

(1983) 01 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No"s. 2540 and 2541 of 1975

S.P. Mohan Singh

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 06-01-1983

Acts Referred:

Income Tax Act, 1961 — Section 143(2), 147, 271(1)

Citation : (1983) 34 CTR 277 : (1983) 141 ITR 440

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Bhagirath Dass and Ramesh Kumar, for the Appellant; Ashok Bhan and Ajai Mittal, for the Respondent

Judgement

I.S. Tiwana, J.—In these two petitions (No. 2540 and 2541 of 1975) two notices issued to the petitioner on May 5, 1975, u/s 148 of the I.T. Act, 1961 (for short "the Act"), for the assessment years 1964-65 and 1965-66 are impugned on identical grounds and thus the same are being disposed of through this common order. Learned counsel for the parties are agreed that for purposes of this judgment a reference to the facts enumerated in the first petition only is enough.

2. The petitioner-concern filed its return u/s 139(1) of the Act for the assessment year 1964-65, on October 1, 1964, declaring an assessable income of Rs. 75,727. Along with the return it claims to have filed the statement of accounts, copies of personal accounts of the partners, details of sales, interest paid and discount account. In response to notice dated January 6, 1966, u/s 143(2) of the Act, the petitioner was required to file a copy of the cash credits and squared up accounts along with confirmatory letters from the creditors showing specifically the districts in which those creditors were being assessed. It was also required to supply the information of sales and purchases above Rs. 20,000 and the details of closing stock and basic valuation of the same. The petitioner claims to have supplied this information, which, according to it, was scrutinised by the ITO and at the time of partial discussion of the case on April 21, 1966, the latter tick-

marked the balance-sheet in red ink giving reference to the pages on which the relevant documents (confirmation slips and copy of the accounts of each particular creditor) were to be found. Similarly, the copy of the balance-sheet was tick-marked by the ITO and is Ex. P-1. The case, however, was adjourned to May 21, 1966. On that day, the petitioner agreed to the addition of, an amount of Rs. 1,500 to his income though that amount had been shown as credit in the account books of the petitioner. The petitioner claims to have filed some more confirmation letters relating to some of its creditors on August 31, 1966. Finding no reliable evidence regarding the genuineness of certain sums totalling Rs. 6,000 in all, penalty proceedings u/s 271(1)(c) of the Act were initiated against the petitioner and as a result thereof, a penalty of Rs. 1,724 was imposed. Thus, according to the petitioner, the ITO after satisfying himself about the genuineness of each and every credit entry and squared up account in the books of the petitioner duly supported by the confirmation letters, copies of the account, the discharged hundis and the information with respect to the wards, in which the respective creditors were being assessed, assessed the petitioner-firm to an income of Rs. 82,581, vide his order dated November 16, 1966 (annex. P-2). A footnote (annex. P-3) was also added to this order specifying that credit balance in the name of certain persons mentioned therein had been accepted by him. Some time in October, 1971, the ITO, however, initiated proceedings for reopening the assessment of the petitioner-firm on the basis that the parties in whose names cash credits appeared in its books were established to be bogus hundi and hawala dealers. According to him, these cash credits represented the petitioner's own income and on that account he had reason to believe that an amount of Rs. 66,220 had escaped assessment. He also formed the opinion that it amounted to a failure on the part of the assessee to disclose fully and truly all material facts necessary for a proper assessment. He obtained the approval of the Commissioner, respondent No. 2, u/s 151(2) and issued the impugned notice. The grounds for seeking the approval are contained in annex. P-4. It was served on the petitioner on January 17, 1972. Before filing the return, in response to this notice, the petitioner has preferred this petition under Article 226 of the Constitution of India primarily on the ground that the petitioner having disclosed all the facts truly and fully at the time of its original assessment, the ITO has no jurisdiction to proceed against it on the basis of a mere change of opinion, or information he may have received otherwise, after a period of four years from the original assessment.

3. As against this, the case of the respondent-authorities is that facts and material presented by the assessee on the basis of his documents accompanying the return or later were accepted by the ITO without making any enquiries into the individual items even though the case had been discussed with the assessee on April 21, 1966, and again on May 21, 1966. Apart from the letters of confirmation, there was no other evidence before the ITO regarding these cash credits supporting the book version of the assessee. The total income of the assessee was fixed at Rs. 82,581 mainly on the basis of the return and without

holding any enquiry into the genuineness of cash credits and these entries were accepted only on their face value. In support of this stand, reliance is placed on a confidential note recorded by the ITO for further action by the Department and the relevant part of the same reads as follows :

"There were credit balances in the names of the following parties which have been accepted because all the creditors have been Income Tax payers and the confirmation letters have been filed. Send their copies of account to the ITOs concerned for necessary verification at their end."

4. Towards the end of 1969, certain classified information was received by the I.T. Dept. from the Central Excise and Customs Dept. revealing that there was a substantial bogus hundi racket and hawala dealing prevalent amongst the businessmen particularly the ones at Amritsar. This fact came to the surface as a result of the search and seizure held by the Central Excise and Customs Dept. at the business premises of various business concerns. It is on the basis of the material that came to light that the ITO, respondent No. 1, came to the conclusion that he had reasons to believe that the petitioner had not fully and truly disclosed the material or the facts at the time of the original assessment and as a result of that the petitioner's income had escaped assessment. The details of the persons or concerns in whose names the cash credits had appeared in the petitioner's books of account and were later established to be bogus hundi and hawala dealers is mentioned at annex. P-4. In a nutshell, the case of the Department is that the petitioner deliberately brought down its real income by accounting it in the shape of loans from various parties who were not in a position to advance such loans and it so transpired subsequently on information received by the Department, long after the finalisation of the original assessment, and thus necessitated the issuance of the impugned notice for reassessment.

5. As already indicated, the primary contention of the learned counsel for the petitioner is that the material facts necessary for the assessment were truly and fully disclosed by the petitioner and it was after investigation that the same were accepted by the ITO and the said officer cannot now go into the matter over again on the basis of further information alleged to have been received subsequent to the finalisation of the assessment and this cannot be the basis for reopening the assessment u/s 147(a) of the Act. According to the learned counsel, in such a contingency, the assessment of the petitioner-firm could be reopened only under the provisions of Section 147(a) of the Act, but that could be done within a period of 4 years only. Thus, according to the learned counsel, respondent No. 1 has committed a jurisdictional error.

6. I would have straightway non-suited the petitioner on the basis of two earlier orders of this court in Civil Writ Petitions Nos. 878 and 879 of 1975 filed by the petitioner impugning two similar notices u/s 148 of the Act on almost identical grounds pertaining to the assessment years 1962-63 and 1963-64 respectively, whereby the said petitions were dismissed as withdrawn though with the

observation that "even otherwise the same were clearly covered by the ratio of three D.B. judgments of this court in Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another, Frontier Trading Company Vs. P.N. Chaudhry, Income Tax Officer and Another, and Jash Bhai F. Patel Vs. Commissioner of Income Tax, ". Learned counsel, however, claimed that a still later D.B. judgment of this court in Jai Singh Vs. Commissioner of Income Tax, fully supports his claim. As a result of this submission of the learned counsel, I have examined that judgment and find that the facts in the case on hand are more akin to the facts in Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another, rather than the facts in Jai Singh Vs. Commissioner of Income Tax, . No doubt, this judgment is based on the ratio of two Supreme Court judgments in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, and Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, and the judgment in Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another, has also been considered but while distinguishing this judgment the Bench, after referring to the observations made in Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another, has observed as follows (p. 903 of 136 ITR):

" The above observations would show that there was sufficient material on the record to indicate that the impugned loans were bogus. Apart from this, the Bench also found that while exercising the extraordinary jurisdiction under Articles 226/227 of the Constitution of India, it was not for the court to see the adequacy or inadequacy of the material, and hence the impugned notice reopening the assessment was not quashed. In the present case, however, a specific reference has been made to this court under the I.T. Act. "

7. These observations clearly indicate that, firstly, the Bench struck no discordant note saying that even in cases where the material or the facts disclosed by the assessee at the time of the initial assessment are found to be bogus or non-existent, still the I.T. authorities have no jurisdiction to reopen the matter and, secondly, the Bench decided the issue as confined in the reference order.

8. In Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, , the Supreme Court has ruled that "it is no responsibility of the assessee to advise the Income Tax Officer with regard to the inference which he should draw from the primary facts. If an Income Tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment." It is thus apparent that in cases where the correctness or the genuineness of the facts established on record is not in dispute, the ITO cannot proceed in the matter merely on the ground that he wants to draw a different inference or meaning from the set of facts established than what had been drawn by him at the time of the initial assessment. In a nutshell, a mere change of opinion on the basis of admitted or established facts cannot possibly be a ground for reopening the assessment. That is not the situation here. It is a case where the facts alleged by the assessee to be true or correct are found to be non-existent. In

Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, their Lordships had come to the conclusion that they were not at all satisfied on the basis of the affidavit of the ITO that he had reason to believe that the part of the income of the respondent (assessee) had escaped assessment by reason of its failure to make a true and full disclosure of the material facts. Obviously, in the face of this conclusion, the issuance of a notice u/s 147(a) of the Act for reopening the assessment could not be sustained.

9. To bring out the similarity of facts in Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another, to the case on hand, and to show the hollowness of the argument of the petitioner, I deem it necessary to make a reference to these observations of the Bench (p. 74) ;

" In order to appreciate the contention, we are presuming for argument's sake, that the entries regarding the loan of a sum of Rs. 95,000 are false. On the other hand, the assessee claimed that he had taken the said loans. In other words, he did not receive any monetary advances but he told the ITO that they were his creditors. We may presume that even though the assessee received no money as loans, yet all the formalities were observed and the hundis were executed and discharged. Since no money passed between the parties on any occasion, the discharged hundis represented sham transactions. In other words, the hundis and other records produced by the assessee should tend to show as if certain transactions had taken place but, in reality, the transactions never took place. In such a case, the discharged hundis and the other entries cannot be taken as evidence of facts. They are merely papers fabricated to give a false appearance to certain monetary transactions which never took place. The said documents could not be said to be narrating true facts. In such a case, even though the assessee disclosed the discharged hundis and other entries before the ITO and gave the list of addresses of spurious creditors thereby falsely showing his income from actual transactions which had taken place between spurious creditors and the petitioner, one can hardly say that the assessee had made a full and true disclosure of material facts. Such a disclosure cannot lend fact-hood to transactions which in fact did not take place. What the assessee has done is that he disclosed certain spurious papers and particulars regarding certain transactions which were themselves not facts. The ordinary dictionary meanings of the word "fact" are "occurrence of event, things certainly known to have occurred or be true, reality ; true or existent". A particular transaction which has never taken place, cannot be held to be a disclosure of true facts. In such a case, it would be a mockery to hold that the assessee has made a full and true disclosure of facts. Thus, in such a case it is to be held that the disclosure made by the assessee is formal evidence of fictitious transactions which had never taken place and they are a mere cloak to cover up the facts. In such a case, the fullness and completeness of such a disclosure is immaterial. In fact, the more copious the materials disclosed in a case like this, the more solid is the crust covering up the real facts. In a case of this type, it is, therefore, futile to contend that the provisions of Section 147(a) of the Act would not be applicable. "

10. It is thus clear that in a case where the facts stated or disclosed by the assessee are either found to be bogus or non-existent, he cannot forestall the reassessment on the plea that he had fully and truly disclosed all the material facts. Where is the question of truthfulness about a fact or a material fact, which, to the knowledge of the assessee, was non-existent or not there at all. Further, I am of the considered opinion that the facts or the material placed by the petitioner-concern before the ITO at the time of its initial assessment does not amount to any "disclosure" in the light of the. Explanation to Section 147 of the Act. This Explanation reads :

"Production before the Income Tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income Tax Officer will not necessarily amount to disclosure within the meaning of this section. "

11. For the reasons recorded above, I find no merit in these two petitions and dismiss the same with costs, which I determine at Rs. 300 in each case.