

(2014) 01 AHC CK 0094

Allahabad High Court

Case No: Civil Misc. Writ Petition (Tax) Nos. 1366, 1367 and 1368 of 2009

M/s. Rohilkhand
Educational Charitable
Trust and Others

APPELLANT

Vs

Chief Commissioner of
Income Tax and Others

RESPONDENT

Date of Decision: Jan. 17, 2014

Acts Referred:

- Income Tax Act, 1922 - Section 34
- Income Tax Act, 1961 - Section 11, 11(1), 11(1)(d), 12AA, 131

Citation: (2014) 2 ADJ 1 : (2014) 365 ITR 233 : (2014) 222 TAXMAN 243

Hon'ble Judges: Surya Prakash Kesarwani, J; Sunil Ambwani, J

Bench: Division Bench

Advocate: Mudit Agarwal, Ashish Agrawal and J.N. Mathur, Advocate for the Appellant; Ashok Kumar, B. Agarwal and M.D. Singh, Advocate for the Respondent

Judgement

S.P. Kesarwani, J.

These three writ petitions have been preferred challenging the notices u/s 148 of the Income Tax Act 1961 (hereinafter referred to as the Act) for reassessment u/s 147 of the Act on common grounds with the only difference with regard to the quantum involved in different assessment years namely AY 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07. The Writ Petition No. 1366 of 2009 pertains to AY 2003-04; Writ Petition No. 1367 of 2009 pertains to AY 2006-07; and Writ Petition No. 1368 of 2009 pertains to AY 2002-03, 2004-05 and 2005-06. Since the facts and controversy involved in all these three writ petitions is common the Writ Petition No. 1366 of 2009 is taken up as the leading case. In Writ Petition No. 1366 of 2009, the petitioner has prayed for the following relief:

(i) Issue a writ order or direction in the nature of certiorari quashing the notices u/s 148 of the Income Tax Act for the Assessment Years 2003-04 contained in Annexure 5 to this writ petition.

(ii) Issue a writ order or direction in the nature of mandamus directing the respondent authorities not to make any reassessment against the petitioner u/s 147 in pursuance of the notice contained in Annexure 5 of the writ petition.

(iii) Grant such other/further relief, as the Hon"ble Court may deem just and appropriate in the facts and circumstances of the case.

2. Briefly stated the common facts in the present cases are that the petitioner is a Trust created under the Trust Deed dated 26.5.1998 as corrected by the Deed dated 19.9.2000. The assessments of the Trust for AY 2003-04 and 2006-07 were completed u/s 143(3) of the Act. The Trust is registered u/s 12AA and Section 80G of the Act. It is alleged in the writ petition that the trust is engaged in imparting and spreading education by establishing various educational institutions and running hospitals to give treatment and relief to the weaker sections of the society. It has started paramedical courses and training for nurses. The colleges established by the Trust and its courses are approved and recognized by Medical Council of India, Dental Council of India and by the Director, Medical and Health, U.P., and the C.M.O. Bareilly. In paragraph-11 it is alleged that there are 100 seats in each colleges. Two batches of BDS courses have passed out and MDS course is running in second year. The MBBS course is running in third year and the college is in process of taking admission of the students for the fourth year. A notice dated 25.3.2009 u/s 148 of the Act was issued to the petitioner for AY 2003 - 04. A notice dated 26.3.2009 for AY 2006-07 was issued to the petitioner u/s 148 of the Act. Likewise notice dated 19.3.2009 for AY 2002-2003, notice dated 19.3.2009 for AY 2004-05 and notice dated 26.3.2009 for AY 2005-06 were issued to the petitioner u/s 148 of the Act. All these notices have been challenged in these writ petitions on the ground that in the absence of the existence of ingredients of Section 147 of the Act, these notices are wholly without jurisdiction. For AY 2003-04, an additional ground has been taken that since the notice has been issued after four years from the end relevant assessment year for which assessment u/s 143(3) of the Act has been completed in the absence of any material that income chargeable to tax as escaped assessment by reason of failure on the part of the assessee to make a return u/s 139 or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts, the impugned notice is wholly without jurisdiction.

3. It is not disputed that for all the assessment years in question similar notices u/s 148 alongwith reasons recorded, were issued to the petitioner with the only difference of figures involved in each of the assessment years. The reasons supplied alongwith the notice u/s 148 of the Act for AY 2003-04 is reproduced below:

ORDER SHEET

M/s. Rohilkhand Educational Charitable Trust,

Office at Keshlata Hospital, Delapeer, Bareilly

PAN; AAATR69023

F.Y. 2002-03 A.Y. 2003-04

Assessee is a charitable Trust and derives income from fees, donation and other sources. The original assessment in this case was completed u/s 143(3) of the IT Act, 1961 on 7.3.2006 at net income of Rs. Nil as against the assessee filed its return declaring income Nil on 14.1.2004 after claiming exemption u/s 11 of the IT Act, 1961 of Rs. 94,90,419/-

A perusal of balance sheet it is observed that the assessee has made addition in corpus of Rs. 11,20,010/- however no comments have made by the Assessing Officer in his order passed on 7.3.2006. Therefore, this amount has been left to be considered.

Meanwhile, a complaint dated 14.2.2009 was received from Mr. Jitendra Kumar alleging that the donations disclosed by the assessee are not genuine donation. He has already worked in Rohilkhand Educational Charitable Trust in the capacity of Joint Treasurer/Member. His statement u/s 131 was recorded on 27.2.2009. In this statement he alleged that the Trust is debiting various expenditure especially salary of Teachers, Doctors which are either not genuine or inflated and Capitation Fees received from students are being shown as a donation. His statement is placed on record from Page No. 96 to 104 (complaint/confidential folder).

In view of above details brought on record, the donation of Rs. 11,20,010/- is not genuine and also salary, expenditure of Rs. 10,01,554/- (5,66,440+4,35,114) debited to Income & Expenditure Statement apart from other expenditure are not genuine to the extent of these expenditures being fictitious and inflated as stated in his statement of Shri Jitendra Kumar. Therefore, I have reason to believe that donation of Rs. 11,20,010/- and expenditure on salary and other expenses to the extent of Rs. 10,01,554/- are not genuine and same is fictitious expenditure are to be taxed as not being for the purpose of the object of Trust. Since these amounts have escaped assessment, therefore, action u/s 147 of the IT Act, 1961 is initiated and notice u/s 148 issued accordingly, after obtaining approval from Commissioner of Income Tax, Bareilly who has given approval vide his letter F. No. CIT BLY/APPR. u/s 148/RKECT. BLY. 2008-09 dated 24.3.2009 which is placed on file.

4. We have heard Sri Shubham Agarwal, learned counsel for the petitioner and Sri Ashok Kumar, Senior Standing Counsel appears for the respondents.

Submission on behalf of the petitioner

5. Sri Shubham Agarwal submits;

(i) The proceedings for the AY 2003-04 is barred by limitation in view of the first Proviso to Section 147 of the Act inasmuch as the impugned notice u/s 148 of the Act has been issued after expiry of four years from the end of the AY 2003-04.

(ii) The assessment for AY 2003-04 was completed u/s 143(3) of the Act vide assessment order dated 7.3.2006. The proceeding u/s 148 of the Act, therefore, cannot be initiated in the absence of any of the ingredients of the first Proviso to Section 147 of the Act namely, the escapement of assessment of income chargeable to tax by reason of the failure on the part of the assessee to make a return u/s 139 or in response to a notice issued under Sub-section (1) of Section 142 or to disclose fully and truly all material facts necessary for the assessment for that assessment year.

(iii) No satisfaction has been reached and recorded by the A.O., with regard to the sufficiency and adequacy of material available with him at the time of issuance of the notices for reassessment.

(iv) There is no requirement under any law that the name of the donors of the corpus should be declared in the balance sheet which is not the income, to be shown included as the total income as per Section 11(1)(d) of the Act.

(v) No fresh material was brought to the knowledge of the A.O. so as to give rise to reason to believe that the income of the petitioner has escaped assessment.

(vi) The statement of Sri Jitendra Kumar, a non credible person cannot be made basis to invoke the provisions of Section 148 of the Act. The impugned notice is based on change of opinion and has been issued merely to conduct a roving inquiry to collect evidence to reassess the petitioner, which is impermissible in law.

(vii) The impugned notices are wholly without jurisdiction.

6. Sri Shubham Agarwal has relied on the following judgments:

(i) [Indra Prastha Chemicals \(P\) Ltd. and Others Vs. Commissioner of Income Tax and Another, .](#)

(ii) [Sunil Kumar Jain Vs. The Income Tax Officer, The Commissioner of Income Tax and The Commissioner of Income Tax, .](#)

(iii) [Kothari Filaments and Another Vs. Commissioner of Customs \(Port\) Kolkata and Others, .](#)

(iv) [Commissioner of Income Tax Vs. SFIL Stock Broking Ltd., .](#)

(v) [Dhampur Sugar Mills Ltd. Vs. Assistant Commissioner of Income Tax and Others, .](#)

(vi) Division Bench judgment of this Court dated 8.8.2013 passed in the Income Tax Appeal No. 442 of 2009, Commissioner of Income Tax, Ghaziabad v. M/s. Uttaranchal Welfare Society.

Submission on behalf of respondents.

7. Sri Ashok Kumar, learned counsel for the respondents submits that:

(i) The impugned notices u/s 148 of the Act are valid inasmuch as the reason for the formation of the belief has rational connection and bearing on the formation of belief.

(ii) The petitioner has not fully and truly disclosed the donation for the corpus and expenses.

(iii) The statement of Sri Jitendra Kumar, Joint Treasurer of the Trust was recorded u/s 131 of the Act on 27.2.2009 in which he disclosed that the trust is debiting various expenditure especially salary of teachers, doctors which are not genuine and are inflated, and that the capitation fees received from students is being shown as donation to the Trust. The donation and expenditure as disclosed are not genuine.

(iv) The objections filed by the petitioner against the impugned notices were decided by the A.O. by a detail orders dated 3.6.2009 (Annexure CA-2) also establishes that the proceedings u/s 148 by the impugned notices have been validly initiated.

(v) For each of the assessment years in question the reassessment proceedings u/s 148 of the Act have been completed and the assessment orders have been passed but the same have not been served on the petitioner in view of the interim order passed by this Court in these writ petitions.

(vi) The impugned notices are wholly valid and they do not suffer from any infirmity.

8. In support of his submissions Sri Ashok Kumar has relied on the following judgments:

(i) [Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others,](#)

(ii) [United Bank of India Vs. Satyawati Tondon and Others,](#)

Our findings

9. The first objection of the petitioner to the impugned notice for AY 2003-04 that it is barred by limitation u/s 147 of the Art, is not sustainable inasmuch as the notice u/s 148 of the Act was issued by the A.O. after obtaining approval of the competent authority.

10. The A.O. has recorded satisfaction for "reason to believe" based on information received that following donations and expenditure on salary and other expenses are not genuine. These are fictitious expenditures to be taxed, as they are not for the purposes

and object of the Trust, and has thus escaped from assessment to tax:

11. The petitioner filed objections against the reasons recorded u/s 147 and notice u/s 148 of the Act. The objections were considered and rejected by the A.O. by a detailed order dated 3.6.2009 for A.Y. 2006-07 with observations summarized as under:

(i) The list of voluntary contributors/donors towards corpus was not enclosed alongwith the return nor submitted during the assessment proceedings u/s 143(3) of the IT Act, 1961. Further no declaration has been filed issued by the voluntary contributors/donors, who contributed/donated the amount directly to the corpus. Even the names and addresses as well as PAN number of such donors were provided to the department, either alongwith return or during the course of assessment proceeding u/s 143(3) of the IT Act, 1961. The assessee has thus failed to comply with the provisions of Sub-section (d) of Section 11(1) of the IT Act, 1961. In these circumstances the amount added in corpus during the period under consideration has been left to be examined and same as income chargeable to tax, has escaped assessment, on the part of the assessee.

(ii) The assessee described its charitable activities in its objections filed under consideration stating therein that the trust has established Dental College, Medical College and Nursing College in the name and style of M/s. Rohilkhand Medical College & Hospital after obtaining the approval of MCI and DCI. In this regard it has come to the notice to the Department that the assessee had made claims of payment of salary to the teachers which have not worked for full year of Rs. 1,17,98,237/- and other expenses of Rs. 12,73,370/-. These expenses are required to be examined for determination of genuineness of payment of salary and expenses by the Trust during the period under consideration. This fact has also come to notice with the report of Medical Council of India vide its No. MCI-34(41)/2007-Med./2399 date 16.4.2008 addressed to the secretary to the Government of India, Ministry of Health and F.M., Nirman Bhawan, New Delhi.

(iii) In view of report of MCI, it is clear that the assessee has claimed salary and expenses which are bogus. The assessee has thus violated the provision u/s 12AA and 80G of the IT Act, 1961. In these circumstances the Assessing Officer right: initiated action u/s 147.

(iv) The Chairman of the trust dr. Keshav Kumar Agarwal had filed an affidavit in the Hon"ble Supreme Court of India in writ petition (Civil) No. 294 of 2008 in the case of M/s. Rohilkhand Educational Charitable Trust v. Union of India, in which as Chairman of the Trust he had mentioned that investment of more than 100 crores has been made in the corpus of the trust. On the other hand on examination of the balance sheet for A.Y. 2007-08 it is observed that the assessee has shown total corpus of Rs. 17,83,18,968/- and in the Balance Sheet tallied at Rs. 33,38,69,499/-. Thus there is a gross difference of the amount disclosed in the Court of law and the amount disclosed in the balance sheet of Rs. 66,61,30,501/.

(v) On examination of records available with the Department for A.Y. 2004-05, it is observed that the assessee has prepared two balance sheets for this period under consideration. The first balance sheet was finalized as provisional on 26.4.2004 which tallied at Rs. 6,40,89,311.16/- and the other finalized on 30.10.2004 which is tallied at Rs. 5,68,33,136.38/-. Thus there is a difference of Rs. 72,52,154.71/-.

12. From the facts noted above it is clear that the A.O. has relevant material in his possession to form the belief that certain income chargeable to tax has escaped assessment for the assessment years 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07. The sufficiency or correctness of the material is not to be considered at this stage. The "reason to believe" recorded by the A.O. as well as the order dated 3.6.2009 rejecting the objection of the assessee leaves no manner of doubt that prima facie the A.O. was having material to form the belief in good faith that there was failure on the part of the assessee to disclose fully and truly the material facts necessary for his assessment for the assessment years in question. The necessary conditions for invoking the provisions of Sections 147 and 148, stand satisfied in the facts and circumstances of the case.

13. In the case of [The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries \(P\) Ltd., Lucknow](#), Hon"ble Supreme Court laid down the law as under:

11. The import of the words "reason to believe" has been examined by this Court in cases arising out of proceedings u/s 34 of the Indian Income Tax Act, 1922 wherein also these words were used. The aforesaid section dealt with income escaping assessment and conferred jurisdiction on the Income Tax Officer to make assessment or re-assessment if he had reason to believe, that income, profits or gains chargeable to income tax had been under-assessed and that such under-assessment had occurred by reason of either omission or failure on the part of the assessee to make a return of his income or to disclose fully and truly all material facts necessary for his assessment. Certain other conditions were also necessary, but we are not concerned with them. Dealing with that section in the case of S. Narayanappa v. Commissioner of Income Tax (1) this Court observed:

But the legal position is that if there, are in fact some reasonable grounds? the income tax officer to believe that there had been any nondisclosure? any fact, which could have a material bearing on the question of underassessment, that would be sufficient to give jurisdiction to the income tax Officer to issue the notice u/s 34. Whether these grounds are adequate or not is not a matter for the Court to investigate. In other words, the sufficiency of the grounds which induced the income tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the income tax Officer did not hold the belief that there had been such non disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again the expression "reason to believe" in Section 34 of the income tax Act does not mean a purely subjective satisfaction on the part of the income tax Officer. 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.

Reliance was placed in the above context upon an earlier decision of this Court in the case of [Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another,](#). The above observations regarding the import of the words "reason to believe" though made in the, context of Section 34 of the Indian Income Tax Act, 1922 have, in our opinion, equal bearing on the construction of those words in Section 21 of the U.P. Sales Tax Act.

(Emphasis supplied by us)

14. In the case of [Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others,](#), Hon"ble Supreme Court observed as under:

In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the Court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income -tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority.

(Emphasis supplied by us)

15. In view of the conclusions drawn as above the impugned notices are held to be validly issued by the A.O. He had relevant and credible material with him to form the requisite reason to believe to issue notice u/s 148 of the Act, that the income of the assessee has escaped assessment to tax. The material has rational connection and relevant bearing on such formation of belief for issuing valid notices for reassessment, the sufficiency of which is not justifiable issue at this stage and may be examined in the proceedings of reassessment. For the AY 2003-04, the additional ground of limitation also does not merit consideration, as we have held that A.O. had material available with him that on the failure of the assessee to have disclosed fully and truly all material facts the income chargeable to tax had escaped assessment.

16. The judgments relied by Sri Shubham Agarwal are of no help to the petitioner in view of our above conclusions on the facts of the present case. In the result all the writ petit fail and are hereby dismissed. The int(sic) orders are vacated. The A.O. shall be liberty to serve reassessment orders the assessee if such orders have been made. If

reassessment orders for any of the assessment years in question have not been made the A.O. is allowed to complete reassessment proceedings within a period of six months from today. There shall be no order as to costs.