
(1969) 11 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ Petition No. 26 of 1966

Y. Rajan

APPELLANT

Vs

Income Tax Officer, (A) Ward

RESPONDENT

Date of Decision : 05-11-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 139(2), 147, 148, 34

Citation : (1970) 77 ITR 839

Hon'ble Judges : Obul Reddy, J; Madhava Reddy, J

Bench : Division Bench

Advocate : G.S. Krishna Prabhu, for the Appellant; T. Ananta Babu, for the Respondent

Judgement

Madhava Reddy, J.—In this writ petition under Article 226 of the Constitution of India for the issue of a writ of prohibition prohibiting the respondent herein from reassessing the income of the petitioner as per the notice issued u/s 148 of the Income Tax Act, 1961, the question that falls for consideration is: "Whether the respondent has jurisdiction to do so on the facts and circumstances of the case ?"

2. The petitioner's income was assessed to tax for the years 1961-62, and for the subsequent years upto 1964-65. Thereafter, on a report made by the inspector of Income Tax that the wife of the petitioner had constructed a house. Income Tax Officer C-III Ward, Hyderabad, served a notice u/s 139(2) of the Act on the wife of the petitioner for the assessment year 1962-63. In pursuance of the said notice, she submitted returns of income for six assessment years 1959-60 to 1964-65 and claimed that the construction of the house was started in 1958 and completed before 31st March, 1961, and further claimed that her income be spread over these years. In the course of the assessment proceedings for these years, the petitioner was examined and also other factors were taken into account and the explanation of the petitioner's wife was accepted. Her income for these years was assessed and the tax determined. Thereafter, the

Income Tax Officer, M.P.P. Circle "A" Ward, Hyderabad, the respondent herein, issued the impugned notice 133-R/61-62 dated 24th November, 1965. This notice was preceded by another notice, G. I. No, 133/61-62, dated 5th November, 1965, in which the petitioner was informed that since his wife apparently has no independent source of income, the investment made by her in the house in all probability must have belonged to him, and that he, therefore, proposed to initiate action u/s 147 of the Act to reopen his assessment from 1961-62 onwards and to include therein the investment of the construction of the house and the rental income therefrom. By this notice, the petitioner was called upon to state his objection, if any, to the above proposal before 18th November, 1965. The petitioner accordingly filed his objection on 24th November, 1965, stating that his wife's assessment has been completed by the Income Tax Officer, C-III Ward, wherein the explanation of his wife was accepted and also disclosed her identity that she is the wife of the petitioner, that the present proposal to reopen the assessment and include the said income was untenable and requested the respondent officer to drop the proceedings. Notwithstanding the above, the impugned notice was issued. In the counter-affidavit, the issuance of this notice is sought to be justified on the ground that the assessment of the wife's income and that of the petitioner's income was completed by two separate officers, one by the Income Tax Officer, C-III Ward, and the other by the Income Tax Officer, M. P. P. Circle "A" Ward, and, secondly, on the ground that, although the petitioner's wife was assessed on her own statement that she had received income which is above the exemption limit, that did not preclude the respondent herein from taking into account the fact that the petitioner's wife did not have any independent source of income, that that income was, in all probability, the income of the petitioner and the investment made by the petitioner's wife in the construction of the house must have been from out of the income of the petitioner, and that therefore not only the investment made by her in the house but also the income derived from the rents of that house, must be deemed to be the income of the petitioner which has escaped assessment, during the relevant years. These facts constituted "information " which was sufficient to vest jurisdiction in the Income Tax Officer u/s 147(b) of the Act to reopen the assessments which are within four years of the impugned notice.

3. The question that falls for determination in this writ petition is whether the "information" as regards the investments made by the wife of the petitioner in the construction of the house said to have been received by the Income Tax Officer, C-III Ward, constituted information within the meaning of Section 147(b) of the Act so as to vest the respondent with jurisdiction to reopen the assessment.

4. In order to appreciate this contention, it is necessary to read Section 147 of the Act so far as it is relevant for our purposes:

" 147. If-

(a) the Income Tax Officer has reason to believe that, by reason of the omission

or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 - 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 - 153 referred to as the relevant assessment year).

Explanation 1.--For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :--

- (a) where income chargeable to tax has been under-assessed ; or
- (b) where such income has been assessed at too low a rate ; or
- (c) where such income has been made the subject of excessive relief under this Act or under the Indian Income Tax Act, 1922 (11 of 1922); or
- (d) where excessive loss or depreciation allowance has been computed.

Explanation 2.-- 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."

5. Here we are not concerned with Clause (a) of Section 147, for, it is nobody's case that the petitioner had omitted or failed to fully and truly disclose all material facts necessary for the assessment of his income during the previous assessment years. It is the specific case of the revenue that the "information" gathered by it in the course of the assessment proceedings of the petitioner's wife which information was communicated to the present respondent by the other Income Tax Officer is the basis for issuing this notice. The notice itself does not disclose the "information" on which it is based. But, as already noticed, it is preceded by a notice dated 5th November, 1965, in which the proposal to reopen assessment was made and objections of the petitioner were invited. The following facts are clearly stated in the said notice :

(1) That it has come to the notice of the respondent that the petitioner has constructed a house in Gandhinagar Colony by the end of the financial year 1960-61 in the name of his wife, Srimathi Ramarathnamma.

(2) That the cost of the construction of the house amounted to Rs. 35,000 and that it was made from the gift of Rs. 15,000 made to her by her father in 1945 at

the time of her marriage and accrued interest thereupon up to the year 1958 for which no proof could be adduced.

(3) That since the petitioner's wife apparently was not having any source of income the investment in all probability must have flowed from the petitioner.

6. It is on these grounds that the respondent proposed in that notice to initiate action u/s 147 of the Act to reopen the petitioner's assessment from 1961-62 onwards so as to include therein, (a) the investment of the construction of the house, and (b) the rental income therefrom. A close reading of the said notice would disclose that the information in the possession of the respondent is about the completion of the house by the end of the financial year 1960-61, i.e., before 31st March, 1961. That was a fact which was asserted by the petitioner's wife and accepted by the Income Tax Officer, C-III Ward. The second fact mentioned in the notice, namely, that the investment was that of the petitioner's wife was also accepted by the concerned officer, although no proof of the actual gift made by her father at the time of marriage was forthcoming. Still it was on that basis that the house was treated to have been constructed by her and the income therefrom was treated to be her income and she was assessed to tax. It is not as if the identity of the assessee therein was not disclosed. In fact the officer concerned knew that the petitioner herein was the husband of the assessee and the petitioner was also present before the officer during the enquiry.

7. On these two facts the conclusion which the respondent came to was that in all probability the investment of the house must have flowed from the petitioner. This is neither a necessary nor an inevitable conclusion from the facts disclosed. When once the officer concerned has accepted the investment to be that of the petitioner's wife and has treated that income as her income and assessed that income to tax as a separate income, merely because she is not able to fully prove her initial statement that it was a gift from her father, it does not necessarily lead to the conclusion that it is the income of her husband. That apart, the respondent himself is not certain that this investment is that of the petitioner. He merely entertains a suspicion and embarks upon a guess as to wherefrom the investment for this house must have come from. He merely surmises that it must have come only from the petitioner because he is the husband of that assessee. For initiating proceedings u/s 147(b), what is required is definite information which in the words of their Lordships of the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, must be something more than "mere guess, gossip, or rumour". To conclude that the investment made by the wife of the petitioner in the construction of the house must have in all probability flowed from the petitioner in the circumstances of the case cannot but be held to be a mere guess based on suspicion. This guess work is actually contrary to the clear finding given by the Income Tax authorities themselves in respect of the assessments of the petitioner's wife wherein her claim that the house was completed before 31st March, 1961, was accepted. If the house was completed

before the financial year 1961-62, then any investment made prior to that cannot be deemed to be a part of the income of the petitioner. No part of this income of the petitioner prior to 1961-62 assessment year even according to the department, has escaped assessment and is proposed to be reopened. It is only the income subsequent to 31st March, 1961, that is sought to be reopened on the ground that it has escaped assessment. If the investment thus made by the petitioner's wife cannot be treated to have flowed from the petitioner's income or it is only on that basis the income of the earlier years is not reopened then the income from the house constructed from such investment cannot also naturally be deemed part of the petitioner's income. It was pointed out by the Supreme Court in *Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry*, that in order that the Income Tax Officer may exercise jurisdiction u/s 147 of the Act, where the jurisdiction is exercised under Clause (a) or Clause (b) he must have reason to believe that any income chargeable to tax has escaped assessment. The expression "reason to believe" in Section 34 (corresponding to Section 147) of the Income Tax Act, does not mean a purely subjective satisfaction on the part of the Income Tax Officer. That belief must be held in good faith; it cannot be merely a pretence. To put it differently, it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income Tax Officer, in starting proceedings u/s 34 of the Act, is open to challenge in a court of law. Keeping this principle in view, we have to examine the facts of the instant case. As already pointed out, the Income Tax Officer while, on the one hand, holding that the investment made by the petitioner's wife is her own investment and the income derived therefrom is her income and on that footing assessing her to tax for the relevant years, cannot, on the other, rationally come to the conclusion that that is the "information" which furnishes him the ground and vests him with jurisdiction to deem that investment and the income derived therefrom as that of the petitioner which had escaped assessment, and, consequently, rendering the assessment for the years 1961-62 onwards liable to be reopened u/s 147(b) of the Act. It must be pointed out that neither the petitioner's wife nor the petitioner deliberately suppressed any fact. The petitioner's wife disclosed the investment made in the construction of the bouse, the period during which the house was constructed and the income that is derived therefrom. It was also disclosed that she was the wife of the petitioner. It is on that footing that she was assessed to tax. If so much is established, then we do not see how the case relied upon by the learned counsel for the revenue in *Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor*, . helps him. That was a case in which the assessee claimed that they were not members of a Hindu undivided family but notwithstanding the partition evidenced by the document, they suppressed the fact of the existence of the joint family from the knowledge of the Income Tax Officer that the separation of the joint family was merely nominal. Therefore, the assessment made without the knowledge of this relevant fact was deemed to be suppression of a material

fact by the assessee which vested jurisdiction in the Income Tax authorities to reopen assessment. Although the impugned notice does not disclose the reasons and in fact the Act does not require the revenue to disclose the grounds on which the notice is issued, still it can be challenged in a court of law as it is subject to scrutiny as pointed out by the Supreme Court in Kantamani Venkaia Narayana's case 3. The facts disclosed by the revenue in its counter-affidavit, and in the notice dated 5th November, 1965, only strengthen the petitioner's allegation that the respondent is trying to embark upon a roving enquiry based on suspicion and guess. Assuming all the relevant facts stated in the notice dated 5th November, 1965, are correct, it at best gives rise to a suspicion which is not sufficient to warrant reopening of an assessment u/s 147(b) of the Act. Any such roving enquiry is beyond the purview of the Income Tax Officer in the matter of reopening the assessment already completed. It is only "information" leading to a reasonable belief that the income has escaped assessment that can vest him with jurisdiction. On the facts and circumstances of this case, we do not think that the Income Tax Officer could be said to have a reasonable belief to hold that any income of the petitioner has escaped assessment for the assessment year 1961-62 onwards. That being so, the impugned notice must be held to be without jurisdiction, and, consequently, the Income tax Officer cannot proceed with the enquiry.

8. In the result, the petitioner succeeds and the writ petition is allowed. A writ of prohibition restraining the respondent herein from taking further proceedings pursuant to the notice dated 24th November, 1965, will issue. The petitioner will have his costs. Advocate's fee Rs. 150 (rupees one hundred and fifty only).