
(1990) 04 BOM CK 0026

In the Bombay High Court

Case No : Writ Petitions No"s. 1455 and 1456 of 1984

Technocraft Industries and others

APPELLANT

Vs

G.S. Tung, Second Ito, Ai Ward, Bombay and others

RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:

Income Tax Act, 1961 — Section 132, 143(3), 147, 147(A), 148

Citation : (1990) 3 BomCR 270 : (1990) 85 CTR 185 : (1990) 185 ITR 465

Hon'ble Judges : T.D. Sugla, J

Bench : Single Bench

Advocate : S.E. Dastur, for the Appellant; G.S. Jetley, for the Respondent

Judgement

T.D. Sugla J.

1. By these two petitions under articles 226 of the Constitution of India, the petitioners have challenged the jurisdiction of the Income Tax Officer to issue notices u/s 148 read with section 147(a) dated February 7, 1984, for the assessment years 1977-78 and 1978-79.

2. The petitioner is a partnership firm. The proceedings relate to the assessment years 1977-78 and 1978-79. Returns of income were filed on July 24, 1977, and June 19, 1978, respectively. The assessments were completed u/s 143(3) on June 22, 1977, and February 20, 1981, respectively.

3. On receipt of an appraisal report dated October 24, 1983, from the Assistant Director of Inspection (Investigation), Unit-III (3), the Income Tax Officer had reason to believe that the income of the petitioner chargeable to tax had escaped assessment for the two years by reason of non-disclosure of necessary material fully and truly at the time of the original assessment. Accordingly, he issued the impugned notice.

4. The reasons recorded by the Income Tax Officer for reopening the assessments were furnished to the court as well as to counsel for the petitioner

at the time of the hearing. Shri Dalvi, learned counsel for the petitioner, referring to the reasons recorded, submitted that the reasons were, to say the least, vague and no reasonable person could have formed the belief that the income of the petitioner had escaped assessment on the basis thereof. He referred to the Income Tax Officer's own admission that confirmation letters in proof of loans were filed at the time of the original assessments. According to him, the petitioners had, thus, furnished primary facts relevant and necessary for completion of assessments and there was no further obligation on the petitioner. In support, Shri Dalvi placed reliance on the Supreme Court decisions in the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, and in the case of Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, .

5. Shri Jetley, learned counsel for the Department, on the other hand, invited the court's attention to Explanation 2 to section 147. He contended that the mere fact that confirmation letter were filed at the time of the original assessments was not and could not amount to a full and true disclosure of necessary and relevant material. For this purpose, he relied on the Supreme Court decision in the case of Indo-Aden Salt Mfg. and Trading Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay, . In particular, he invited my attention to page 628 of the judgment to show that it was the duty of the assessee to bring to the notice of the assessing authority all the material and relevant facts which the assessee knew and the assessing authority might or might not know. According to Shri Dalvi, the later decision of the Supreme Court was not applicable to the facts of the case. Explanation 2, it was pointed out, was considered by the Supreme Court in one of its earlier decisions in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., and the said decision was followed (sic) by the Supreme Court in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, .

6. For a proper appreciation of the rival contentions, it is desirable to reproduce the reasons recorded by the Income Tax Officer for reopening the assessments for the year 1978-79 hereunder :

"Action against this firm, its partners and other sister concerns was taken on February 17, 1982, u/s 132 of the Income Tax Act, 1961.

Total loans for the assessment year 1978-79 as per balance-sheet amounted to Rs. 6,53 lakhs approximately. As the necessary confirmations had been filed, the loans were accepted as genuine by the Income Tax Officer.

The Assistant Director of Inspection (Investigation), Unit-III(3), has intimated in his appraisal report dated October 24, 1983, that a number of persons who are stated to have advanced loans during the assessment year 1977-78 are mere name-lenders/havala loan givers. Such loan amounts to Rs. 1,95,000 and further that these and other loans needs scrupulous scrutiny. In addition, some commission payments have also been found by him to be of doubtful nature.

Most of the creditors for loans and persons to whom commission payments are

stated to have been made during the assessment year 1978-79 are the same as for the assessment year 1977-78.

I have thus reason to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year 1978-79, income chargeable to tax has escaped assessment for that year."

7. The reasons recorded for reopening the assessment for assessment year 1977-78 are similar and for the sake of brevity are not reproduced. The material information, if any, is in paragraph 3 only and that too up to the figure, Rs. 1,95,000. The other part of that paragraph, namely, "and further that these and other loans need scrupulous scrutiny. In addition, some commission payments have also been found to be of doubtful nature by him" can by no stretch of imagination be treated even as information. This piece of observation may, at best, be considered as an advice by a brother officer to the Income Tax Officer to make an investigation into certain aspects. Therefore, the only worthwhile information/material that requires consideration is "a number of persons who are stated to have advanced loans are mere name-lenders/havala loan givers and such loans amount to Rs. 1,95,000". It is evident that even the Assistant Director of Inspection, in his appraisal report, does not indicate as to who are the name-lenders and whether they made a general statement before any authority to the effect that they were name-lenders or whether they specifically stated that their transactions with the petitioner were not genuine. The information is thus very vague and cannot be said to provide a nexus to the formation of the belief that the assessee's income had escaped assessment.

8. These facts squarely fall within the ratio of the Supreme Court decision in *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, where it was held that it is not any and every material, howsoever vague and indefinite and distant, remote and farfetched, which would warrant the formation of the belief that income chargeable to tax had escaped assessment. In that case also, the information was that "one of the creditors has since confessed that he was doing only name-lending". The reopening of the assessment u/s 147(a) was struck down by the Supreme Court both on the ground that such information did not warrant the formation of belief that income had escaped assessment and also on the ground that the assessee having made true and full disclosure of the primary facts at the time of the original assessment, the escapement, if any, could not be by reason of any failure on his part. It is pertinent to mention that, in this case, the Income Tax Officer has himself mentioned, while recording the reasons, that confirmation letters were filed at the time of the original assessments. A similar case had come up before the Supreme Court in *Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta*. It was held that, after an assessee had given the particulars of loans with confirmation letters, it was for the Income Tax Officer to investigate and determine whether those documents were genuine or not. The assessee could not be said to have failed to make a

true and full disclosure of the material facts by not confessing before the Income Tax Officer that those documents were bogus. Under the circumstances, even if it is assumed that formation of the belief that income chargeable to tax had escaped assessment had some basis, the second condition that the escapement should be by reason of failure on the part of the assessee to disclose truly and fully the material facts is certainly absent in this case.

9. As regards the Supreme Court decision in *Indo-Aden Salt Mfg. and Trading Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay*, it is to be noted that the facts in that case are distinguishable. The assessee had both taxable and non-taxable income. There was no dispute that assets used for earning taxable income alone are entitled to depreciation. The assessee had not given the bifurcation of the extent of use of the assets for earning taxable and non-taxable income. Explanation 2 was considered in this context and it was held that it was the obligation of the assessee to furnish the bifurcation which was necessary for the purpose of assessment. In the present case, the petitioner did furnish the loan accounts and confirmation letters in support. It was for the Income Tax Officer to make an investigation, if advised. The petitioner had no obligation to confess that the loans were not genuine or that the Income Tax Officer should not accept their genuineness without any enquiry. The Supreme Court, in *Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta*, in terms, stated that it was not the obligation of the assessee.

10. In the above view of the matter, it was to be held that the formation of the belief that income chargeable to tax had escaped assessment by reason of the assessee's failure to disclose relevant and necessary material truly and fully is not warranted. The impugned notices were, accordingly, issued without proper assumption of jurisdiction.

11. In the result, the petition is allowed. The impugned notices are quashed. Rule is made absolute in terms of prayer (a) in both the petitions. No order as to costs.