
(1973) 07 CAL CK 0025

Calcutta High Court

Case No: Appeal from Original Order No. 3 of 1973

Income Tax Officer, "G"
Ward

APPELLANT

Vs

Dwarkadas Shah
Brothers (P.) Ltd.

RESPONDENT

Date of Decision: July 18, 1973

Acts Referred:

- Income Tax Act, 1961 - Section 148

Citation: (1974) 95 ITR 527

Hon'ble Judges: Amiya Kumar Mookerji, J; Amaresh Roy, J

Bench: Division Bench

Advocate: Balai Lal Pal and C.K. Banerjee, for the Appellant; P.K. Pal and M. Seal, for the Respondent

Judgement

Amiya Kumar Mookerji, J.

This appeal is by the revenue and it is directed against the judgment and order of Sabyasachi Mukharji J. dated August, 1972, quashing notices dated 26th March, and 31st March, 1970, u/s 148 of the Income Tax Act, 1961, for the assessment year 1961-62 issued upon the respondent.

2. The respondent is a company incorporated under the Indian Companies Act. For the assessment year 1961-62, the said company was assessed u/s 23(3) of the Indian Income Tax Act, 1922 (hereinafter referred to as "the old Act") and the Income Tax Officer, "E" Ward, Companies Dist. III, computed the total income of the company at Rs. 70,692. The said assessment was, however, rectified subsequently by the said officer by his three orders dated 22nd March, 1962, 7th July, 1973, and the total income was finally computed at Rs. 41,519. The said company's assessment had been completed under the relevant provisions of the old Act and also under the new Income Tax Act, 1961, up to the assessment year 1965-66. While the assessment proceeding relating to the assessment

years 1965-66 and 1966-67 were pending before the assessing Income Tax Officer, the respondent-company received the summonses dated 1st February, 1967, and 8th February, 1967, issued u/s 131 of the Income Tax Act, 1961 (hereinafter referred to as "the new Act"), whereby the principal officer of the said company was required to appear before the said Income Tax Officer to produce the books of account for the assessment year 1959-60. The said company moved this court against the said two notices under Article 226 of the Constitution and obtained a rule. The said rule was made absolute by T. K. Basu J. and the summonses were cancelled. Thereafter, the respondent-company received two notices dated 26th March, 1970, and 31st March, 1970, issued by the Income Tax Officer, "G" Ward, Companies Dist. III, u/s 148 of the new Act for the assessment year 1961-62. By the said notices the respondent-company was called upon to submit the return of its income for the assessment year 1961-62, as the said Income Tax Officer had reasons to believe that the respondent-company's income had escaped assessment within the meaning of Section 147 of the new Act. By a letter dated 29th April, 1972, written to the said Income Tax Officer the respondent-company pointed out that there was absolutely no material in the possession of the Income Tax Officer on which he could have reasons to believe that the respondent-company's income had escaped assessment for the said year 1961-62. It was pointed out in the said letter that the conditions precedent for assumption of jurisdiction under the provisions of Section 147 of the new Act had not been satisfied and the Income Tax Officer had absolutely no materials on which he had reasons to believe that the respondent-company's income had escaped assessment and, as such, the said Income Tax Officer had no jurisdiction and/or authority to reopen the said assessment on a mere change of opinion. It was further contended that there was no new or fresh information in the possession of the said Income Tax Officer in consequence of which he had reasons to believe that the income of the respondent escaped assessment and that there was no omission on the part of the respondent-company to disclose fully and truly the material particulars of its income and, as such, the said notices were illegal, invalid and inoperative. Accordingly, the respondent-company by the said letter requested the Income Tax Officer to drop the said proceeding in pursuance of the said notices. As the said proceeding against the respondent-company was not dropped, the respondent-company moved this court in an application under Article 226 of the Constitution and obtained a rule nisi on 13th of May, 1970. The said rule was heard by Sabyasachi Mukharji J. and the learned judge by his order dated August 9, 1972, made the rule absolute upon the view that the materials upon which the belief was formed by the Income Tax Officer had not been indicated in the reasons or in the affidavit filed on behalf of the revenue. Accordingly, the conditions precedent for the reopening of the relevant assessment had not been fulfilled in the instant case. The revenue being aggrieved by the said judgment and order preferred this present appeal in this court.

3. Mr. Balai Lal Pal appearing on behalf of the revenue contended that the learned trial judge erred in applying the principles laid down by the Supreme Court in the case of [Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta](#), . Mr. Pal

strenuously argued that the said decision has got no application in the facts and circumstances of the present case.

4. In Sheo Nath Singh's case, the reasons for such belief, inter alia, is as follows :

(1) The assessee who is or was at the relevant time a managing director in about a dozen limited companies along with "Oberois" is believed to have made some secret profits which were not offered for assessment.

(2) The assessee is believed to have received a sum of Rs. 22 lakhs from " Oberois " and this sum or at least part of which represents income which has escaped assessment.

5. The Supreme Court observed that it was abundantly clear that two reasons which were given for the belief which was formed by the Income Tax Officer hopelessly failed to satisfy the requirements of the statute.

6. Now, in the instant case, the reasons recorded for the reopening for the assessment read as follows :

" From the statement of accounts for the accounting period relevant to the assessment year under consideration it appears that the assessee had unsecured loans amounting to Rs. 3,90,697. On the basis of records available some of these loans are from parties who have declared before the department that they were doing name-lending business. The assessee on the other hand claimed before the Income Tax Officer that these transactions are genuine. I have reason to believe that owing to inaccurate particulars furnished by the assessee income has escaped assessment to the extent of Rs. 50,000 (approximately). I therefore propose to reopen the assessment u/s 147(a) of the Income Tax Act, 1961. "

7. It appears from the reasons recorded that the belief was sought to be formed that there were certain inaccurate particulars given and some of the persons in whose names money had been shown were merely name-lenders and they declared before the Income Tax authority that they were carrying on bogus name-lending business. Upon what materials or facts that belief has been formed has not been indicated in the reasons or in the affidavit filed by the department before the trial court. At the time of the hearing a cyclostyled statement in response to the summons u/s 131 of the Income Tax Act of one Shri Giridhari Singh whose business had been closed on and from 31st March, 1965, was produced before us. The said statement was recorded on the 8th December, 1966. It appears from that statement that the said Giridhari Singh has said :

"" I am affirming that all the hundies loan transactions that might be attributed to me and might be shown in any party's book as taken from me are bogus and in no instance had I lent any money against hundies.

During the entire period 1952 or 1953 to 31st March, 1965, whatever hundi loan appeared in my name in any party at Calcutta, Delhi, Bombay or in any other place, these loans were not really loans and I acted merely as name-lender."

8. In the balance-sheet which was submitted by the respondent it appears that material loans from sundry parties were shown as Rs. 3,50,000. The names of the parties from which these loans were taken have not been mentioned. It has not been stated in the affidavit filed by the department that the respondent-company took loan from the said Shri Giridhari Singh who has made the said declaration before the Income Tax Officer. The Income Tax Officer, " E " Ward, District I, Calcutta, recorded that statement on the 8th of December, 1965. The statement could not be the basis of the records which was available to the Income Tax Officer, "E" Ward, Dist. IV. Nowhere it is stated in the affidavit that on what date the said statement was received by the Income Tax Officer.

9. In [S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore](#), the Supreme Court observed that the expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The belief must be held in good faith, it cannot be merely a pretence, and it is open to the court to examine 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. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. It has been held by the Supreme Court in Sheo Nath Singh's case, that the court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court. Considering the facts and circumstances of the case, we are unable to agree with the contention of Mr. Balai Lal Pal that the learned trial judge erred in applying the principles laid down by the Supreme Court in the case of Sheo Nath Singh.

10. We are satisfied that there is no material or fact which has been stated in the reasons in starting proceedings in the present case on which any belief could be founded of the nature contemplated by Section 147(a) of the Income Tax Act, 1961. We find no reason to differ from the view of the learned trial judge that the conditions precedent for the reopening of the said assessment had not been fulfilled in the instant case.

11. In the result, this appeal is dismissed. There will be no order for costs.

Amaresh Roy, J.

12. I agree.