(1988) 06 GAU CK 0010

Gauhati High Court

Case No: Civil Rules No''s. 147 and 148 of 1974

ABDUL RAB ABDUL SALAM		APPELLANT
	Vs	
Income Tax OFFICER.		RESPONDENT

Date of Decision: June 22, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 139, 147

Citation: (1988) 73 CTR 108 : (1988) 174 ITR 424 : (1988) 40 TAXMAN 154

Hon'ble Judges: A. Raghuvir, C.J; S.P. Rajkhowa, J; A. Raghuvir, J

Bench: Full Bench

Judgement

A. RAGHUVIR C.J. - These two writ petitions are filed by a partnership firm called Abdul Rab Abdul Salam. The firm was constituted on July 1, 1965, with four partners. Two among the partners are indicated in the firms name. The other two are Abdul Barik and Abdul Jabbar. The firm was reconstituted on April 1, 1969, and four more partners were inducted on that day. The main office of the firm is at Tinsukia in Assam and a branch at Sonari in Sibsagar District and another branch at Calcutta in the State of West Bengal. The firm deals in stationery, readymade goods and is the agent of Bata Shoe Company at all the three places of business. The issue raised in the two civil rules pertain to the Income Tax assessment orders of the firm for the assessment years 1968-69 and 1969-70. The circumstances which prompted the firm to file the two civil rules are set out below and also as to what has preceded the impugned notices and as to why the Revenue has served the two notices on the firm.

On June 6, 1968, the assessee was called upon to submit a return for the assessment year 1968-69 under sub-section (2) of section 139 of the Income Tax Act. In response to it, the assessee (the firm) filed the return showing an income of Rs. 46,465. This

amount was later revised to Rs. 73,300. For the assessment year 1969-70, the assessee filed a return after a like notice by the Revenue showing an income of Rs. 1,08,030. In the inquiry held, the assessee produced books of account and filed the profit and loss account and balance-sheet for each accounting year of she main office and two branches. On September 27, 1971, the Income Tax Officer finalised the orders for the assessment years 1968-69 and 1969-70 and on that day also for the assessment year 1967-68.

The impugned notices were served on the assessee by the Income Tax Officer to reopen the assessments for 1968-69 and 1969-70. Thereupon, the assessee approached this court to quash the two notices. What prompted the Revenue to reopen the assessments is connected with the events that had transpired in the Enforcement Branch of the Sales Tax Department. The head office of the assessee at Tinsukia was searched and in that search account books were seized. It was found that enormous turnover of the business of the assessee was discovered by the Sales Tax Department to have escaped assessment. Therefore, the assessment orders were revised including the assessments orders relevant to Income Tax assessment years 1968-69 and 1969-70.

When information reached the Income Tax Officer of the seizure of books and the revision of the assessment orders, the Superintendent of Taxes was requested to furnish necessary particulars of the revisions made by that Department. In response, the sales tax authorities furnished particulars showing that for the quarter ending September 30, 1967, the turnover shown at Rs. 3,98,136 before the books were seized, was later revised to Rs. 9,20,463. For the quarter ending March 31, 1968, the original turnover of Rs. 3,84,381 was revised to Rs. 8,46,429. Thus, for the financial year 1968, Rs. 9,20,463 plus RS. 8,46,429 was the total turnover of Rs. 17,66,892 as ascertained. Likewise, for the quarter ending September 30, 1968, the original turnover was Rs. 4,23,187 which was revised to Rs. 8,38,997. The original turnover for the succeeding quarter ending with March 1969, Rs. 7,51,814 was not revised. Thus, the total of the turnover for the financial year 1969 was ascertained as Rs. 7,51,814 plus Rs. 8,38,397 = Rs. 15,90,211.

After the particulars were received, the Income Tax Officer, u/s 147 of the Income Tax Act, recorded the reasons for reopening the two assessment orders and served the two impugned notices. The assessee, once on October 24, 1973, and later on November 13, 1973, by two letters protested. The validity of the notices was questioned and clarifications were sought. When nothing was heard from the Revenue, the assessee filed the two civil rules to quash the two impugned notices and further to interdict the Income Tax Officer from reopening the assessments.

We may here at the outset mention one aspect relevant to the bar of limitation raised by the assessee. It is seen that the two assessment orders were finalised on September 27, 1971, and from the above data, one of the questions raised by the assessee relating to the assessment order of 1968-69 is that the notice was served

on October 20, 1973, after four years and that therefore, the notice is time-barred under clause (b) of section 147 of the Act. As far as the assessment order relating to 1969-70 is concerned, notice is not assailed as time-barred. We hold that no question of bar of limitation arises in either of the cases as the impugned notices are served on facts under clause (a) of section 147 and not under clause (b) of section 147.

We may now consider the principal issue raised in the two cases. The issue raised is not res integra. As to when an assessment can be reopened is set out in the Income Tax Act. What principles govern the issues in reopening assessments and when assessments can be reopened have been explained by the courts. Nevertheless, whenever such issues are raised, the courts will have to apply the principles laid down to the facts of each case. In that sense, in the two cases, the issue has to be scrutinised from the perspective of account books which are not filed before the Income Tax Officer and the turnover relating to the assessments discovered to have been escaped.

The principle in such cases is culled from the words in clause (a) of section 147 of the Income Tax Act. The words are whether the assessee disclosed "fully and truly all material facts necessary for assessment". Once the assessee does that, what inferences are to be drawn is in the hands of the Income Tax Officer. It is open to the Income Tax Officer not to act on the representation of the assessee, call for additional information or further investigate facts and pass the assessment order. In doing so, he may totally reject the case of the assessee or partially accept the representation of the assessee or fully agree with the case of the assessee. Once the assessment order is finalised or issues in the inquiry are settled, the same issues cannot be reopened later stating that the Income Tax Officer has discovered the truth, that the conclusion arrived at earlier was discovered to be wrong or that the assessee got away with false representation. The Income Tax Officer can reopen only if he records that true facts were not disclosed; (like true account books have not been filed as in this case).

Three decisions of the Supreme Court are cited and in those three cases, the above principle is explained. The first one is Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and in that case it was explained (at p. 200) : "there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered .... which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed". There was no further duty on the assessee. It was emphasised what inferences are to be drawn or for that matter what proper inferences are to be drawn. Again in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., emphasis was laid on the words "omission or failure" and how they are to be considered is discussed. The discussion shows that the duty postulated on the assessee is only to the extent of disclosing fully and truly

the material facts necessary for assessment. What facts are material and what facts are necessary for assessment will differ from case to case. "Where, on the evidence and the materials produced, the Income Tax Officer could have reached a conclusion other than the one which he has reached" was juxtaposed to show that the assessee was under no obligation to inform the Income Tax Officer which inference may be raised against him. The above cited two cases were relied on in the third case in Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, In that case, what can be done by the Income Tax Officer was further explained. What is not the duty of the assessee in the discussion of the case is explained with reference to the contention raised in that case (at p. 4) "the assessee contended that it has produced all the relevant accounts and documents necessary for completing the assessment and it was under no obligation to inform the Income Tax Officer about the true nature of the transaction and there was accordingly no failure on its part to disclose fully and truly all material facts necessary for its assessment ...." The assessee discharged his obligation, so it was held, when he tendered books of account and evidence from which material facts could be discovered. It was for the Income Tax Officer to decide whether the documents produced by the assessee were genuine or false. All the aspects considered in the two earlier cases were explained and followed.

Thus, once the assessee disclosed material facts necessary and assessment is finalised later on a different conclusion on the same facts, the assessment cannot be reopened. If this was not the law, as held by the Privy Council case from Australia in Hoystead v. Commissioner of Taxation [1926] AC 155 "litigation will never end". The assessee can never rest in peace. The Revenue can always reopen and such a power to reopen the orders can be wielded to harass the assessee. Litigation can never be concluded finally. All assessments can be reopened with a view to "obtain another judgment upon a different assessment of facts". The Privy Council further held (at p. 165) "Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted". These aspects were applied by one of us (Raghuvir J.) in Sirpur Paper Mills Ltd. Vs. Income Tax Officer, "A" Ward and Another, . The above passage extracted is found in the Privy Council case of Hoystead v. Commissioner of Taxation [1926] AC 155.

In the instant case, on the basis of those three cases, the assessee contended that account books were placed before the Income Tax Officer. The assessment orders were concluded and, therefore, it was no more open for the Revenue to reopen orders. The reasons recorded for reopening the case are the facts disclosed in the search and seizure of the account books by the sales tax authorities. The additional account books which were seized in the search held in May 1969, had not been placed by the assessee before the Revenue. It is only from the account books seized

from the assessee that the true facts came to light is the case of the Revenue. That the books seized at Tinsukia were not placed before the Revenue is obvious from the facts and when the order was finalised on September 27, 1971. Therefore, the assessee did not place "true material" before the Income Tax Officer. Therefore, it is asserted rightly by the Revenue that they are entitled to reopen the assessment.

We have set out at first what are the principles which govern the reopening of assessments. We have applied the principles to the facts of the instant case and we hold that the impugned notices did not suffer from any vice whatever.

It was argued on behalf of the assessee by placing reliance on Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle "B", Nagpur, that the assessee can question the jurisdiction of the Income Tax Officer in a proceeding under article 226 of the Constitution. That contention is well-founded. The Supreme Court in that case held : (at p. 642) "Jurisdiction of the Income Tax Officer obviously arises when he has reason to believe that by reason of omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment ... we are not seeking to lay down any rigid rule about the nature or quantum of enquiry which the High Court in a petition which seeks to challenge the issue of a notice u/s 34(1)(a) of the Indian Income Tax Act may make ... If there be other grounds which appear to the High Court to be adequate, such as delay or acquiescence, existence of an adequate alternative remedy which is equally efficacious, or failure to disclose all material facts which have a bearing on the question of misrepresentation of facts, jurisdiction of the High Court to dismiss a petition in limine cannot be denied. "Again in Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, the powers of the High Court were reiterated." ... the taxpayer may challenge the validity of a notice u/s 147 of the Income Tax Act, 1961, on the ground that either branch of the condition precedent does not exist, but an investigation whether the inferences raised by the Income Tax Officer from the information are correct or proper cannot be made.." Finally, the assessee relied on Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, In that case, the subject was fine-tuned as to what the High Courts can and cannot do. "The powers of the Income Tax Officer to reopen an assessment, though wide, are not plenary. The words of the statute are reason to believe and not reason to suspect. The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income Tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken, the requirements of the law should be satisfied. The live link or close nexus which

should be there between the material before the Income Tax Officer ...."

S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, another case which is cited, emphasised the subject with reference to the procedure to be followed. "But, before issuing the notice, the proviso requires that the officer should record his reasons for initiating action u/s 34 (the earlier provision under 1922 Act) and obtain the sanction of the Commissioner who must be satisfied that the action u/s 34 was justified."

We experience no difficulty in holding that the assessee can approach the High Court for relief but on consideration of the facts, we hold that no case is made out in the instant two cases for interference by the court.

No other point has been argued.

For the aforesaid reasons, the civil rules are dismissed with costs. The costs are fixed at Rs. 250 in each case.

S. P. RAJKHOWA J. - I agree.