Bhajan Lal Vs Commissioner of Income Tax and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 18, 2000

Acts Referred: Constitution of India, 1950 â€" Article 226
Income Tax Act, 1961 â€" Section 142, 142(1), 143, 143(2), 147
Penal Code, 1860 (IPC) â€" Section 120B, 173
Prevention of Corruption Act, 1988 â€" Section 12, 13(1), 7

Citation: (2001) 250 ITR 399

Hon'ble Judges: Nirmal Singh, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: H.L. Sibal and Rita Kohli, for the Appellant; R.P. Sawhney and Rajesh Bindal, for the Respondent

Judgement

G.S. Singhvi, J.
This is a petition for quashing of the notices annexures P-1 to P-5 issued by the Assessing Officer (respondent No. 2) to

the petitioner under Sections 148, 142(1) and 143(2) of the Income Tax Act, 1961 (for short ""the Act"").

2. Briefly stated, the facts of the case are that in pursuance of the order of assessment passed by the Income Tax Officer for the assessment years

1994-95, the petitioner deposited due tax. After about three years, the Assessing Officer issued notice annexure P-1 dated August 26, 1997, u/s

148 of the Act proposing reassessment of the income of the petitioner for the said assessment year on the ground that his income had escaped

assessment within the meaning of Section 147 of the Act. In response to the said notice, the petitioner filed the return dated October 7, 1997. This

was followed by notices annexure P-2 dated February 6, 1998, issued u/s 142(1), annexure P-3 dated July 2, 1998, u/s 143(2), annexure P-4A

dated March 6, 2000, u/s 143(2), annexure P-4B dated March 6, 2000, u/s 142(1) and annexure P-5 dated March 6, 2000 u/s 142(1)/143(2) of

the Act vide which the petitioner was required to appear in person or through an authorised representative and to produce the documents,

accounts and any other evidence in support of his return mentioned in the notice annexure P-5 dated March 6, 2000. It was pointed out in the said

notice that the investigation made by the Central Bureau of Investigation had revealed that the petitioner had made payments of Rs. 3,00,57,000

between July 24, 1993, and August 3, 1993, but the same had not been reflected in the Income Tax return dated October 7, 1997. He was,

therefore, asked to explain the source from which payment had been made with a stipulation that on his failure to do so it would be treated as

undisclosed income and added to the income already disclosed by him.

3. The petitioner has challenged the notices mainly on the ground that proceedings u/s 147 of the Act cannot be initiated on the basis of the report

submitted by the Central Bureau of Investigation and in any case, it is barred by limitation prescribed u/s 153 of the Act. Another ground raised by

him is that the proceedings for reassessment cannot be held till the conclusion of the criminal case pending in the Court of the Special Judge, Delhi,

in which he has been charged under Sections 120B and 173 of the Indian Penal Code, and Sections 7, 12, 13(2) and 13(1)(a) of the Prevention

of Corruption Act, 1988.

4. In the written statement filed on behalf of the respondents, it has been averred that the writ petition should be dismissed as premature as no

order adversely affecting the petitioner has so far been passed. According to them, if any such order is passed, then the petitioner can avail of the

remedy of appeal before the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, The respondents have further

averred that the notices under Sections 142(1) and 143(2) were issued to the petitioner on July 2, 1998 and March 6, 2000, but he has failed to

furnish any reply or explanation and has also not produced any evidence regarding the source from which the expenditure was made. As regards

the petitioner''s plea of the bar of limitation, the respondents have averred that the proceedings initiated against him are not barred by time and the

same can be finalised within two years from the end of the financial year in which the notice u/s 148 of the Act was served.

5. Shri H. L. Sibal, senior counsel for the petitioner, argued that notice u/s 148 should be quashed because no material was available before the

Assessing Officer on the basis of which he could form an opinion that the income of the petitioner had escaped assessment. Learned counsel then

referred to the judgment dated September 29, 2000, of the Special Judge, Delhi, vide which the petitioner was acquitted of the criminal charges

and submitted that in view of the findings recorded by the court of competent jurisdiction, the substratum of the notice issued u/s 148 must be

deemed to have disappeared, and, therefore, the proceedings initiated against the petitioner should be quashed. He invited our attention to the

observations made by the special judge in paragraphs 114, 142 and 205 of the judgment to show that the charge levelled against the petitioner of

having bribed seven Members of Parliament has not been proved and submitted that in view of these findings there is no legal justification to

continue the proceedings initiated u/s 147 read with Section 148 of the Act.

6. Shri R. P. Sawhney, senior counsel for the respondents, argued that the notice issued by the Assessing Officer u/s 148 cannot be invalidated

only on the ground that the report of the Central Bureau of Investigation was relied upon by him for believing that the petitioner"s income had

escaped assessment. Learned counsel submitted that after examining the report of the Central Bureau of Investigation, the Assessing Officer had

unequivocally recorded that he had reason to believe that the asses-see had not declared true particulars of his income and expenditure of Rs.

3,00,57,000 and, therefore, it was a case of escaped assessment within the meaning of Section 147 and there is no valid ground for the court"s

interference at this stage. He produced the file maintained by the Department to show that the Assessing Officer had recorded independent reasons

before issuing notice u/s 148 of the Act. Shri Sawhney referred to paragraphs 31 and 100 of the judgment of the Special Judge, Delhi, to show

that the petitioner was acquitted by giving benefit of doubt and, submitted that the findings recorded by the Special Judge, Delhi, on the issue of

giving bribes to seven Members of Parliament for casting their vote in favour of the Government headed by Shri P. V. Narasimha Rao cannot be

treated as conclusive on the legitimacy source from which the petitioner had collected Rs. 3,00,57,000 and the petitioner"s acquittal of the charges

framed u/s 120B read with Section 173 of the Indian Penal Code, and the Prevention of Corruption Act, is not sufficient to absolve him of his

liability to explain the source of Rs. 3,00,57,000, which had not been disclosed in the return. Learned counsel also relied on the decision of the

Supreme Court in Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, , and argued that at this stage of the proceedings, the court

cannot go into the insufficiency and adequacy of the material relied on by the assessing authority for the purpose of reopening of the assessment.

7. We have given serious thought to the respective submissions. In our opinion, the question as to whether the petitioner was a party to the alleged

offer of bribes made to seven Members of Parliament for casting their vote in support of the then Government has no bearing on his liability to be

taxed on the total income for the year 1994-95 and the competent authority constituted under the Act cannot be deprived of its jurisdiction to

determine his liability to pay tax on the total income simply because in the criminal case he has been acquitted. The petitioner"s acquittal by the

Special Judge, Delhi, on the charge of having conspired to bribe the Members of Parliament for exercising their vote in favour of the Government

of Shri P. V. Narasimha Rao may be relevant to any other similar proceedings pending against him, but the same cannot be made the basis for

quashing notices issued u/s 148 or 142(1) or 143(2) of the 1961 Act, requiring him to produce documents, accounts and other evidence to prove

the source of Rs. 3,00,57,000 which he is shown to have spent between July 24, 1993 and August 3, 1993.

8. We are further of the view that the opinion formed by the Assessing Officer cannot per se be regarded as arbitrary or capricious so as to justify

intervention of this court at this stage of the proceedings. The jurisdiction of this court to interfere with the show-cause notice issued u/s 148 of the

Act is extremely limited and the belief formed by the competent authority cannot be set at naught simply because this court, on reappreciation of

the matter, forms a different opinion.

9. The ambit and scope of Sections 147 and 148 of the Act was considered by the Supremo Court in M/s. Phool Chand Bajrang Lal and another

Vs. Income Tax Officer and another, . After reviewing several judicial precedents on the subject, a two-judges Bench of the Supreme Court held

as under (page 477) :

From a combined review of the judgments of this court, it follows that an Income Tax Officer acquires jurisdiction to reopen an assessment u/s

147(a) read with Section 148 of the Income Tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his

possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to

make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his

income, profits or gains chargeable to Income Tax has escaped assessment. He may start reassessment proceedings either because some fresh

facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his

possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a

different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income Tax Officer,

the sufficiency of reasons for forming the belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no

belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the

court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from

which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for

the formation of the requisite belief. It would be immaterial whether the Income Tax Officer, at the time of making the original assessment, could or

could not have found by further enquiry or investigation, whether the transaction was genuine or not if, on the basis of subsequent information, the

Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not

made a full and true disclosure of the material facts at the time of original assessment and, therefore, income chargeable to tax had escaped

assessment . . ,

One of the purposes of Section 147 appears to us to be to ensure that a party cannot get away by wilfully making a false or untrue statement at the

time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you

can do nothing". It would be a travesty of justice to allow the assessee that latitude.

10. In Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, , their Lordships of the Supreme Court rejected the challenge to the

notice issued for reassessment by observing that at that stage, the court can only consider whether there is a prima facie case for reassessment and

reopening proceedings cannot be struck down by going into the sufficiency or correctness of the material relied upon by the assessing authority for

the purpose of reopening.

11. In C. W. P. No. 10619 of 2000- Bal Ram Jakhar Vs. Commissioner of Income Tax and Others, , decided on October 19, 2000, this court

has held that notice issued u/s 147 of the 1961 Act cannot be quashed under article 226 of the Constitution of India simply because the Central

Bureau of Investigation had not pressed the charge of giving bribe against the petitioner. Some of the observations made in that decision, are

extracted below (page 396) : ""In view of this conclusion, we would have refrained from expressing any opinion on the merits of the reasons

recorded by the Assistant Commissioner of Income Tax, Circle-cum-New Assessees Circle. Bhatinda, for initiating proceedings u/s 147 read with

Section 148 of the 1961 Act, but as Shri Mittal made repeated efforts to persuade us to nullify the notice solely on the ground that the Special

Judge, Delhi, has not framed charges against the petitioner, we are constrained to observe that an order, like the one passed by the Special Judge,

Delhi, not framing the charge cannot be treated as conclusive so far as the proceedings under the 1961 Act are concerned. A careful reading of the

order, annexure P-12, passed by the Delhi High Court in Criminal Revision No. 473 of 1997 shows that the Central Bureau of Investigation had

not pressed for framing of charges against the petitioner on the issue of receipt of Rs. 51,24,800 because at that stage it did not have sufficient

evidence to corroborate the allegations. The question as to whether the petitioner could be held liable for an offence under the Prevention of

Corruption Act or any other contemporaneous statute does not, in our opinion, have any bearing on his liability to be taxed under the 1961 Act

and the competent authority constituted under that Act cannot be denuded of its jurisdiction to determine the petitioner"s liability to pay tax in

relation to the particular assessment year simply because the criminal case charge has not been framed.

12. In view of the above discussion, we hold that the notices issued to the petitioner cannot be quashed merely because he has been acquitted of

the charge framed under Sections 148, 142(1) and 143(2) of the Act.

13. The arguments of Shri Sibal that the findings recorded by the special judge on the question of giving bribe should be declared as binding on the

respondents deserves to be rejected because the proceedings initiated against the petitioner relate to the non-disclosure of the full particulars, of

the income and not to the alleged act of offering bribes to seven Members of Parliament and even though he may have been acquitted of the latter

charge the finding recorded by the Special Judge, Delhi, cannot confer immunity upon him from disclosing the source of money.

14. For the reasons mentioned above, the writ petition is dismissed.