

# PUNJAB AND HARYANA HIGH COURT

Hazi Amir Mohd. Mir Ahmed

Vs

Commissioner of Income Tax

Income Tax Reference No. 70 of 1974

(O. Chinnappa Reddy and M.R. Sharma, JJ.)

01.11.1976

## JUDGMENT

### **O. Chinnappa Reddy, J.**

1. For the Assessment year 1962-63 the Income-tax Officer assessed the assessee on 21st April, 1964, on a total income of Rs. 11,510/-. In the balance sheet of the assessee, there appeared cash credits in the names of Hundal Dass Vasu Mal, Chopra Trading Company and five others. The assessee produced evidence before the Income-tax Officer about the genuineness of the cash credits. The Income-tax Officer enquired into the genuineness of the cash credits and accepted them as true. It was only thereafter that he completed the assessment. Later, a huge hundi racket operating on an all India Basis was unearthed and broken. Income-tax Officers all over the country got busy and started further probes into the affairs of various assesses. Some of the creditors shown in the balance sheet of the assessee made confessional statements to the effect that they were lending names and not money. Thereupon, the Income-tax Officer issued a notice to the assessee under Section 148 of the Income-tax Act, 1961, reopened the assessment and added a sum of Rs. 1,60,000/- to the income of the assessee. The appeals filed by the assessee to the Appellate Assistant Commissioner and Income-tax Appellate Tribunal were dismissed. Before the Income Tax Appellate Tribunal, it was contended that the assessee had made a true and full disclosure of all primary facts even at the time of the original assessment and, therefore, the Income-tax Officer was not justified in reopening the assessment under Section 147(a). The Income Tax Appellate Tribunal disagreed with the submission of the assessee and held that the Income-tax Officer was justified in reopening the assessment. At the instance of the assessee the Tribunal has referred to us the following question for our opinion :-

"Whether on the facts and in the circumstances, the Income Tax Appellate Tribunal Chandigarh, has rightly upheld the reopening of the assessment under Section 147 (a) of the Income-tax Act, 1961 ?"

2. Shri Bhagirath Dass, learned counsel for the assessee, argued that the Income Tax had disclosed all the primary facts at the time of the original assessment and the Income-tax Officer, after enquiry, had accepted the genuineness of the cash credits. The Income-tax Officer had latter

changed his opinion merely because some 'hundi' racket' unconnected with the assessee had been unearthed. The Income Tax Officer was not entitled to do so. Shri Bhagirath Dass relied upon the well known cases of *Calcutta Discount Co. Ltd. v. Income Tax Officer*, and *Commissioner of Income Tax v. Bhanji Lavji* and the decision of a learned Single Judge of this Court in *Karam Chand Kakkar v. Income Tax Officer*, on the other hand, Shri Awasthy learned counsel for the department argued that the obligation on the assessee was to disclose the facts both fully and truly and if the Income tax Officer had reason to believe that material facts had not been truly disclosed he was competent to reopen the assessment. It would be a case of truth coming to light and not a mere change of opinion, Shri Awasthy relied upon the decisions of the Supreme Court in *Chungmal Rajpal v. S.P. Chaliha*<sup>1</sup>, and *Income Tax Officer v. Lakshmani Mewal Dass*<sup>2</sup>, and of a learned Single Judge of this Court in *Hiralal Dewan Chand v. Income Tax Officer*<sup>3</sup>,

3. Section 147 of the Income-tax Act, 1961, in so far as it is relevant for the purposes of the present case is as follows :-

"147. *Income escaping assessment.* - (a) If the Income Tax Officer has reason to believe that, by reason 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 chargeable to tax escaped assessment for that year ... he may .. assess or reassess such income ... for the assessment year concerned."

4. The expression 'material facts necessary for assessment' occurred in section 34 of the 1922 Act. which corresponding to section 147 the Supreme Court to mean 'primary facts' as distinguished from inferences, factual or legal, which may properly be drawn from the primary facts. If an assessee disclose primary facts fully and truly and if the Income Tax Officer drew one inference from those facts yesterday and made an assessment he cannot tomorrow change his mind and propose to reopen the assessment on the basis of a different possible inference from the same facts. The Income-tax Officer cannot be heard to say that it was the duty of the assessee to disclose the primary facts as well as the several different inferences possible from the primary facts. On the other hand, if the Income-tax Officer has reason to believe the primary facts were not fully disclosed or that they were not truly disclosed, he may reopen the assessment. This he may do either because fresh facts come to light which were not previously disclosed or because new light thrown on facts previously disclosed tends to expose the untruthfulness of such facts.

5. In *Calcutta Discount Company Limited v. Income-Tax Officer*, the Supreme Court held that while the assessee was bound to disclose truly and fully all primary facts, the assessee was under no obligation to point out the factual inferences which might be drawn from those facts. They said :-

"There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authorities lies on the assessee.. Does the duty, however, extend beyond the full and truthful disclosure of all primary facts ? In our opinion, the answer to this question must be in the negative. 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 inferences 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...

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."

Again they said :-

"It is the duty of the assessee to disclose all the facts which have a bearing on the question .. The law does not require the assessee to state the conclusion that could reasonably be drawn from the primary facts. The question of the assessee's intention is an inferential fact and so the assessee's omission to state his true intention behind the sale of shares, cannot by itself be considered to be a failure or omission to disclose any material facts within the meaning of section 34."

6. Thus the Supreme Court drew a distinction between primary facts and inferential facts and held that the duty of the assessee extended only to disclosing primary facts fully and truly. It should be noticed to hear that the Supreme Court could not and did not absolve the assessee from the obligation of disclosing facts truly. We are mentioning this because the decision is sometimes misunderstood and it is argued that if an assessee discloses certain facts which are accepted as true by the Income-tax Officer after enquiry and an assessment is made on that basis, the Income-tax Officer is thereafter precluded from reopening the assessment even if subsequent information exposes the facts disclosed to be false. For example in *Karam Chand Kakkar v. Income-tax Officer* learned Single Judge of this Court after referring to the observations of the Supreme Court in the *Calcutta Discount Company case*, said :-

"From this observation it follows that the "material facts" which the assessee is required to disclose at the time of assessment are the primary facts material and necessary for the purpose of his assessment. The assessee is under no obligation of further informing the Income-tax Officer that some of the entries in his account books or in the balance-sheet are false. It is for the Income-tax Officer to scrutinise the accounts of the assessee and after being satisfied as to their correctness to make the assessment. It is true that as stated in Explanation 2 to section 147 of the Act the mere production before the Income-tax Officer of the 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 that section. But, in the present case, the Income-tax Officer, at the time of the original assessment specifically required the assessee to prove the cash credits standing in the names of all the firms including the five firms mentioned in the earlier part of the learned counsel and the petitioner-firm satisfied the Income-tax Officer, about the genuineness of those accounts... It is thus apparent that the Income-tax Officer has changed his opinion on account of subsequent information which has come into his possession. It was the duty of the Income-tax Officer making the assessment order in 1964 to hold the enquiry and find the genuineness or otherwise of the cash credits. He, in fact, held the enquiry by asking the petitioner-firm to prove the genuineness of those cash credits. It is not open to him to commence proceedings for

reassessment under Section 148 of the Act on a change of opinion in such circumstances."

The assessee may not be under any obligation to inform the Income-tax Officer that the entries in his accounts are false, But he is under an obligation to maintain true accounts and where subsequent information comes into the possession of the Income-tax Officer exposing the accounts as false, the Income-tax Officer is not precluded from reopening the assessment. It would not be a case of mere change of opinion as a result of drawing a different inference from the same facts. It would be a case where the Income-tax Officer has reason to believe, on the basis of subsequent information, that the assessee has failed to disclose material facts truly. The observations of the learned Single Judge are clearly erroneous though, as we shall presently point out, the actual decision appears to be correct.

7. *Income Tax Officer v. Lakshmani Mewal Das*, decided by the Supreme Court is an instructive case. Khanna J. first explained the legal position thus :-

"The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he had done that his duty ends. It is for the Income-tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income-tax Officer with regard to the inference which he should draw from the primary facts. If an Income-tax Officer draws a inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment.

The grounds or reasons which lead to the information of the belief contemplated by section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of this failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income-tax Officer to form the above belief that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the Court to investigate. The sufficiency of the grounds which induce the Income-tax Officer to act is, therefore, not a justifiable issue. It is, of course, open to the assessee to contend that the Income-tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law."

After stating the legal position, Khanna J. proceeded to apply it to the facts before him which were as follows. The Income-tax Officer mentioned two grounds for reopening the assessment. One was that Narayan Singh Nandalal, D.K. Naraindas, Bhagwandas etc. whose names were

mentioned in the list of the creditors of the assessee were known name-lenders. The other was that Mohan Singh Kanayalal who was shown to be one of the creditors of the assessee had confessed that he was doing only name lending. In regard to the first ground Income-tax Officer did not explain how the circumstance that some of the creditors were known name lenders could lead to a reasonable belief that the assessee had failed to disclose facts fully and truly. The Supreme Court therefore eschewed the first ground from consideration. We may mention here that it was on such a ground that the Income-tax Officer had reopened the assessment in *Karam Chand Kakkar v. Income-tax Officer*. That is why, though we disagreed with the observations of the learned Single Judge, we said that the decision was correct on facts. In regard to the second ground the Supreme Court noticed that there was nothing to show that the confession related to the loan to the assessee, nor was there any indication whether the assessment related to the relevant period. In other words, there was no indication that the confession related directly or indirectly to the loan to the assessee./ It was, therefore, held that there was no rational connection between the confession and the formation of the reasonable belief necessary for reopening an assessment under Section 147. The discussion by the Supreme Court clearly indicates that had it been shown that the confession related to the loan to the assessee directly or indirectly, the reopening of assessment would have been upheld.

8. Coming now to the facts of the case before us, Shri Awasthy argued that Income-tax Officer had before him the confessional statements of creditor when he issued the notice under Section 148. If they were before the Income-tax Officer at the time of issuance of notice under Section 148 but not at the time of regular assessment confessional statements indicating that the loans to the assessee were bogus loans, it has to be held that the Income-tax Officer was justified in reopening the assessment. Shri Awasthy invited our attention to the order of the Income-tax appellate Tribunal where it has been stated :-

"When the racket of hundis were exploded on all India basis and the hundi racket became a notorious fact, the Income-tax Officer found that the credits shown in the names of the parties were merely name lending credits based on hawala business and as there were confessional statements of the creditors or the creditors had been proved to be merely lending their names without lending the money, were indulging in hawala business, he reopened the case under Section 147(a). We have seen his reasons to believe and we are satisfied that the Income-tax Officer was within his right to reopen the case under Section 147(a) because his reasons to believe were covered by section 147(a)."

Of course, the breaking of a hundi racket on an all India basis cannot have any rational connection with the loans to the assessee but the confessional statements of the creditors may have. That depends on whether the confessional statements are related in any manner to the loans to the assessee. That information is not available in the order of the Tribunal out of which the reference arises or in the statement of the case submitted to us by the Tribunal. Therefore, the only answer which we can give to the question referred to us is to say that the Appellate Tribunal was justified in upholding the reopening of the assessment under Section 147(a) if the confessional statements referred to in paragraph 5 of its order were in any manner related to the loans to the assessee, otherwise, not. The reference is answered accordingly. The Appellate Tribunal will now deal with the matter in the light of our answer. No costs.

Reference answered accordingly.

**Cases Referred.**

179 ITR 603  
2103 ITR 437  
393 ITR 204