

(2002) 05 CAL CK 0050

Calcutta High Court

Case No: FMA No. 372 of 1978

Rawatmall Mohanlal

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision: May 3, 2002**Acts Referred:**

- Income Tax Act, 1961 - Section 147

Citation: (2004) 188 CTR 425 : (2004) 269 ITR 420**Hon'ble Judges:** Ashok Kumar Mathur, C.J.; Subhro Kamal Mukherjee, J**Bench:** Division Bench**Advocate:** Debi Prosad Pal, Amiya Kumar Sahu and Maloy Dhar, for the Appellant; Pradip Ghose, Rupen Mitra and M.K. Goswami, for the Respondent**Final Decision:** Dismissed

Judgement

Ashok Kumar Mathur, C.J.

This appeal is directed against the order passed by the learned Single Judge dt. 16th July, 1976, whereby the learned Single Judge has dismissed the writ petition" and held that the notice for reopening of the assessment of the incumbent for the year 1958-59 u/s 148 of the IT Act, 1961 (hereinafter referred to as the Act of 1961), is valid.

2. The brief facts which are necessary for disposal of this appeal are that a notice was issued on 25th March, 1975, u/s 148 of the IT Act, 1961, for reopening the assessment for the year 1958-59. The previous reopening order was set aside by the Tribunal. It is alleged that sanction of the Central Board of Direct Taxes (CBDT) was obtained on 22nd March, 1975, for this second reopening notice. The previous reopening of the assessment was done, on the basis that there was hundi loan credits in the names of various parties who were known as name lenders. In the original assessment, loan credits from these parties were accepted without investigation. But subsequently, it was found that some of the hundiwalas whose

names appear in the list of creditors of the assessee made confessional statements before the Department that they were mere name lenders. Therefore, it was found that the hundi loans figuring in the books of account of the assessee were not genuine and the loan amount was nothing but the assessee's own undisclosed income. The papers which were placed before the Commissioner of Income Tax (CIT) for sanction, reference of some confessional statements was made, out of which the statement of Jethanand Madhavdas was also made from whom the assessee took loan. But that confessional statement was recorded on 6th Aug., 1968. This confessional statement was not in existence when the proceedings were initiated for reopening on 10th Feb., 1967. The previous reopening of the assessment was challenged before the Appellate Assistant Commissioner of Income Tax (AAC). The same was set aside by the AAC on the ground of non-application of mind because the confessional statement of Jethanand Madhavdas was not in existence at the time of initiation of reopening of assessment in the year 1967. It was observed that there is no material to show that there was any entry in the accounts of the assessee pertaining to the asst. yr. 1958-59 from any of the confessional statements which were there at the relevant time that is the confessional statements of Kanyalal Hotchand and Mohansingh Kanyalal and it was found that the confessional statement of Jethanand Madhavdas relates to this loan amount but that statement was recorded on 6th Aug., 1968, therefore, that confessional statement was not there at the time when the reopening notice was issued. It was held that other confessional statements of Kanyalal Hotchand and Mohansingh Kanyalal does not relate to any hundi loan by these persons during 1958-59. Therefore, the AAC came to the conclusion that the proposal which was given by the ITO and approved by the CIT only by putting a rubber stamp without ascertaining whether the facts stated by the ITO warrant reopening of the assessment or not. The matter was taken up in appeal by Revenue before the Tribunal and the Tribunal affirmed the view taken by the AAC that the reassessment proceedings of 1958-59 were not initiated validly. After the decision of the Tribunal a second notice was issued for reopening of the assessment on 25th March, 1975, on the basis of the confessional statement of Jethanand Madhavdas. This was challenged by the petitioner by filing this writ petition. The learned Single Judge after going through the records erroneously proceeded on the basis of the confessional statement of Giridharisingh Jhamansingh and found that the reopening to be justified, but there appears to be a little typographical mistake that it is not Giridharisingh Jhamansingh but it is Jethanand Madhavdas who has given a confessional statement in 1968 that impelled the authorities to reopen the assessment in 1975. However, the learned Single Judge referred to the statement of Giridharisingh Jhamansingh whereas it should have been the statement of Jethanand Madhavdas wherein it was categorically stated that Jethanand Madhavdas was only a name lender and he did not advance any hundi loans. The learned Single Judge found the reopening to be valid and dismissed the writ petition. Aggrieved against this order, the present appeal has been filed by the assessee challenging the order of the learned Single Judge on two

grounds; firstly, that once the earlier reopening of the assessment having been set aside by the AAC and affirmed by the Tribunal, this second reopening could not have been opened by the Department; secondly, that there is no material whatsoever to reopen the assessment.

3. We have heard learned counsel for the parties and perused the records. It is true that the first assessment which was reopened but not found to be validly initiated by the Tribunal and no further step was taken by the Revenue to challenge the same. Therefore, the question is whether when the first reopening of the assessment having been set aside by the Tribunal, can this second reopening be done or not.

4. It may be, at the outset, mentioned that earlier reopening was set aside by the Tribunal because of the non-application of mind by the CIT. There is no finding of fact recorded therein that whether the confessional statement of Jethanand Madhavdas is to be believed or not for the asst. yr. 1958-59. In fact, the Tribunal held the notice of 10th Feb., 1967, as bad because of non-application of mind. The assessment was reopened on 10th Feb., 1967, and no confessional statement of Jethanand Madhavdas was available at that time, therefore, the finding given by the Tribunal on the notice of reopening cannot be said to be conclusive on the merit of the matter. The Tribunal held that initiation was not validly made as the CIT put a rubber stamp without application of mind. Therefore, this is not a finding of fact with regard to asst. yr. 1958-59 specially the entry of name lending by Jethanand Madhavdas because there was no confessional statement before the ITO at that time. Had the finding been recorded after examining the confessional statement of Jethanand Madhavdas then perhaps this finding would have become conclusive and if it has not been challenged before any higher Tribunal then that would have put an end to the whole issue. But the second reopening was made on the basis of the so-called confessional statement of Jethanand Madhavdas recorded in 1968 and for which the matter was reopened on 22nd March, 1975, with the previous sanction of CBDT. This reopening cannot be said to be invalid and it was within time-limit. At the time when the proposal for reopening was sent to the CBDT all the materials were placed before the CBDT, namely, the proposal was in prescribed form; copy of the show-cause notice dt. 5th March, 1975; copy of the ITO's report dt. 12th March, 1975; and a copy of the order of the Tribunal dt. 3rd May, 1974. Therefore, all the materials pertaining to this reopening of the assessment for the year 1958-59 were placed before the CBDT and the CBDT after due application of mind felt satisfied and granted sanction for reopening of the assessment for the year 1958-59. It is true that other confessional statement with regard to this entry of Kanyalal Hotchand or Giridharisingh Jhamansingh does not pertain to asst. yr. 1958-59, therefore, the Tribunal was right in its approach but in 1968 when the confessional statement of Jethanand Madhavdas was available that provided sufficient material for reopening of the matter. Therefore, the confessional statement of Jethanand Madhavdas provided sufficient material to the authorities for reopening the assessment and that has been considered by the CBDT, and sanction was accorded. Thus, it cannot

be said that the CBDT has not applied its mind to the materials placed before it. The sending of the matter to the Board necessitated because the period for reopening by the CIT has already expired, as such sanction of the CBDT was necessary and that was obtained within time.

5. Dr. Pal, learned counsel for the appellant, submitted that the confessional statement of Jethanand Madhavdas was not placed before the Tribunal and he has pointed out that the proposal which was sent does not mention about the so-called confessional statement of Jethanand Madhavdas, therefore, there is non-application of mind. This contention is not correct because the factual aspect has already been noted in the proposal and it contained the order of the Tribunal which was sent with the proposal for reopening. Therefore, there is sufficient material before the CBDT to apply its mind and accord sanction. In this connection our attention was invited to a Supreme Court decision in the case of [Chhugamal Rajpal Vs. S.P. Chaliha and Others](#), wherein it has been decided by the apex Court that before the ITO decides to reopen the matter there should be a prima facie conclusion of the escapement of the income; this is necessary before the issue of a notice. That appears to be so in the present case, as the confessional statement of Jethanand Madhavdas provided sufficient material for reopening. In the case cited above their Lordships found that a prima facie conclusion was not recorded by the ITO; he appeared to have only a vague feeling that there might be a bogus loan transaction. This was held to be invalid by the apex Court. But this is not the case here. In our case, as we have already observed that the confessional statement of Jethanand Madhavdas provided sufficient material for the ITO to come to a conclusion and the same has been affirmed by the CBDT within time. Therefore, this case does not provide any assistance to the appellant.

6. In this connection, Dr. Pal has cited another Supreme Court decision in the case of [Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das](#), wherein their Lordships observed that the reason for formation of the belief contemplated by Section 147(a) of the IT Act, 1961 for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. It was observed that rational connection postulates that there must be a direct nexus or live link between material coming to the notice of the ITO and the formation of his belief that there has been escapement of the income of the assessee from the assessment in a particular year because of his failure to disclose fully and truly all material facts. This yardstick has been amply complied with in the present case as the confessional statement of Jethanand Madhavdas provided sufficient material to show that he was only a name lender and he did not advance any loan to the assessee.

7. Dr. Pal also submitted that once the Tribunal has found that reopening of the assessment for the year 1958-59 was bad and that having not been challenged then in that case reopening cannot be made as the matter stood concluded with the

finding of the Tribunal. In that connection he has invited our attention to a decision of the apex Court in the case of [Commissioner of Income Tax, New Delhi Vs. Rao Thakur Narayan Singh,](#) wherein it was observed that a mistake was committed in the order in appeal by the Tribunal and that mistake was not rectified by IT Department by pursuing proper remedy. It was held by the apex Court that the Department cannot initiate proceeding again u/s 34 on the self same subject-matter. This case does not provide any useful assistance in our case because the initiation of the proceeding was found to be bad in our case on account of non-application of mind for the reopening of the assessment for the year 1958-59. The reason given by the Tribunal was that the statement of Jethanand Madhavdas was not available at that time when the notice for reopening of the assessment was given in 1967. Therefore, the Tribunal held that it is invalid on account of non-application of mind. It is not a case in which finding has been given on the merit of the matter and that finding has not been challenged by the IT authorities by taking the matter to the higher forum. Therefore, this case does not provide any useful assistance. In our case, the assessment for the year 1958-59 was reopened with the previous sanction of the CBDT within time on the basis of fresh material which was available in the confessional statement of Jethanand Madhavdas which is recorded in 1968, and that provided fresh material for the authorities to apply their mind on reopening of the assessment for the year 1958-59. Therefore, the case cited by learned counsel does not help him.

8. The next case cited by Dr. Pal is the case [Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta,](#) wherein their Lordships have held that mere disclosure of a belief without setting out material on the basis of which belief was arrived at cannot constitute sufficient ground to reopen the assessment. As far as the proposition of law is concerned, there are no two opinions, but the fact of the matter is that in the present case the belief has been arrived at on the basis of sufficient material, that is, the confessional statement of Jethanand Madhavdas. Therefore, it cannot be said that there are no materials to arrive at a belief of the escapement of the income during the relevant assessment year.

9. The next decision cited is the case of [Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others,](#) . In this case their Lordships held that what Court has to see whether commencement of the reassessment proceeding is made on the basis of prima facie materials or not. Sufficiency or insufficiency, correctness or incorrectness of the materials is not a thing to be considered at that stage. Therefore, this is not the stage to assess whether the so-called confessional statement of Jethanand Madhavdas is to be believed or not.

10. The confessional statement of Jethanand Madhavdas on the basis of which a belief has been arrived by the ITO and the same having been affirmed by the CBDT is sufficient for reopening of the assessment, and in this view of the matter we are of the opinion that the view taken by the learned Single Judge cannot be said to be

wrong and does not warrant any interference by this Court. We find no merit in the appeal and the same is dismissed with no order as to costs.