

(1972) 06 GAU CK 0009

Gauhati High Court

Case No: Civil Rule No. 450 of 1966

Assam Cane Suppliers

APPELLANT

Vs

Income Tax Officer, "A" Ward

RESPONDENT

Date of Decision: June 22, 1972**Acts Referred:**

- Income Tax Act, 1961 - Section 147, 148

Citation: (1973) 91 ITR 364**Hon'ble Judges:** P.K. Goswami, C.J; R.S. Bindra, J**Bench:** Division Bench**Advocate:** S.M. Lahiri and S.K. Sen, for the Appellant; J.P. Bhattacharjee and S.N. Medhi, for the Respondent

Judgement

Goswami, C.J.

This application under Article 226 of the Constitution is directed against a notice u/s 148 of the Income Tax Act, 1961, issued by the Income Tax Officer, "A" Ward, Dibrugarh, on 17/18th October, 1961, and two other subsequent notices of 19th/23rd November, 1966, following that.

2. The petitioner is a partnership firm. It submitted a return for Income Tax for the assessment year 1959-60 and an order of assessment was passed by the Income Tax Officer on 23rd December, 1959, u/s 23(3) of the Income Tax Act. Its application for registration for that year was also refused. The assessment order was subsequently rectified on 10th March, 1960, and the total income was determined at Rs. 58,530 in place of the earlier figure of Rs. 57,515. The petitioner preferred an appeal to the Appellate Assistant Commissioner, who allowed the same on 24th September, 1962, and directed the Income Tax Officer to give the petitioner the benefit of registration for the assessment year 1959-60. The Commissioner of Income Tax started a proceeding u/s 33B of the Income Tax Act, 1922, to cancel the assessment order of 23rd December, 1959, and ultimately cancelled the order of

assessment by memo, dated 26th October, 1961. The petitioner preferred an appeal before the Income Tax Appellate Tribunal, Calcutta, and the same was allowed by the Tribunal on 16th October, 1962, and the Commissioner's order u/s 33B was set aside. Thereafter, the Income Tax department applied for reference u/s 66(1) of the Income Tax Act to the Tribunal which was pending at the time of issue of the rule on 5th December, 1966. We are, however, informed by Mr. Lahiri, and it is not denied by Mr. Bhattacharjee, that the same was not pressed by the department before the Tribunal. The income tax Officer, who in this case is successor to the original assessing officer, issued the impugned notice u/s 148 on 17/18th October, 1961, the ground that he had reason to believe that income chargeable to tax for the assessment year 1959-60 had escaped assessment within the meaning of section 147 of the Income Tax Act, 1961. It is stated in the notice that it was issued after obtaining the necessary satisfaction of the Commissioner of Income Tax.

3. The petitioner's case is that at the stage of hearing of the original assessment proceedings, it made a true and full disclosure of all material facts in respect of the business. The Income Tax Officer in consideration of the return filed, the accounts and books produced, and the full and complete disclosures made of all material facts, and discoveries made by him on the facts before him, passed the order of assessment which was even later on rectified. The petitioner submits that the conditions precedent for exercising jurisdiction u/s 147(a) are non-existent. It is obvious that if the case is not one u/s 147(a), the proceedings will be barred u/s 147(b), as four years had already elapsed from the end of the relevant assessment year.

4. The reasons for the order appear in the report of the initiating Income Tax Officer to the Commissioner (annexure I to the counter-affidavit). The reasons may be set out:

" Records show that there were the following cash credits in the books of accounts of M/s. Assam Cane Suppliers, Dibrugarh, during the year ending on 15-11-1958:

1.	Rs. 10,000	in the name of Shri Jaganath Paul,		
2.	Rs. 10,000	"	"	Shri Parsanath Das,
3.	Rs. 7,000	"	"	Shri Dinesh Ch. Dey.

4.	Rs. 5,000	"	"	Shri Jogendra Ch. Paul,
5.	Rs. 6,500	"	"	Shri Chitta Ranjan Dutta,
6.	Rs. 5,000	"	"	ShriGovinda Ch. Paul,
7.	Rs. 5,000	"	"	Shri Rakhal Ch. Dey.

5. It appears from the records that the assessee was asked to produce the following depositors or affidavits from them in support of the alleged cash credits:

1. Shri Dinesh Ch. Dey,
2. Shri Chitta Ranjan Dutta,
3. Shri Govinda Ch. Paul,
4. Shri Rakhal Ch. Dey.

6. In response to the requisitions, Shri Dinesh Ch. Dey and Shri Chitta Ranjan Dutta only were produced before the Income Tax Officer, who simply admitted that the deposits in question were made by them, but no evidence whatsoever could be produced in support of the alleged deposits by them. As regards the cash credits in the names of the other depositors, viz., Shri Jaganath Paul, Shri Parsauath Das, Shri Jogendra Ch. Paul, Govinda Ch. Paul and Rakhal Ch. Dey, no evidence, whatsoever, could be produced. Only they were represented to be well acquainted with the assessee and to have their own shop and/or other sources of income having substantial financial capacity to justify the deposits made by them. The assessment was completed u/s 23(3) on December 23, 1959, on a total income of Rs. 58,530.

7. Subsequent enquiries revealed that the facts represented and particulars furnished by the assessee in the course of the assessment proceedings in support of the aforesaid cash credits are not correct and complete. (Copy of the inspector's report dated March 4, 1961, is enclosed). From a perusal of the inspector's report it appears that 4 persons out of the 7 persons were not traceable at the time of enquiry and that none of the persons had capacity to make the alleged cash

deposits with the firm and the assessee-firm had brought, in its own concealed income in the garb of the cash deposits in the names of third parties.

8. I have, therefore, reason to believe that the amount of cash credits of Rs. 48,500 represent the assessee's income from undisclosed sources which escaped assessment by reason of the assessee's failure to disclose the material facts relevant to the assessment for the year 1959-60, for which I propose to take action u/s 147(a). "

9. The report of the inspector of Income Tax, dated 4th March, 1961, is also an enclosure to the report of the Income Tax Officer to the Commissioner. The inspector's report is as a result of an enquiry which he made in pursuance of the orders of the Income Tax Officer. It appears that the inspector recorded the statements of two of the cash depositors out of the seven. It is obvious that action u/s 147(a) was initiated in this case relying on the said report of the inspector.

10. In the counter-affidavit submitted on 30th May, 1972, by another Income Tax Officer, the same position is disclosed, as will be clear from the following extract:

" Subsequent inquiries revealed that the facts represented and the particulars furnished by the assessee in the course of the assessment proceeding in support of the various cash credits are not correct and complete. The action, therefore, has been taken u/s 147/148 of the Act."

11. Mr. S. M. Lahiri, the learned counsel for the petitioner, submits that the petitioner having disclosed truly and fully all the material facts during the original assessment, the notice u/s 148 is without jurisdiction. He further submits that, at any rate, it may be a case u/s 147(b), in which case action is barred beyond the expiry of four years from the end of the relevant assessment year. He also submits that, although action has been initiated by the Income Tax Officer u/s 147(a), the Commissioner's satisfaction required u/s 151(2) of the Act is lacking in this case.

12. The history of this case is a bit peculiar. It appears, in cancelling the original order of assessment u/s 33B, the Commissioner ordered for fresh assessment in this case. That order was set aside by the Tribunal, and since the revenue did not proceed further against that order, the same is binding between the parties for the relevant year. The Tribunal's order as well as the earlier order of the Commissioner u/s 33B are produced before us. The original assessment order was made on December 23, 1959, and rectified on March 10, 1960. It is not clear when the Income Tax Officer had ordered the inspector to conduct an enquiry with regard to the seven cash deposits disclosed in the petitioner's accounts. But, the order must have been passed prior to February 4, 1961, when the inspector recorded the statements of two depositors. The Commissioner's order discloses a contention made by the petitioner before him in the following terms:

" It is further contended by the learned representative that subsequent enquiries made by the Income Tax Officer were invalid and no cognisance should be taken of the statement or report obtained in the course of invalid proceedings. I have carefully considered this contention too and I hold that there is some force in the argument of the learned representative of the assessee since there were no assessment proceedings."

13. It is clear that the enquiry and the report referred to in the above extract are none other than those conducted by the Income Tax inspector which must have been forwarded by the Income Tax Officer to the Commissioner, who heard the case on October 5, 1961. The reasons given by the Income Tax Officer in submitting his report to the Commissioner also referred to the subsequent enquiries and to the report of the inspector dated March 4, 1961. It is clear that action u/s 147(a) was initiated basing on the inspector's report that " 4 persons out of the 7 persons were not traceable at the time of enquiry and that none of the persons had capacity to make the alleged cash deposits with the firm..." The reasons set out also disclose that the original Income Tax Officer had enquired into the genuineness of the deposits disclosed in the accounts and, as a matter of fact, the petitioner was required to produce four out of the seven depositors before the said Income Tax Officer. Two of them were produced and as regards two others " they were represented to be well acquainted with the assessee and to have their own shop and/or other sources of income having substantial financial capacity to justify the deposits made by them". It is also disclosed in this report giving the reasons that the original Income Tax Officer accepted the assessee's statements and the statements of the depositors produced. It is clear that some time after subsequent enquiries were conducted by the Income Tax inspector under orders and, basing on his report, the Commissioner took action u/s 33B with the result already noticed. After failure of that action at the instance of the Commissioner, the Income Tax Officer on May 16, 1966, submitted the report to the Commissioner for obtaining his satisfaction for action u/s 147(a) against the petitioner. In the background of the above facts and circumstances and of the sequence of orders, it is clear that the Income Tax Officer has initiated action u/s 147(a) by taking a view different from that of the original Income Tax Officer. He takes this view on the information disclosed in the enquiry and the report dated March 4, 1961, of the inspector referred to above.

14. This is, therefore, not a case where the Income Tax Officer could have reason to believe that income had escaped assessment on the assessee's failure to disclose truly and fully all material primary facts necessary for his assessment for the relevant year. This is a clear case of change of opinion of the Income Tax Officer with regard to the cash deposits which is the only basis for initiating proceedings u/s 147(a). The material in this case on which action u/s 147(a) was taken is the report of the Income Tax inspector. The Income Tax inspector mentioned in his report dated March 4, 1961, that "whereabouts" of the four out of the seven cash depositors were

" not known " and he recorded the statements of two depositors and furnished some information with regard to the third. Earlier, at the time of the original assessment, the Income Tax Officer conducted an enquiry with regard to the cash depositors and recorded the statements of two of them. The Income Tax Officer accepted their statements as well as those of the assessee with regard to the other depositors. It is, therefore, obvious that the succeeding Income Tax Officer only took a different view of the matter from the one earlier entertained by his predecessor. The provisions of Section 147(a) are, therefore, clearly not attracted in this case and the impugned notice u/s 148 read with Section 147(a) is without jurisdiction. This view receives support from the decision of the Supreme Court in [Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar,](#)

15. Mr. J. P. Bhattacharjee, the learned counsel for the department, drew our attention to a decision of the Andhra Pradesh High Court in [ANNE NAGENDRAM AND BOMMA REDDI VENKAYYA AND CO. Vs. COMMISSIONER OF Income Tax A. P.,](#) and he relies upon the following passage:

" Where the Income Tax Officer, in our view, after considering the cash credits accepted them and allowed interest, when it is subsequently discovered that those cash credits are false and not genuine, the provisions of Section 34(1)(a) can be invoked because that would be a non-disclosure fully and truly of all material facts necessary for the assessment."

16. It was, however, found by the High Court in that case that:

" There is no mention in the order (original assessment order) anywhere that the accounts were examined or that the interest paid on the cash credits which are debited in his accounts had been allowed on the basis that the cash credits were genuine."

17. The facts of the present case are, therefore, clearly distinguishable and the ratio decidendi of that case does not apply. Our attention was also invited to an observation of the Supreme Court in [Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor,](#) which may be quoted :

" In short, the case of the revenue was that the compromise was a make-believe one and the family in fact continued to be a joint Hindu family. If the case of the revenue was true--on which we do not express any opinion--and the fact of the continuance of the joint Hindu family was kept back from the knowledge of the Income Tax Officer, it would be a clear case of the said family escaping assessment during the relevant year. If that be so, Section 34(1) would immediately be attracted and the notice issued would be good."

18. We have not found any material from which the Income Tax Officer in this case could have reason to believe that income had escaped assessment except that he was suspicious about the genuineness of some of the cash deposits as neither the

four depositors out of the seven nor sufficient materials were found by the inspector in the course of an enquiry under his orders some time after the original assessment. The principle laid down in the above decision of the Supreme Court is not attracted in this case.

19. Mr. Bhattacharjee also drew our attention to a decision of the Calcutta High Court in [Lakhmini Mewal Das Vs. Income Tax Officer, "J" Ward and Others](#), But that case is of no assistance to him on the peculiar facts and circumstances of the present case.

20. In view of our decision in this case, it is not necessary to decide the third submission of Mr. Lahiri with regard to the satisfaction of the Commissioner and particularly so in his absence before us.

21. In the result, the application is allowed. The impugned notices are quashed. Rule nisi made absolute. We will, however, make no orders as to costs.

R.S. Bindra, J.

22. I agree.