

Gemini Leather Stores

Vs

The Income Tax Officer, 'B' Ward, Agra and Others

Civil Appeal No. 1925 of 1970

(R. S. Sarkaria, A. C. Gupta JJ)

01.05.1975

JUDGMENT

GUPTA, J. –

1. The appellant, a partnership firm, was assessed to income-tax for the assessment year 1956-57 on a turnover of Rupees Fifteen lacs by the Income-tax Officer by his order dated January 22, 1958. The Income-tax Officer did not accept the return filed by the assessee and the books of accounts produced by it and made a best judgment assessment. The turnover so assessed was reduced by the Appellate Assistant Commissioner and further reduced by the Appellate Tribunal. On March 31, 1965 the Income-tax Officer issued a notice under Section 148 of the Income Tax Act, 1961, stating that he had reasons to believe that income chargeable in respect of the assessment year 1956-57 had escaped assessment within the meaning of Section 147 of the Act and directing the assessee to file a return as he proposed to reassess the income for the said assessment year. The assessee filed a writ petition before the High Court at Allahabad challenging the validity of the notice dated March 31, 1965 on the ground that the Income-tax Officer had no jurisdiction to issue the notice. A learned Single Judge dismissed the writ petition and his order was affirmed in appeal by a Division Bench. The appeal to this Court is by the assessee on certificate granted by the High Court.

2. The justification for taking action under Sections 147 and 148 of the Income Tax Act, 1961, as stated by the Division Bench of the High Court is :

The firm utilised certain drafts for making purchases at Madras and Calcutta. These drafts represented undisclosed income of the firm. This aspect of the matter was not considered at the time of the original assessment. It is proposed to take this income into consideration for purposes of re-assessment. The amounts, for which drafts were purchased by the firm, were not recorded in the disclosed account of the firm. It is, therefore, proposed to tackle that income for purposes of re-assessment.

The learned Single Judge took the view that the Income-tax Officer did not apply this mind to the question as to whether the amounts invested in the purchase of the drafts could be treated as part of the total income of the assessee, and as the assessee did not disclose the source of these amounts which were not recorded in the account books produced by the assessee, all the conditions for invoking the jurisdiction under Section 147(a) were present. This was also the view taken by the Division Bench.

3. It appears that the Income-tax Officer had written a detailed order in making his best judgment assessment. Having found out all about the drafts which were not mentioned in the assessee's books

of account, the Income-tax Officer gave the partners of the firm opportunity to explain the drafts. Referring to the statement of one of the partners, Shri Om Parkash, the Income-tax Officer observed in his order :

He has said that the drafts which were sent by him relating to Messrs Gemini Leather Stores were entered in the books of firm while other drafts which he has made would be of others whose name he does not remember. As he is unable to tell to whom other drafts sent by him relate in spite of specific opportunities, given to him, the obvious inference is that moneys of the drafts are that of the firm with which he is connected.

Referring to the circumstances in which these drafts had been sent or received, the Income-tax Officer further observed :

Since these drafts have been sent or received in such circumstances and by such persons connected with the firm the conclusion is obvious that these drafts relate to the firm.

It is not disputed that the case falls under clause (a) of Section 147. The question is whether the Income-tax Officer had reason to believe that income chargeable to tax had escaped assessment for the assessment year in question by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. The law on the point has been settled by this Court in *Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies District I, Calcutta* (41 ITR 191 : (1961) 2 SCR 241 : AIR 1961 SC 372). The decision in *Calcutta Discount Company's case* (supra) based on Section 34 of the Income-tax Act, 1922, the provisions of which correspond to those Sections 147 and 148 of the Income Tax Act, 1961; the points of departure from the old law are not material for the purpose of this case. The position is stated in *Calcutta Discount Company's case* as follows :

In every assessment proceeding the assessing authority will for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inference of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else far less the assessee - to tell the assessing authority what inferences, whether of facts or law, should be drawn.

The law laid down in *Calcutta Discount Company's case* has been restated in several subsequent decisions of this Court : *Commissioner of Income-tax, West Bengal v. Hemchandra Kar* (77 ITR 1 : (1970) 1 SCC 780); *Commissioner of Income-tax, Gujarat v. Bhanji Lavji* (79 ITR 582 : AIR 1971 SC 717); *Commissioner of Income-tax, Calcutta v. Burlop Dealers Ltd.* (79 ITR 609 : (1971) 1 SCC 462), to name only a few. In the case before us the assessee did not disclose the transactions evidenced by the drafts which the Income-tax Officer discovered. After this discovery the Income-tax Officer had in his possession all the primary facts, and it was for him to make necessary

enquiries and draw proper inference as to whether the amounts invested in the purchase of the drafts could be treated as part of the total income of the assessee during the relevant year. This the Income-tax Officer did not do. It was plainly a case of oversight, and it cannot be said that the income chargeable to tax for the relevant assessment year had escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. The Income-tax Officer had all the material facts before him when he made the original assessment. He cannot now take recourse to Section 147(a) to remedy the error resulting from his own oversight.

4. For these reasons we allow the appeal and quash the impugned notice dated March 31, 1965 and the proceedings in consequence thereof. Considering all the circumstances of the case we make no order as to costs.

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