

Income-Tax Officer

Vs

Purushottam Das Bangur and Another

Civil Appeals Nos. 3041-3043 and 3234-3235 of 1983

(S. C. Agarwal, G. T. Nanavati JJ)

22.01.1997

JUDGMENT

These appeals are directed against the judgment of the Rajasthan High Court (see [1980] 126 ITR 580), dated November 26, 1979, whereby the writ petitions filed by the respondents have been allowed and the notices issued under section 147(b) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), have been quashed.

Civil Appeal No. 3041 of 1983 arises out of Writ Petition No. 1177 of 1974, filed by Purushottam Das Bangur, respondent No. 1. It relates to the assessment of the said respondent for the assessment year 1969-70. During the accounting year relevant to the said assessment year the assessee claimed that he had suffered long-term capital loss on sale of shares of Maharaja Shree Umaid Mills Ltd. during the period March 5, 1969, and March 30, 1969, at the price quoted in the official report and quotations of the Calcutta Stock Exchange Association. According to the assessee, he had incurred a loss of Rs. 1,57,792. The said claim of the assessee was accepted by the Income-tax Officer, 'C' Ward, Jodhpur, while making the assessment and the same was affirmed in appeal by the Appellate Assistant Commissioner. Subsequently, the Income-tax Officer received a letter dated March 21, 1974, from Shri S.M. Bagai, Deputy Director, Directorate of Inspector (Investigation), Special Cell, New Delhi, wherein it was stated that on information obtained from the Bombay Stock Exchange Directory, the book value per equity share of Maharaja Shree Umaid Mills Ltd. rose from Rs. 318.55 for the year ending December 31, 1965, to Rs. 401 for the year ending December 31, 1970, and the earning per share rose from Rs. 8.37 per share to Rs. 44 per share during the abovementioned period and that the dividend percentage also rose from 2 per cent. to 10 per cent. for the same period, but the quotations of the shares on the Calcutta Stock Exchange fell from Rs. 168 to Rs. 85 per share during this period. In the said letter of Shri Bagai, it was stated that it was clear from these facts that the quotations appearing are as a result of certain manipulated transactions between the group and it cannot be said to reflect the fair market value of the company. Along with the said letter Shri Bagai had annexed the information which was gathered by him on the basis of the Bombay Stock Exchange Directory and other information. The said letter of Shri Bagai was received by the Income-tax Officer on March 26, 1974. On March 27, 1974, he issued a notice under section 147(b) of the Act whereby the assessee was informed that the Income-tax Officer had reason to believe that the assessee's income chargeable to tax for the assessment year 1969-70 had escaped assessment and, therefore, the assessing authority proposed to reassess the income for the said assessment year and the assessee was required to deliver to him a return in the prescribed form of his income for the said year. Feeling aggrieved by the said notice, the assessee filed Writ Petition No. 1177 of 1974 in the Rajasthan High Court.

Similar notices under section 147(b) of the Act were issued to respondent No. 2, Rang Lal Bangur,

in respect of the assessment years 1969-70 and 1971-72 which were challenged by him by filing Writ Petitions Nos. 1182 of 1974 and 57 of 1975 before the Rajasthan High Court.

All the three writ petitions have been decided by the High Court by a common judgment dated November 26, 1979, whereby the High Court has held that in the facts and in the circumstances of the case, it could not be said that the Income-tax Officer had, in this possession, information in consequence of which he could have reason to believe that income chargeable to tax had escaped assessment for the relevant assessment years. The said decision of the High Court has been assailed by the Income-tax Officer by filing these appeals.

Section 147(b) of the Act, as it stood at the relevant time, provided as follows :

"147. If -

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assess, 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 (hereafter in section 148 to 153 referred to as 'the relevant assessment year')."

A perusal of clause (b) of section 147 shows that for taking action under the said provision what was required was that : (i) the Income- tax Officer has received information, and (iii) in consequence of such information he has reason to believe that income chargeable to tax has escaped assessment for any assessment year. The question is whether in the present case after he had completed the original assessment, the Income-tax Officer had received information on the basis of which he could have reason to believe that the income chargeable to tax had escaped assessment.

Shri D.R. Gupta, Income-tax Officer, 'B' Ward, Jodhpur, who was the assessing authority and who had issued the impugned notice, filed his counter-affidavit in reply to the writ petition, wherein he stated that during the assessment proceedings it was represented to him on behalf of the assessee that the shares of Maharaja Shree Umaid Mills Ltd. were regularly quoted on the stock exchange and that the sale was effected by the assessee at the prevalent market rate. A share quotation list was also shown to him and, in these circumstances, he accepted the version given by the assessee without making any further inquiry regarding the market rates of the shares, as, at that time, there was no material before him to suspect that the fair market value of the shares was higher than the sale price given out by the assessee. He has further stated that on March 26, 1974, he received a letter through Shri C.S. Jain, Inspecting Assistant Commissioner, Jodhpur Range, Jodhpur, from Shri S.M. Bagai, Deputy Director, Directorate of Inspection (Investigation), Special Cell, New Delhi, dated March 21, 1974, along with some annexures and also a telegram from Shri Bagai from Calcutta giving certain information regarding the shares of Maharaja Shree Umaid Mills Ltd., Pali, which had been collected by the said director, Shri S.M. Bagai. The telegram from Shri Bagai from Calcutta indicated that on inquiries he had found that the shares of the said company were not regularly quoted on the stock exchange. Shri Gupta further stated that he applied his mind to the aforesaid information and it appeared to him that the quotation of the shares of the mills on the Calcutta Stock Exchange was a result of certain manipulated transactions between the Bangur group

itself, and he, therefore, calculated the fair market value of the shares at Rs. 250 per share on the relevant dates as against Rs. 84 and Rs. 85 per share. His case was that it was in consequence of the aforesaid information received by him on March 26, 1974, that he formed the reasonable belief that the fair market value of the shares was far more than the sale price and the so-called market quotations shown by the assessee at the time of the original assessment were manipulated ones, as a result of which the income chargeable to tax had escaped assessment.

It would thus appear that the impugned notice was issued by the Income-tax Officer on the basis of the letter dated March 21, 1974, from Shri S.M. Bagai to Shri C.S. Jain. The said letter was as under (page 592 of 126 ITR) :

"My dear Jain,

Sub : Maharaja Shree Umaid Mills Ltd., Pali

I have received your D.O. No. C-Misc. 56/73-74/229 dated 19th March, 1974, today through a special messenger enclosing a statement regarding transfer of shares of the captioned company and also statement regarding shareholding of that company on various dates. You have just confirmed to me on telephone that you have retained a copy of the statements for your own record.

2. I am enclosing herewith a statement containing certain financial information regarding the captioned company which has been extracted from the Bombay Stock Exchange Directory. According to this statement the paid-up equity capital of the company is Rs. 72,00,000 divided into 72,000 shares of Rs. 100 each, the equity share data at page 2 of the enclosed statement indicates that the book value per equity share rose from Rs. 318.55 for the year ending 31st December, 1965, to Rs. 401, for the year ending 31st December, 1970. The earning per share rose from Rs. 8.37 per share to Rs. 44 per share during the abovementioned period. The dividend percentage also rose from 2 per cent. to 10 per cent. for the same period. In spite of all these facts, the quotation of the shares in the Calcutta Stock Exchange fell from Rs. 168 per share to Rs. 85 per share during this period.

3. It is clear from these facts that the quotations appearing are as a result of certain manipulated transactions between the group itself and cannot be said to reflect the fair market value of the shares of this company. This is also borne out from the fact that the share transfer register of the company, the extract of which you have given, shows transfers of a very small number of shares compared to 72,000 equity shares of the company.

4. The statements set by you contain the names of several shareholders, both corporate as well as non-corporate of Didwana and Pali, who appear to have been transferring the shares of this company at values far below the fair market value of the share. It would be worthwhile examining the assessment records of their cases in order to consider the feasibility of action under section 52(2) of the Income- tax Act and section 4 of the Gift-tax Act.

5. The equity shareholders' list sent by you also gives the names of certain shareholders of Didwana, Pali and Jodhpur. The wealth-tax assessment records of these persons will have to be examined to consider whether the value of shares returned by them for the purpose of their wealth-tax assessment is really the open market value of the shares at the relevant time. I shall be grateful if the information set by me is passed on to the concerned Wealth-tax Officers, Income- tax Officers and Gift-tax Officers, so that they may apply their mind to the facts of each individual case and take such appropriate action under the Wealth-tax Act, Income-tax Act and the Gift-tax Act as they may

deem fit.

6. I am also enclosing herewith a copy of D.O. addressed to Inspecting Assistant Commissioner, Bikaner, who I believe has jurisdiction over Didwana. This may kindly be set by special messenger to him. I am also sending one copy to him direct by post.

7. I am proceeding to Calcutta on the evening of 22nd and in case I get some more relevant information, I shall send the same to you and the Inspecting Assistant Commissioner, Bikaner, directly. Meanwhile I would request you to kindly obtain the value of the shares of the company as on March 31, 1969, by the break-up method any by the maintainable profit method. These two values may be worked out on the basis of Circular No. 2 (W.T.) of 1967 and communicated to me telegraphically c/o Shri V. Subramanyan, Inspecting Assistant Commissioner, Range XXI, Aayakar Bhawan, P-7, Chowringhee Square, Calcutta. You may also convey this information to the Commissioner of Income-tax, Rajasthan, and the Inspecting Assistant Commissioner, Bikaner, so that the information reaches the concerned Wealth-tax Officers, Income-tax Officers and Gift-tax Officers, who would be concerned with the case of the other share-holders in Rajasthan.

With Regards,

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Yours sincerely,

(Sd.) (S.M. Bagai).

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In the second paragraph of his letter Shri Bagai has referred to the statement containing certain financial information regarding Maharaja Shri Umaid Mills Ltd. which he had extracted from the Bombay Stock Exchange Directory and which he had forwarded as an annexure along with the said letter. The said information was to the effect that the paid-up capital of the company was Rs. 72,00,000 divided into 72,000 shares of Rs. 100 each; the equity share data at page 2 of the enclosed statement indicated that the book value per equity share rose from Rs. 318.55 for the year ending December 31, 1965, to Rs. 401 for the year ending December 31, 1970, the earning per share rose from Rs. 8.37 per share to Rs. 44 per share during the abovementioned period and the dividend percentage also rose from 2 per cent. to 10 per cent. for the same period. But, in spite of all these facts, the quotation of the shares in the Calcutta Stock Exchange fell from Rs. 168 per share to Rs. 85 per share during the said period. In the third paragraph of his letter, Shri Bagai has, on the basis of these facts, expressed the opinion that the quotations appearing the Calcutta Stock Exchange were as a result of certain manipulated transactions between group itself and cannot be said to reflect the fair market value of the company. In the other paragraphs of this letter, Shri Bagai had suggested steps to be taken for further investigation into the matter.

The High Court has proceeded on the basis that the said letter of Shri Bagai did not contain any information and that there was neither evidence of manipulation nor evidence of collusive transactions referred to in the letter and that no inquiries were made by the Income-tax Officer after the receipt of the letter so as to constitute information. We are unable to agree with the said view of the High Court. The contents of paragraph 2 of the letter of Shri Bagai refer to the statement containing financial information regarding Maharaja Shree Umaid Mills Ltd. which was annexed to the letter of Shri Bagai. The said statement contained information derived from the Bombay Stock

Exchange Directory about the financial condition of Maharaja Shree Umaid Mills Ltd. during the period 1965-70 which indicated that during this period the company has prospered and that the book value per equity share had risen from Rs. 318.55 for the year ending December 31, 1965, to Rs. 401 for the year ending December 31, 1970, the earning per share rose from Rs. 8.37 per share to Rs. 44 per share and that dividend percentage had also risen from 2 per cent. to 10 per cent. for the same period.

On the basis of the information contained in the letter of Shri Bagai and the documents annexed to it, the Income-tax Officer could have had reason to believe that the fair market value of the share was far more than the sale price and the market quotations from the Calcutta Stock Association shown by the assessee at the time of original assessment were manipulated ones and as a result income chargeable to tax had escaped assessment. It could not be said that the information that was contained in paragraph 2 of the letter of Shri Bagai was not definite information and it could not be acted upon by the Income-tax Officer for taking action under section 147(b) of the Act.

Ms. Gauri Rastogi, learned counsel appearing for the respondents, has urged that the letter of Shri Bagai was received by the Income-tax Officer on March 26, 1974, and on the very next day, that is, on March 27, 1974, he issued the impugned notice under Section 147(b) of the Act and that he did not have conducted any inquiry or investigation into the information sent by Shri Bagai. Merely because the impugned notice was sent on the next day after receipt of the letter of Shri Bagai does not mean that the Income-tax Officer did not apply his mind to the information contained in the said letter of Shri Bagai. On the basis of the said facts and information contained in the said letter, the Income-tax Officer, without any further investigation, could have formed the opinion that there was reason to believe that the income of the assessee chargeable to tax had escaped assessment. The High Court, in our opinion, was in error in proceeding on the basis that it could not be said that the Income-tax Officer had in his possession information on the basis of which he could have reasons to believe that income of the assessee chargeable to tax had escaped assessment for the relevant assessment years. For the reasons aforementioned, we are unable to uphold the impugned judgment of the High Court. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petitions filed by the respondents are dismissed. No order as to costs.

Civil Appeals Nos. 3234-3235 of 1983 :

These appeals are directed against the judgment of the High Court of Rajasthan dated November 26, 1979, whereby the High Court has allowed Writ Petition Nos. 1178 and 1182 of 1974 filed by the respondents and has quashed the notices dated March 27, 1974, issued under section 17 of the Wealth-tax Act, 1957. This judgment of the High Court is based on its judgment in D.B. Writ Petition No. 1177 of 1974 (see [1978] 126 ITR 580 (Raj)) and connected writ petitions, wherein the High Court had quashed the notices issued by the Income-tax Officer under section 147(b) of the Act. For the same reasons the High Court has quashed the notices under section 17 of the Wealth-tax Act in these cases. The said judgment of the High Court in D.B. Civil Writ Petition No. 1177 of 1974 and connected writ petitions titled Purushottam Das Bangur v. WTO has been set aside in the judgment delivered in Civil Appeals Nos. 3041-3043 of 1983. For the same reasons the impugned judgment of the High Court cannot be upheld and has to be set aside. The appeals are accordingly allowed, the impugned judgment of the High Court is set aside and Writ Petitions Nos. 1178 and 1182 of 1974 filed by the respondents are dismissed. No order as to costs.