Srikrishna Private Ltd. and Others

Vs

I. T. O., Calcutta and Others

Civil Appeals No. 1562 of 1977

(S. B. Majmudar, B. P. Jeevan Reddy JJ)

16.07.1996

JUDGMENT

B. P. JEEVAN REDDY, J.-

1. This is an appeal preferred by the assessee against the judgment and order of a Division Bench of the Calcutta High Court allowing the writ appeal preferred by the Revenue (Income Tax Officer, Central Circle-VI and Others) against the judgment of a learned Single Judge. The learned Single Judge had allowed the writ petition filed by the assessee questioning the validity of a notice issued under Section 148 read with Section 147 of the Income Tax Act.

2. In the return filed for the Assessment Year 1959-60, the assessee had shown certain hundi loans totalling Rs 8,53,298 said to have been taken from a number of persons. The Income Tax Officer accepted the averment and made the assessment. During the assessment proceedings for the succeeding year, 196061, the assessee again showed hundi loans in a sum of more than rupees seventeen lakhs. The Income Tax Officer enquired into the truth of the averment and found that many of them were bogus claims while some of the alleged lenders were found to be near relations of directors or principal shareholders of the assessee. The Income Tax Officer held that out of the hundi loans of more than rupees seventeen lakhs claimed by the assessee, loans totalling Rs 11,15,275 were not established to be genuine loans and accordingly added that amount as income from undisclosed sources. Having regard to the similarity of the claims and the persons who are said to have advanced the said unsecured hundi loans during the accounting year relevant to the Assessment Year 195960, the Income Tax Officer issued a notice under Section 148 calling upon the assessee to file a revised return for the Assessment Year 1959-60. Immediately, upon receiving the said notice, the assessee approached the Calcutta High Court by way of a writ petition questioning the validity of the notice on, the grounds that the Income Tax Officer had no reasonableground to believe that income chargeable to tax has escaped assessment for the said year on account of any omission or failure on his part to make a full and true disclosure of all material facts. The writ petition was allowed by a learned Single Judge, as stated above, whose decision has been reversed in appeal by the Division Bench. This Court entertained the special leave petition filed by the assessee and granted leave on 26-7-1977. This Court, however, did not stay the proceedings pursuant to the impugned notice. It directed that the Income Tax Officer may proceed to complete the assessment proceedings but will not issue a demand notice. The Income Tax Officer has accordingly completed the reassessment.

3. Sections 147, 148 and 151, as they stood at the relevant time, read as follows:

"147. Income escaping assessment. If-

(a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under Section 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereinafter in Sections 148 to 153 referred to as the relevant assessment year).

Explanation 1. -For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:

(a) where income chargeable to tax has been under-assessed; or

(b) where such income has been assessed at too low a rate; or

(c) where such income has been made the subject of excessive relief under this Act or under the Indian Income Tax Act, 1922 (11 of 1922); or

(d) where excessive loss or depreciation allowance has been computed.

Explanation 2. -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 this section.

148. Issue of notice where income has escaped assessment.--(1) Before making the assessment, reassessment or recomputation under Section 147, the Income Tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that subsection.

(2) The Income Tax Officer shall, before issuing any notice under this section, record his reasons for doing so,

151. Sanction for issue of notice. -(1) No notice shall be issued under Section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income Tan Officer that it is a fit case for the issue of such notice.

(2) No notice shall be issued under Section 143 after the expiry of four years from the end of the relevant assessment year, unless the Commissioner is satisfied on the

> reasons recorded by the Income Tax Officer that it is a fit case for the issue of such notice."

4. Section 139 places an obligation upon every person to furnish voluntarily a return of his total income if such income during the previous year exceeded the maximum amount which is not chargeable to income tax. The obligation so placed involves the further obligation to disclose all material facts necessary for his assessment for that year fully and truly. If at any subsequent point of time, it is found that either on account of an omission or failure of the assessee to file the return or on account of his omission or failure to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, the Income Tax Officer is entitled to reopen the assessment in accordance with the procedure prescribed by the Act. To be more precise, he can issue the notice under Section 148 proposing to reopen the assessment only where he has reason to believe that on account of either the omission or failure on the part of the assessee to file the return or on account of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year, income has escaped assessment. The existence of the reason(s) to believe is supposed to be the check, a limitation, upon his power to reopen the assessment. [See the leading decision on this subject in Barium Chemicals Ltd. v. Company Law Board[1966 Supp SCR 311 : AIR 1967 SC 295 : (1966) 36 Comp Cas 639] (SCR at p. 361: AIR at p. 324).] Section 148(2) imposes a further check upon the said power, viz., the requirement of recording of reasons for such reopening by the Income Tax Officer. Section 151 imposed yet another check upon the said power, viz., the Commissioner or the Board, as the case may be, has to be satisfied, on the basis of the reasons recorded by the Income Tax Officer, that it is a fit case for issuance of such a notice. The power conferred upon the Income Tax Officer by Sections 147 and 148 is thus not an unbridled one. It is hedged in with several safeguards conceived in the interest of eliminating room for abuse of this power by the assessing officers. The idea was to save the assessees from harassment resulting from mechanical reopening of assessment but this protection avails only those assessees who disclose all material facts truly and fully.

5. Coming to the facts of this case, the reasons recorded by the Income Tax Officer for reopening the assessment for the year 1959-60 are to the following effect:

> "In the course of the assessment proceeding for the Assessment Year 1960-61 investigations were made into the unsecured loans of Rs 17,32,298 which was the position of the last day of the accounting year relevant to the Assessment Year 1960-61. These investigations disclosed that a large number of them were bogus hundi loans or loans from near relations of the Directors or principal shareholders. Hence, the amounts credited to some of these accounts have been assessed as income from undisclosed sources to the extent of Rs 11,51,275.00.
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> Similar loans are noticed for the Assessment Year 1959-60 and they stand at Rs 8,53,298 as per Balance-Sheet as on 16-4-1959.
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> I have, therefore reasons to believe that by reason of omission or failure on the part of the assessee company to disclose fully and truly all material facts necessary for its assessment of 1959-60 in regard to these accounts, income chargeable to tax has escaped assessment.
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> I, therefore, propose action under Section 147(a) of I. T. Act, 1961."

6. We may also mention that after hearing this appeal for some time, we found it appropriate to look into the relevant record and accordingly made the following order on 10-10-1995:

> "After hearing the appeals for some time, we find it necessary to look into the record to satisfy ourselves with respect to the following fact:
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> Whether, at the time of issuing of notice under Section 148, the ITO had material before him showing the persons who have lent the sum of Rs 8,53,298 during the accounting year relevant to Assessment Year 1959-60, were the very same persons who are said to have lent Rs 11,51,275 (bogus loans) during the accounting year relevant to Assessment Year 1960-61, and disallowed by the ITO in that assessment year?
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> Adjourned for eight weeks."

7. Accordingly, the Income Tax Officer has submitted a chart showing that out of the unsecured hundi loans of Rs 8,53,298 claimed by the assessee, ten persons who are said to have lent a total amount of Rs 3,80,000 were common to both the Assessment Years 1959-60 and 1960-61. In other words, these very ten persons are said to have advanced loans again during the next year and all the ten were found to be bogus lenders as recorded in the assessment proceedings relating to Assessment Year 1960-61. Now, the question is can it be said in the above facts that the issuance of the notice under Section 148 was not warranted? Can it be said in the face of the above facts that the Income Tax Officer had no reason to believe that on account of the assessee's omission/failure to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year. In the reasons recorded by the Income Tax Officer [as required by Section 148(2) 1, he had stated clearly that in the course of assessment proceedings for the succeeding assessment year, it was found that out of the unsecured hundi loans put forward by the assessee, a large number were found to be bogus and that many of the so-called lenders were found to be near relations of the Directors or the principal shareholders. He stated that similar loans are also noticed for the Assessment Year 1959-60 and, therefore, he has reason to believe that there has been no true and full disclosure of all material facts by the assessee for the Assessment Year 1959-60 leading to escarpment of income. It is not alleged by the assessee that the Income Tax Officer had not checked up or tallied the names of the alleged lenders for both the assessment years and that he merely went by the fact that there were unsecured hundi loans for both the assessment years. In the absence of any such allegation - which allegation, if made, could have afforded an opportunity to the Income Tax Officer to answer the said averment - we must presume that the Income Tax Officer did find that a large number of alleged lenders who were found to be bogus during the Assessment Year 1960-61 were also put forward as lenders during the Assessment Year 1959-60 as well. Evidently, this is what he meant in the context, when he spoke of "similar loans" being noticed for the year in question as well. In such a situation, it is impossible to say that the Income Tax Officer had no reasonable ground to believe that there has been no full and true disclosure of all material facts by the assessee during the relevant assessment year and that on that account, income chargeable to tax had escaped assessment. As we shall emphasise hereinafter, every disclosure is not and cannot be treated to be a true and full disclosure. A disclosure may be a false one or true one. It may be a full disclosure or it may not be. A partial disclosure may very often be a misleading one. What is required is a full and true disclosure of all material facts necessary for making assessment for that year. This calls for an examination of the decisions of this Court analysing and elucidating Sections 147 and 148 of the Act.

8. The first and foremost is the decision of the Constitution Bench in Calcutta Discount Co. Ltd. v. ITO, Compunies Distt.-I. [(1961) 41 ITR 191 : AIR 1961 SC 372] The case arose under Section 34 of the Income Tax Act (as amended in 1951). In material particulars, the provisions in Section 34 were similar to those in Section 147. Having regard to the fact that it is the only Constitution Bench decision on the point, it is necessary to examine it in some detail. The Constitution Bench explained the 7 purport of Section 34 in the following words:

> "To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income Tax Officer must have reason to believe that income, profits or gains chargeable to income tax have been under-assessed. The second is that he must have also reason to believe that such 'under-assessment' has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under Section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to he satisfied before the Income Tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years, but within the period of eight years, from the end of the year in question.
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> The words used are 'omission or failure to disclose fully and truly all material facts necessary for his assessment for that year'. It postulates a duty on every assessee to disclosefully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. 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 which 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, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee is capital receipt, or revenue receipt, the assessing authority has to find out what primary facts have been proved, what other facts can be inferred from them, and, taking all these together, to decide what the legal inference should be.
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> We have, therefore, come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this. " (emphasis added)

9. In that case, the alleged non-disclosure of material facts fully and truly to put it in the words of the court - was the failure of the assessee to disclose "the true intention behind the sale of the shares". The assessee had stated during the assessment proceedings that the sale of shares during the

relevant assessment years was a casual transaction in the nature of mere change of investment. The Income Tax Officer found later that those sales were really in the nature of trading transactions. The case of the Revenue was that the assessee ought to have stated that they were trading transactions and that his assertion that they were casual transactions, in the nature of change of investment, amounted to "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" within the meaning of Section 34. This contention of the Revenue was rejected holding that the true nature of transaction, being a matter capable of different opinions, is not a material or primary fact but a matter of inference and hence, it cannot be said that there was an omission or failure of the nature contemplated by Section 34 on the part of the assessee. Now, what needs to be emphasised is that the obligation on the assessee to disclose the material facts - or what are called, primary facts - is not a mere disclosure but a disclosure which is full and true. A false disclosure is not a true disclosure. The disclosure must not only be true but must be full - "fully and truly". A false assertion, or statement, of material fact, therefore, attracts the jurisdiction of the Income Tax Officer under Sections 34/147. Take this very case: the Income Tax Officer says that on the basis of investigations and enquiries made during the assessment proceedings relating to the subsequent assessment year, he has come into possession of material, on the basis of which, he has reasons to believe that the assessee had put forward certain bogus and false unsecured hundi loans said to have been taken by him from non-existent persons or his dummies, as the case may be, and that on that account income chargeable to tax has escaped assessment. According to him, this was a false assertion to the knowledge of the assessee. The Income Tax Officer says that during the assessment relating to subsequent assessment year, similar loans (from some of these very persons) were found to be bogus. On that basis, he seeks to reopen the assessment. It is necessary to remember that we are at the stage of reopening only. The question is whether, in the above circumstances, the assessee can say, with any justification, that he had fully and truly disclosed the material facts necessary for his assessment for that year. Having created and recorded bogus entries of loans, with what face can the assessee say that he had truly and fully disclosed all material facts necessary for his assessment for that year? True it is that Income Tax Officer could have investigated the truth of the said assertion which he actually did in the subsequent assessment year - but that does not relieve the assessee of his obligation, placed upon him by the statute, to disclose fully and truly all material facts. Indubitably, whether a loan, alleged to have been taken by the assessee, is true or false, is a material fact - and not an inference, factual or legal, to be drawn from given facts. In this case, it is shown to us that ten persons (who are alleged to have advanced loans to the assessee in a total sum of Rs 3,80,000 out of the total hundi loans of Rs 8,53,298) were established to be bogus persons or mere name-lenders in the assessment proceedings relating to the subsequent assessment year. Does it not furnish a reasonable ground for the Income Tax Officer to believe that on account of the failure - indeed not a mere failure but a positive design to mislead - of the assessee to disclose all material facts, fully and truly, necessary for his assessment for that year, income has escaped assessment? We are of the firm opinion that it does. It is necessary to reiterate that we are now at the stage of the validity of the notice under Sections 148/147. The enquiry at this stage is only to see whether there are reasonable grounds for the Income Tax Officer to believe and not whether the omission/failure and the escarpment of income is established. It is necessary to keep this distinction in mind.

10. A recent decision of this Court in Phool Chand Bajrang Lal v. ITO, [(1993) 4 SCC 77 : (1993) 203 ITR 456] we are gratified to note, adopts an identical view of law and we are in respectful agreement with it. The decision rightly emphasises the obligation of the assessee to disclose all material facts necessary for making his assessment fully and truly. A false disclosure, it is held, does not satisfy the said requirement. We are also in respectful agreement with the following holding in

the said decision: (SCC p. 96, para 25)

> "Since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and nonspecific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."

11. Learned counsel for the assessee, Shri Gupta placed strong reliance upon the decisions of this Court in Chugamal Rajpal v. S. P. Chdliha, [(1971) 1 SCC 453 : (1971) 79 ITR 603] ITO v. Lakhmani Mewal Das[(1976) 3 SCC 757 : 1976 SCC (Tax) 402 : (1976) 103 ITR 437] and CIT v. Burlop Dealers Ltd. [(1971) 1 SCC 462 : (1971) 79 ITR 609] as laying down propositions contrary to those laid down in Phool Chand Bajrang Lal. [(1993) 4 SCC 77 : (1993) 203 ITR 456] We cannot agree. The principle is well settled by Calcutta Discount[(1961) 41 ITR 191 : AIR 1961 SC 372] and it is not reasonable to suggest that any different proposition was sought to be enunciated in the said decisions. Calcutta Discount[(1961) 41 ITR 191 : AIR 1961 SC 372] emphasises repeatedly the assessee's obligation to disclose all material facts necessary for his assessment fully and truly in the context of the two requirements - called conditions precedent which must be satisfied before the Income Tax Officer gets the jurisdiction to reopen the assessment under Sections 147/148. This obligation can neither be ignored nor watered down. Nor can anyone suggest that a false disclosure satisfies the requirement of full and true disclosure. All the requirements stipulated by Section 147 must be given due and equal weight. Finality of proceedings is certainly a consideration but that avails one who has fully and truly disclosed all material facts necessary for his assessment for that year - and not to others. 411 the decisions relied upon by Shri Gupta have been elaborately discussed and distinguished in Phool Chand Bajrang Lal[(1993) 4 SCC 77 : (1993) 203 ITR 456] and we fully agree with the same. We think it unnecessary to repeat those reasons. In particular, we agree with the reasons given in Phool Chand Bajrang Lal[(1993) 4 SCC 77 : (1993) 203 ITR 456] for holding that the decision of this Court in Burlop Dealers[(1971) 1 SCC 462 : (1971) 79 ITR 609] must be confined to the particular fact-situation of that case and that it cannot be construed to be of universal application irrespective of the facts and circumstances of the case before the Court.

12. It is brought to our notice that certain other decisions of this Court have rightly emphasised the requirement of full and true disclosure and have held that failure or omission to do so, legitimately attracts the power under Section 147. In Inspecting Asstt. CIT v. V. I. P. Industries Ltd. [(1991) 191 ITR 661 (SC)] a three- Judge Bench had this to say:

> "After hearing learned counsel for both the parties, we are unable to uphold the order of the High Court. It appears that, subsequently, facts have come to the notice of the Income Tax Department that the facts disclosed in the return are not a true and correct declaration of facts. In that view of the matter, we set aside the order of the High Court passed in Writ Petition No. 1634 of 1988 with Writ Petition No. 2919 of 1988 (V. I. P. Industries v. Inspecting Asstt. Cammr.), [(1991) 187 ITR 639 (Bom)] and send the case back on remand to the Income Tax Officer for a decision in accordance with law after giving an opportunity of hearing to the parties concerned.

> The special leave petitions are disposed of."

13. In Central Provinces Manganese Ore Co. Ltd. v. ITO[(1991) 4 SCC 166 : (1991) 191 ITR 662] again this Court observed: (SCC pp. 170-71, paras 9-11)

> "The only question which arises for our consideration is as to whether the two conditions required to confer jurisdiction on the Income Tax Officer under Section 147(a) of the Act have been satisfied in this case. The first is that the Income Tax Officer must have reason to believe that the income chargeable to income tax had been under- assessed and the second that such under-assessment has occurred by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the year 1953-54.
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> So far as the first condition is concerned, the Income Tax Officer, in his recorded reasons, has relied upon the fact as found by the Customs Authorities that the appellant had under-invoiced the goods he exported. It is no doubt correct that the said finding may not be binding upon the income tax authorities but it can be a valid reason to believe that the chargeable income has been under-assessed. The final outcome of the proceedings is not relevant. What is relevant is the existence of reasons to make the Income Tax Officer believe that there has been under-assessment of the assessee's income for a particular year. We are satisfied that the first condition to invoke the jurisdiction of the Income Tax Officer under Section 147(a) of the Act was satisfied.
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> As regards the second condition, the appellant did not produce the books of accounts kept by them at their head office in London nor the original contracts of sale which were entered into at London with the buyers. The appellant did not produce before the income Tax Officer any of the accounts which related to the foreign buyers. No reasons were given for the supply of manganese ore at a rate lower than the market rate. It is for the assessee to disclose all the primary facts before the Income Tax Officer to enable him to account for the true income of the assessee. The proven charge of under-invoicing per se satisfied the second condition. The appellant's assessable income has to be determined on the basis of the price received by it for the goods exported. If the true price has not been disclosed and there was under-invoicing, the logical conclusion prima facie is that there has been failure on the part of the appellant to disclose fully and truly all material facts before the Income Tax Officer. We are, therefore, satisfied that both the conditions required to attract the provisions of Section 147(a) have been complied with in this case."

14. In ITO v. Mewalal Dwarka Prasad[(1989) 2 SCC 279 : 1989 SCC (Tax) 266 (1989) 176 ITR 529] this Court held that if the notice issued under Section 148 is good in respect of one item, it cannot be quashed under Article 226 on the ground that it may not be valid in respect of some other items. We need not, however, dilate on this aspect for the reason that no argument has been urged before us to the effect that since the notice under Section 148 is found to be justifiable in respect of some loans disclosed and not with respect to other loans, it is invalid.

15. For the above reasons, the appeal fails and is dismissed with costs. Advocate' s fee rupees ten thousand consolidated. Civil Appeals Nos. 2101-03 of 1980

16. No separate arguments have been addressed in these appeals obviously because the decision in Civil Appeal No. 1562 of 1977 would govern these cases as well. For the reasons given for dismissing Civil Appeal No. 1562 of 1977, these appeals are also dismissed.

17. No costs.