Officer, who was entrusted with the valuation of the property and the Inspector furnished the report on March 16, 1972, showing the valuation at Rs. 7,86,058. As there was difference in valuation, the predecessor-in-interest in office referred the matter finally to the Executive Engineer, Valuation Unit-I, on March 17, 1972.

(f) As the preparation of the report of the valuation was a time-consuming factor and will take some time, the Executive Engineer requested the predecessor-in-interest in office to complete the time-barring assessments for the years

1967-68, 1968-69 and 1969-70 without waiting for the valuation report as the preparation of the valuation report was not possible without inspection and full particulars. On receipt of the aforesaid request, the assessments for the assessment years 1967-68, 1968-69 and 1969-70, were completed on March 25, 1972, on the basis of the valuation report made by Messrs. R.N. Seal & Associates submitted by the assessee.

(g) The Executive Engineer thereafter sent a valuation report on September 23, 1972, showing the valuation at Rs 6,73,000 as on December 31, 1968, and Rs. 7,69,000 as on December 31, 1970.

(h) On the basis of the aforesaid, the Income Tax Officer on careful consideration of the entire issue has reasons to believe that the assessee's income chargeable to tax has escaped assessment due to failure on the part of the assessee to disclose truly and fully all the material facts necessary for the assessment for those years and accordingly proceedings u/s 148(2) of the Income Tax Act were initiated for the assessment years 1965-66 to 1969-70. A copy of the reasons recorded for initiation of the proceeding is annexed herewith and marked with the letter "X" collectively."

4. It is contended on behalf of the assessee that there is absolutely no material before the Income Tax Officer to hold that the assessee failed to disclose fully or truly all material facts necessary for her assessment for the said assessment year. It is also contended that on the basis of the estimated valuation, no charge of omission can be made against the assessee.

5. On the other hand, the Revenue has attempted to justify the reopening on the basis of the facts stated in the affidavit-in-opposition read with recorded reasons as set out hereinabove.

6. I have considered the rival contentions. The assessee constructed a house property at No. 48-D, Muktaram Babu Street, Calcutta, known as Agarwal Bhavan. The construction started during the accounting year relevant for the assessment year 1965-66. Yearwise construction cost was reflected in the balance-sheet. The petitioner in her return for the assessment year 1965-66 had shown gross rental income at Rs. 11,863.33 as rent received on partial construction of the said house property. This fact has not been disputed by the respondents. The only allegation is that details of the, cost of construction are not available in the records and the assessee did not furnish such details in the course of the assessment proceedings for the assessment year 1965-66. This cannot be a ground for reopening of the assessment u/s 147(a) charging the assessee with omission and failure to disclose fully and truly all material facts. The order-sheet records that the assessee furnished the details asked for by the assessing Income Tax Officer. The Income Tax Officer completed the assessment for the assessment year 1965-66 taking the rental income of the said house property. It was for the assessing Income Tax Officer to ask for the details of the construction and source of investment made. If that was not done, he cannot

reopen the assessment on the ground that the assessee did not disclose details of construction. On the contrary, in the balance-sheet, the assessee disclosed the cost of construction. As indicated earlier, the Income Tax Officer also asked for details of construction and such details were furnished.

7. The assessee filed the valuation report of the house property during the course of assessment proceedings for the year 1967-68. The Income Tax Officer was not satisfied with the report and an Inspector was sent to estimate the valuation. There was difference in the valuation and the matter was referred to the Executive Engineer for valuation on March 17, 1972. It has been alleged that as the valuation report was a time-consuming factor, the Executive Engineer requested the Income Tax Officer to complete the time-barring assessments for the assessment years 1967-68, 1968-69 and 1969-70 without waiting for the valuation report as the preparation of the valuation report was not possible without inspection and full particulars. At the request of the Executive Engineer, the assessments for the assessment years 1967-68 to 1969-70 were completed on March 25, 1972, on the basis of the valuation report submitted by the assessee's valuer. The Income Tax Officer completed the assessments on the basis of the report of the valuation submitted by the assessee as the assessments were getting time-barred and he could not wait for the departmental valuer's report. This, in my opinion, cannot be a ground for reopening of the assessments holding that the assessee did not disclose the cost of construction or that the difference between the cost of construction shown by the assessee and subsequently estimated by the departmental valuer represents undisclosed investment. This is not a case where a proceeding can be initiated u/s 147(a). The Income Tax Officer might have reopened the assessment u/s 147(b) on the basis of information contained in the departmental valuer's report. Although the report was submitted by the departmental valuer on September 23, 1972, notices u/s 148 were issued only in 1978. That apart, the valuation report was relevant only for the assessment years 1969-70 and 1970-71 and not for earlier years.

8. The Income Tax Officer in assuming jurisdiction did not have any prima facie ground for thinking that there had been any non-disclosure of material facts. The Income Tax Officer could have proceeded on the basis of the Inspector's report if he did not accept the assessee's valuation report pointing out the infirmities, if any, in the said valuation report. He did not adopt the said course. In a case like this, it was expected that the Income Tax Officer who made the original assessment should affirm an affidavit dealing with the allegations made by the petitioner that there was no omission or failure on her part to disclose fully and truly all material facts necessary for her assessments for the said assessment years. Where the primary facts have been disclosed by the assessee before the Income Tax Officer, as regards the construction of the house property it was for the Income Tax Officer to investigate into the facts and to find out whether the cost of construction as disclosed was correct or not. The Income Tax Officer while making the original assessment for the assessment year 1967-68 has, inter alia,

held as follows:

"The assessee constructed a house property at 48-D, Mukhtaram Babu Street, Calcutta. Bulk of the construction was made this year for which a valuation certificate from M/s. R.N. Seal & Associates was filed. The valuation report relates to the construction up to 1966, Fasli Year, which is the assessee's accounting year. As per the valuation report, the total cost of construction was certified to be Rs. 6,34,646 including an old construction for Rs. 6,045 and valuation of land at Rs. 82,500. But the assessee has shown this at Rs 4,37,450 (including lift--Otis Elevator Co. (I) Ltd., for Rs. 35,680) whereas such cost according to the valuation report aforesaid is Rs. 5,46,101 (6,34,646--6,045--82,500). Again as per valuation report, the rate of construction cost has been valued at Rs. 22 for all the floors. But, in my opinion, having regard to the period of construction and the then market price of materials used in the construction, the cost of construction as per valuation report should be reduced by at least 20%. The reduced valuation comes to Rs. 4,64,186 (5,46,101--81,915), But the assessee has shown Rs. 4,37,450, leaving a difference of Rs. 26,736 (4,64,186--4,37,450), I, therefore, make an addition of Rs. 26,736 to the construction account and this is treated as the concealed income of the assessee."

9. On an appeal by the assessee, the Appellate Assistant Commissioner deleted the said addition made as undisclosed income. The Appellate Assistant Commissioner held that the cost of construction disclosed by the appellant is not lower compared to the cost estimated by the Income Tax Officer and as such no addition was called for. The addition was, therefore, deleted. The Income Tax Officer in the original assessment had investigated into the facts and treated what, according to him, was undisclosed investment. There is no new fact and the Income Tax Officer has proceeded mechanically without application of mind to the facts of this case. Thus there was no basis at all for initiating the proceedings in this case. In any event, valuation is always a question of opinion and unless there is a clear finding on the basis of the materials that the assessee invested in the construction of the house property more than what had been shown by her in the course of the assessment proceedings, the Income Tax Officer cannot proceed merely on the basis of the valuation report of the Departmental valuer. He has to reject the assessee's valuation assigning reasons therefore. On the basis of the difference in estimate, it cannot be said that the assessee actually invested more than what has been shown by her.

10. In the result, this application succeeds. Rule is made absolute.

11. Let appropriate writs be issued. The impugned notices are quashed. On the prayer of learned counsel for the Revenue, there will be a stay of operation of this order till March 31, 1986.