KERALA HIGH COURT

Muthukrishna Reddiar

Vs

Commissioner of Income-Tax

(P G Nair, C.J. K Sadasivan, J.)

28.07.1972

JUDGMENT

Sadasivan, J.

1. The Income-tax Appellate Tribunal, Cochin Bench, has made this reference and the question referred is :

> " Whether, on the facts and in the circumstances of the case, the proceedings initiated under Section 147(b) of the Income-tax Act, 1961, are legal and valid?"

2. The reference relates to the assessment year 1963-64, the relevant previous year being 1137 M.E. The original assessment was completed on March 16,1964. The Income-tax Officer subsequently reopened the assessment under Section 147(b) of the Income-tax Act, 1961 (hereinafter to be referred to as " the Act") on the ground that the capital gains arising to the assessee on account of the transfer of a property had not been brought to tax. Following facts are relevant in this connection: A property by name Machungal Purayidom belonged originally to the assessee's wife, Ratnammal. She died on October 21, 1954, leaving a will whereby the property was bequeathed to her 4 daughters, Nagammal, Maya Devi, Rajeswari and Visalakshi in equal shares. Nagammal and Maya Devi sold their interest in the property to the assessee on January 30, 1958, for Rs. 10,000, Thus, one-half of the entire property devolved on the assessee. He then sold this one-half interest in the property to his daughter, Rajeswari, on September 5, 1961, for Rs. 40,000. In the reassessment the capital gains sought to be assessed was the difference between the selling price of Rs. 40,000 and the purchase price of Rs. 10,000, namely, Rs. 30,000. At the time of the original assessment it was contended before the Income-tax Officer that in the estate duty proceedings following the death of assessee's wife, the property had been valued at Rs. 42,680. So, the value of the one-half share which the assessee had purchased was Rs. 21,340. On this basis the capital gains arising in the transaction was treated as Rs. 18,660 (Rs. 40,000--21,340). It was also alleged that the assessee had put up a building worth Rs. 10,000 in 1957 and from the amount of Rs. 18,660 this amount of Rs. 10,000 had to be deducted. The Income-tax Officer accepted these contentions and brought to tax as capital gains only the amount of Rs. 8,660. During the reassessment proceedings under Section 147(b) the Income-tax Officer held that since the assessee had purchased the half share in the property only in 1958, the cost of the building alleged to have been put up in 1957 could not be treated as an improvement

within the meaning of Section 48 and that the market value of the property as fixed in the estate duty proceedings could not be taken as the amount for which the property had been purchased by the assessee. The Income-tax Officer, therefore, came to the conclusion that the income chargeable to tax had escaped assessment. He, accordingly, brought to tax the amount of Rs. 30,000 as capital gains.

3. Section 147 of the Act is to the following effect: "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

4. The point for consideration is what would consitute " information " within the meaning of Section 147(b) (34(1)(b) of the old Act). This is a vexed question and to use the words of Banerji J. in Commissioner of Income-tax v. Kalyanji Mavji & Co., [1969] 74 I.T.R. 107 (Cal.), still remains a rich germinating ground for forensic Arguments. Even though there is no decision directly on the point, guidelines are supplied by some of the decisions of the Supreme Court and the various High Courts cited at the Bar. Decisions are, however, uniform on the points to be satisfied before a reassessment under Section 147 can be resorted to, and they are :
(1) The Income-tax Officer should receive information after the original assessment; and (2) In consequence of such information he should reasonably believe that the income chargeable to tax has escaped assessment.

5. Information, in the present case, is a communication from the audit party pointing out under the relevant provisions of the Act that it was wrong to have allowed the market value of the property, namely, Rs. 21,340, to be substituted for the consideration of Rs. 10,000 paid and that the application of Section 52(2) was not justified as the assessee neither possessed the property before January 1, 1954, nor received it as a gift from one who possessed it before January 1, 1954. It was also pointed out that the property having been purchased by the assessee in 1958, cost of improvements, if any, effected thereafter, alone could be deducted and the alleged improvements had been effected in 1957, when the assessee had no rights over the property. It was on this information, according to the revenue, that the Income-tax Officer entertained the plea that the income had escaped assessment.

6. The Supreme Court has observed in *Commissioner of Income-tax v. A. Raman & Co*[1]*.,*

> ".... that 'information in the context it occurs in Section 147(b) must mean instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. Mere change of opinion on the part of the Income-tax Officer cannot constitute information so as to empower the Income-tax Officer to start proceedings under Section 147(b)."

7. Information may be in respect of facts or particulars or it may be as to the correct state of the law, but it must be from an extraneous source as distinguished from a mere change of opinion. The revenue favours the view that no limitation could justifiably be placed on the nature or

character of the external source from which communication as to the state of the law can be derived by the Income-tax Officer. Whether it be the Supreme Court or the High Court or the Tribunal or the Appellate Assistant Commissioner or for the matter of that any person or authority, the communication would be information derived from an external source. On behalf of the assessee, on the other hand, the view is sought to be projected that instruction or knowledge as to the state of the law must be received from some judicial authority such as the Supreme Court or the High Court which is competent to declare the law and whose decisions have the effect of binding precedents; if it is received from any other source it would not be " information " as to the state of the law within the meaning of Section 147(b) of the Act. This latter view gains support from the Gujarat High Court in *Kasturbai Lalbai v. R. K. Malhotra, Income-tax Officer*[2], and the former view is endorsed by the Delhi High Court in *Commissioner of Income-tax v. H. H. Smt. Chand Kanwarji*[3],

8. In elucidation of the point the Gujarat High Court in the aforesaid decision would point out that information or knowledge derived from an external source must be from a person, body or authority competent and authorised to give it. It must have an element of authority behind it. It must not be a mere information of some one who has no authority to pronounce upon the law. The audit department is not an authority competent and authorized to declare the correct state of the law or to pronounce upon it. In the above cited case, the facts relevant for our purpose are: The petitioner (assessee) owned two items of immovable property, one in Ahmedabad and the other in Bombay. During the year of account (1965-66), both the properties were occupied by the petitioner (self-occupied properties). Petitioner claimed Rs. 4,052 to be deducted towards municipal tax in determining the annual value of the properties under Section 23(2) for computing the income of the properties under income from house property. Assessment was made in March, 1966. In July, 1969, the Income-tax Officer addressed a letter calling upon the petitioner to show cause why the amount of municipal tax allowed as deduction should not be added back on the ground that it was wrongly allowed. The assessee questioned the competency of the officer to reopen the assessment under Section 147. The Income-tax Officer pointed out that income-tax assessments are subjected to audit by the office of the Comptroller and Auditor-General of India, and while auditing the assessment of the petitioner for assessment year 1965-66, the audit department had pointed out that on a true interpretation of Section 23(2) the deduction of municipal tax in respect of self-occupied properties was not admissible. This information, according to him, constituted information under Section 147(b). The court held that opinion as to the state of the law by any and every person cannot constitute information, so as to entitle the Income-tax Officer to reopen an assessment.

9. The opposite view seems to have found favour with the Delhi High Court as is seen from its decision in Commissioner of Income-tax v. H. H. Smt. Chand Kanwarji, mentioned already. , There, the original assessment of the assessee for 1960-61 was made by the Income-tax Officer, treating the assessee's income from bank deposits as earned income and accepting her claim for deduction of salary paid to her daughter-in-law as expenditure. Thereafter, the revenue audit staff working under the Comptroller and Auditor-General of India, while scrutinising the assessments, brought to the notice of the department that the Income-tax Officer had wrongly treated the interest income as business income, and had wrongly allowed the assessee's claim with regard to the salary paid to her daughter-in-law. Acting upon the scrutiny note of the Revenue Audit, the Inspecting Assistant Commissioner wrote to the Income-tax Officer to rectify the defects by reopening the assessment under Section 147(b) of the Act. Thereupon, the Income-tax Officer

issued notices under the section and made reassessments. The court held :

(1) The scrutiny note of the Revenue Audit and the letter of the Inspecting Assistant Commissioner constituted " information " within the meaning of Section 147(b) from an " external source " and the assessments were, therefore, valid;

(2) The expression ' external source' used by the Supreme Court in Commissioner of Income-tax v. A. Raman & Co. could not be restricted to opinions expressed or findings given by courts of law or the tribunal or other authorities under the Income-tax Act.
(3) Though the reassessment might be the result of a change of opinion on the part of the Income-tax Officer, the change of opinion was not on his own initiative or on his own reconsideration of the available material; it was one brought about as a result of information from an external source which came into his possession subsequent to the original assessments ; and
(4) The Comptroller and Auditor-General of India has, the statutory right to scrutinise the proceedings of all departments of the Government including the income-tax department and to point out any defects or mistakes in such proceedings which adversely affect the revenues of the State. It is in the exercise of this statutory power that the Comptroller and Auditor-General of India, acting through his revenue audit staff, pointed out what he considered to be the errors committed by the Income-tax Officer in the original assessments.

10. We think that this decision reflects the correct view and has to be accepted in preference to the other view expressed by the Gujarat High Court referred to above. The Supreme Court, it must be remembered, did not pin-point or limit " external source " in A. Raman & Co.'s case to judgments of a particular court or authority. On the other hand, the Supreme Court has widened the scope and ambit of " external source " as is evident from the following observation in the judgment:

" Jurisdiction of the Income-tax Officer to reassess income arises if he has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment. That information must, (1) [1968] 67 I.T.R. 11; [1968] 1 S.C.R. 10 (S.C.)(supra) it is true, have come into the possession of the Income-tax Officer after the previous assessment, but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on the record, or the facts disclosed thereby, or from other inquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the Income-tax Officer is not affected."

11. The point on which attention is to be focussed is as to whether the Income-tax Officer had acted on his own initiative or on 'the basis of the fact that the correct position was brought to his notice by some other authority within the scope of the section. No decision was brought to our notice which would in so many terms restrict the scope of " external source " to judgments or orders of courts and Tribunals under the Act. On the other hand, the courts have gone even to the extent of holding that mistakes pointed out by a subordinate or superior officeer or an assessee would constitute information disclosed to the Income-tax Officer.

12. In Salem *Provident Fund Society Ltd. v. Commissioner of Income-tax*[4], a Division Bench of the Madras High Court, interpreting the scope of the word " information which has come into his possession " under the section, has observed:

" We are unable to accept the extreme proposition, that nothing that can be found in the record of the assessment, which itself would show escape of assessment or under-assessment, can be viewed as information which led to the belief that there has been escape from assessment or under-assessment. Suppose a mistake in the original order of assessment is not discovered by the Income-tax Officer himself on further scrutiny, but it is brought to his notice by another assessee or even by a subordinate or a superior officer, that would appear to be information disclosed to the Income-tax Officer. If the mistake itself is "not extraneous to the record and the informant gathered the information from the record, the "immediate source of information to the Income-tax Officer in such circumstances is in one sense extraneous to the record. It is difficult to accept the position that while what is seen by another in the record is ' information' what is seen by the Income-tax Officer himself is not ' information' to him. In the latter case, he just informs himself. It would be information in his possession within the meaning of Section 34. In such cases of obvious mistakes apparent on the face of the record of the assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment or under-assessment."

13. The meaning of the word " information " came up again for consideration before a Division Bench of this court, to which one of us was party, in *United Mercantile Co. Ltd. v. Commissioner of Income-tax*[5], where it was held that to "inform" means to impart knowledge and a detail available to the Income-tax Officer in the papers filed before him does not by its mere availability become an item of information ". It is transmuted into an item of information in his possession only if and when its existence is realised and its implications recognized. Applying that test to the case before them, the court held that the awareness of the Income-tax Officer for the first time after the assessment order of November, 1957f that the bonus shares were issued not out of premiums received in cash and the consequent result in the light of the Finance Act, 1957, was information within the meaning that expression is used, in Section 34(1) of the Indian Income-tax Act of 1922, and, consequently, the reopening of the assessment under that provision was not illegal. These two decisions, Salem Provident Fund Society Ltd. y. Commissioner of Income-tax and United Mercantile Co.

Ltd. v. Commissioner of Income-tax, are quoted with approval by the Supreme Court in *Anandji Haridas & Co. v. S. P. Kushare*[6], On the same lines more or less, is the decision of this court in a later case, *Commissioner of Income-tax v. Kelukutty*[7], There the assessment was in respect of a firm.

Previously there was another firm, the partners of which were one Kelukutty and his three major and minor sons. That firm carried on business from January 1, 1959, to July 8, 1959, when Kelukutty died. After that the new firm was constituted on July 15, 1959. There was no need for dissolving the old partnership. The Income-tax Officer originally treated these two firms as separate entities and passed two separate assessment orders. He assessed the old firm from January 1, 1959, to July 8, 1959, and the new one from July 15 1959, to December 31, 1959. Subsequently, the Income-tax Officer issued a notice under section 148 and initiated proceedings under Section 147(b). That was on the basis of the information gathered from the auditor's inspection notes that the old firm was not dissolved but only reconstituted and so the income of the two firms should have been aggregated and only one assessment made. The assessee

contended that on the death of Kelukutty the firm stood dissolved and that the business carried on by that firm ceased to exist and a new firm was constituted on July 15, 1959, and so, the Income-tax Officer was not justified in clubbing together the income of the two periods. The contention was rejected, and reassessment was made. But, finally, the Tribunal, upholding the contention, held that the Income-tax Officer was not justified in reopening the assessment under Section 147(b), as he had no information within the meaning of the sub-section. This court, reversing the decision of the Tribunal, observed :

> "The Income-tax Officer cannot take any action under this section merely because he happens to change his opinion or to hold an opinion, different from that of his predecessor, on the same set of facts. But the word ' information' does not necessarily imply factual material in contradistinction to the legal aspect of the case. 'Information' may be factual, but the word also includes some cases of ' information' as to the state of the law. The decision of an appellate authority, for instance, under the Income-tax Act on the question as to which assessable entity is chargeable in respect of a particular income is an information on the strength of which the Income-tax Officer can act. The note put up by the audit to the effect that the assessment ought to have been made on the reconstituted firm for the entire income of the two periods, and, therefore, the Income-tax Officer committed an error, was instruction or knowledge derived from an external source and so it would constitute ' information' within the meaning of the term in Section 147(b).....The Income-tax Officer was, therefore, perfectly competent to initiate proceedings under Section 147(b)."

14. To sum up, the position thus is that " information ", whether factual or as regards the state of the law, should be extraneous, extraneous in the sense that it should suggest itself to the Income-tax Officer otherwise than by his own subsequent re-thinking. A change of opinion on 'his own reappraisal of the facts already before him cannot constitute "information" for the purpose of the section. But a mistake apparent on the face of the order of assessment would constitute " information" whether someone else supplied that information to the Income-tax Officer or whether he informed himself. An item of information available in the papers filed before the Income-tax Officer will become " information " only when its existence is realised and its implications are understood.

15. We are, therefore, of the view that the proceedings initiated in the present case under Section 147(b) on the basis of the audit note are legal and valid. Question answered in the affirmative.

16. A copy of this judgment will be sent under the seal of the court and the signature of the Registrar to the Income-tax Appellate Tribunal, Cochin Bench.

Cases Referred.

1[1968] 67 I.T.R. 11; [1968] 1 S.C.R. 10 (S.C)
2[1971] 80 I.T.R. 188 (Guj.)
3[1972] 841.T.R. 584 (Del)
4[1961] 42 I.T.R. 547, 564 (Mad.)
5[1967] 64 I.T.R. 218 (Ker)
6[1968] 21 S.T.C. 326; [1968] 1 S.C.R. 661; A.I.R. 1968 S.C. 565

7[I972] 85 I.T.R. 102,108(Ker)