

(1990) 03 BOM CK 0097

Bombay High Court

Case No: Writ Petition No. 2564 of 1983

Sir Bansilal and Co.

APPELLANT

Vs

Prabhu Dayal, Income
Tax Officer and
another

RESPONDENT

Date of Decision: March 12, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 144, 146, 147, 147A

Citation: (1990) 185 ITR 287

Hon'ble Judges: T.D. Sugla, J

Bench: Single Bench

Advocate: Jagdish Prem, for the Appellant; Dr. V. Balasubramanian, for the Respondent

Judgement

T.D. Sugla J.

March 9, 1990:

1. By this petition under article 226 of the Constitution of India, the petitioner, a registered partnership firm, carrying on money-lending business, has challenged the two notices dated March 30, 1983, issued by the Income Tax Officer u/s 148 read with section 147(a) of the Income Tax Act, 1961, for the assessment years 1978-79 and 1979-80. The petition came up for admission before this court on November 23, 1983, when, referring to the Supreme Court decision in [Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das](#), this court issued rule in terms of prayer (a) and passed an interim order in terms of prayer (d).

2. However, despite the specific order, the grounds on the basis of which the Income Tax Officer had issued the impugned notices were not furnished to the petitioner nor was any affidavit-in-reply filed. In the circumstances, the petition was heard on the facts stated in the petition and those borne out from other documents

furnished by the petitioner along with its writ petition.

3. The assessments were originally completed ex parte u/s 144 on March 28, 1981, even though a raid was conducted at the petitioner's premises on February 13, 1981, when all its books of account and other documents were seized. On application by the petitioner u/s 146 of the Act, the ex parte assessments were set aside on March 31, 1981. Fresh assessments u/s 143(3) were made for both the years on March 5, 1982.

4. Subsequently, on learning that certain cash credits appearing in the books of the petitioner were not genuine, the Income Tax Officer formed the belief that the petitioner's income for the two years had escaped assessment by reason of its not furnishing full particulars of income. In view thereof, he issued the impugned notices u/s 148 of the Act.

5. On the face of it, the notices did not disclose whether they were issued u/s 147(a) or u/s 147(b). The notices did not disclose the reasons why they were issued. The petitioner requested the Income Tax Officer, vide its letter dated April 26, 1983, for information in this regard. By letter dated May 12, 1983, from the Income Tax Officer, the petitioner was informed that the assessments were reopened under the provisions of section 147(a) for the reason that "from scrutiny of your books of account seized relevant to the aforesaid assessment years and earlier and subsequent years, it is quite clear that you have introduced certain cash credits in your books, which are of dubious nature and from the parties who are suspected and/or made confession before other Income Tax authorities".

6. The impugned notices, as stated earlier, were challenged by the petitioner. Shri Prem, learned counsel for the petitioner, invited this court's attention to the Supreme Court decision in [Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das](#), for the proposition that the material on the basis of which the Income Tax Officer forms or can form reason to believe that income has escaped assessment by reason of the assessee's non-disclosure of full and necessary particulars of income must provide a live link or direct nexus between the material and the belief. Any information/material will not be a good material for reopening the assessment u/s 147(a). He relied on another Supreme Court decision in the case of [Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta](#), in which it was, inter alia, held that the assessee's obligation was to disclose primary facts only. Once the primary facts were disclosed, there was no further obligation of the assessee to point out to the Income Tax Officer as to what inference he should draw from the primary facts. It would then be for the Income Tax Officer to make investigation on the basis of primary facts and to come to his own conclusions. It was reiterated that the assessment orders were made u/s 143(3) in this case on March 8, 1982, i.e., long after the raid was conducted on the petitioner's premises, and that the petitioner had furnished full particulars of income at the time of assessment. The notices were issued, it was contended, without jurisdiction and

must be quashed.

7. Dr. Balasubramanian, learned counsel for the Department, on the other hand, referred to the Income Tax Officer's reply dated May 12, 1983, to the petitioner. It was pointed out that the ground given by the Income Tax Officer for reopening the assessments was broadly indicated in paragraph 2 of the letter and the Income Tax Officer had made this fact clear, vide paragraph 3 of the letter. The detailed reasons for reopening the assessment and items which are proposed to be examined were to be revealed subsequently. He, thus, submitted that being given time, he will be able to produce the assessment records to satisfy the court that there were good grounds for reopening the assessments. According to Dr. Balasubramanian, it was impossible for the Income Tax Officer to verify the genuineness of each and every item of material or evidence at the time of assessment. By and large, the evidence/material is believed/accepted and the assessments are completed. It is only when in that case or in the case of some other assessee facts came to the notice of the Income Tax Officer or the Department that certain material or evidence produced by the assessee was not genuine or was bogus that the question of reopening the assessments would arise.

8. March 12, 1990 : The Supreme Court has held in [Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das](#), that the reasons for the formation of the belief contemplated by section 147(a) of the Income Tax Act, 1961, for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material on record and the formation of the belief that income has escaped assessment. The court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point of reason to believe. All the same, it is not any and every material, howsoever vague or indefinite or distant, remote or far-fetched, which would warrant the formation of the belief relating to escapement of the income. The material in that case was the confession of one of the creditors that he was a name-lender. Observing that there was nothing to show that the confession of the creditor related to the loan to the assessee or as to when the confession was made, the Supreme court held that the material was too tenuous to provide a legally sound basis for reopening the assessment. In the present case also, the material indicated in the Income Tax Officer's reply dated May 12, 1983, to the petitioner is that "you introduced certain cash credits in your books, which are of dubious nature and to the parties who are suspected and/or have made confession before other Income Tax authorities". It is in no way different from the one in the Supreme Court case. Accordingly, following the Supreme Court decision, it has to be held that the material did not have direct nexus or live link with the formation of the belief that the petitioner's income had escaped assessment.

9. The other contention raised on behalf of the petitioner is equally sound. For assuming jurisdiction to reopen an assessment u/s 147(a), another condition necessary is that the reason to believe that income had escaped assessment must be by reason of the failure to file returns of income or non-disclosure of material facts necessary for assessment fully and truly. There is not even a suggestion that the assessee did not file its returns of income. Therefore, the only question to be considered is whether it was or could be by reason of non-disclosure of material facts necessary for assessments fully and truly. This has to be examined on the facts of each case. The Income Tax Officer has categorically observed in the assessment order completed u/s 143(3) on March 8, 1982, as under :

For the assessment year 1978-79 :

"Necessary details together with details called for have been filed".

For the assessment year 1979-80 :

"Other necessary details called for have also been filed and verified."

10. In the circumstances, it cannot also be disputed that there was or could be no non-disclosure of full particulars necessary for assessment by the petitioner.

11. What can at best be argued on behalf of the Department is that the disclosure was untrue and that section 147(a) required not only full disclosure but also true disclosure. However, the argument, though attractive, is not tenable. The duty cast upon the assessee is to make true and full disclosure of the primary facts at the time of the original assessment. Explanation 2 to section 147 which provides that production before the Income Tax Officer of account books or other evidence from which material evidence could, with due diligence, have been discovered by the Income Tax Officer will not necessarily amount to disclosure within the meaning of the section is of no assistance to the Department in this regard. It has been held by the Supreme Court in its decision in [Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta](#), that where the assessee produced in the original assessment proceedings all the hundis on the strength of which it had obtained loans from creditors as also entries in the books of account showing payment of interest, it was for the Income Tax Officer to investigate and determine whether these documents were genuine or not. The assessee could be said to have failed to make a true and full disclosure of the material facts by not confessing before the Income Tax Officer that the hundis and the entries in the books of account produced by it were bogus. As stated earlier, the petitioner in this case had disclosed necessary particulars about loan accounts. Such a finding is duly recorded in the assessment orders. In the circumstances, the petitioner cannot be blamed for not further informing the Income Tax Officer that the evidence placed on its behalf may not be genuine.

12. In the above view of the matter, the validity of the notices issued u/s 147(a) cannot be upheld. They are accordingly quashed. Rule is made absolute in terms of prayer (b). No order as to costs.