

Raj Kumar Shrawan Kumar Vs. Central Board of Direct Taxes and anr.

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Court : Allahabad

Decided On : Nov-10-1976

Reported in : [1977]107ITR570(All)

Judge : C.S.P. Singh and ;R.M. Sahai, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 147 and 148

Appeal No. : Civil Miscellaneous Writ No. 1591 of 1974

Appellant : Raj Kumar Shrawan Kumar

Respondent : Central Board of Direct Taxes and anr.

Advocate for Def. : Deokinandan, Adv.

Advocate for Pet/Ap. : Shanti Bhushan and ;R.K. Gulati, Adv.

Judgement :

C.S.P. Singh, J.

1. The petitioner, a firm, runs an oil and tin factory. The financial year of the firm runs from Asarh Sudi 2 to Asarh Sudi 1. For the year 1965, the accounts were closed in July, 1965. In the accounts provision for payment of bonus was made and a reserve for bonus was created, and the amount debited to the profit and loss account. The amounts debited were to the extent of 20% for bonus and 20% as

reserve for bonus. This method was followed from the accounting year 1966 to 1972-73. In accordance with the provisions of the Payment of Bonus Act, 1965, amounts credited to the bonus reserve account were transferred back to the profit and loss account after four years. The Income-tax Officer accepted the method of accounting aforesaid for the assessment years 1966-67 to 1973-74.

2. By circular letter dated 18th August, 1973, the Central Board of Direct Taxes issued instructions to the effect that deduction for the bonus reserve should not be allowed. Subsequent to this circular letter, the Income-tax Officer issued a notice under Section 154 of the Act on October 18, 1973, for the assessment years 1969-70 to 1972-73 requiring the petitioner to show cause why the assessment should not be rectified as double allowance for bonus had been allowed. Objections to this notice were filed by the petitioner on November 26, 1973. Another notice was sent by the Income-tax Officer stating that the balance-sheet filed by the firm disclosed that the bonus debited to the profit and loss account relevant for the assessment years 1969-70 to 1972-73 had not been paid, and consequently in exercise of powers under Section 154 of the Income-tax Act, he proposed to add these sums. By this letter, he also invited objections to the action proposed to be taken by him. The petitioner filed objections to these notices. Subsequently, the Income-tax Officer issued notice under Sections 148/147(b) of the Income-tax Act, 1961, dated February 18, 1974, for the assessment years 1969-70 to 1972-73. The petitioner filed objection to the aforesaid notice challenging the jurisdiction of the Income-tax Officer to reopen the assessment under Section 147(b) of the Act. The plea taken was that there was no subsequent information on the basis of which the Income-tax Officer could issue the impugned notices. The petitioner has now impugned these notices under Section 148 of the Act as also the Board's circular letter and has prayed for the quashing of both, and for a writ of prohibition restraining the Income-tax Officer from reassessing the petitioner-firm for the years 1969-70 to the assessment year 1972-73.

3. The question that arises for decision in the present writ petition is as to whether the Income-tax Officer acting under Sections 147-148 of the Act could reopen the assessment on the basis of the circular issued by the Central Board of Direct Taxes. Counsel for the petitioner has contended that the circular issued by the

Central Board of Direct Taxes was not information of such nature as warranted action under Sections 147-148 of the Act. It was urged that all relevant information in respect of the assessment years was already on the record and the present proceedings taken by the Income-tax Officer in effect are mere change of opinion formed by him on the matter, and as such the proceedings are without jurisdiction.

4. It is well-settled that the Income-tax Officer cannot reopen an assessment only on a change of opinion. The assessment can be reopened under Section 147(b) of the Income-tax Act, 1961, only in case the Income-tax Officer has, in consequence of the information in his possession, reason to believe that the income chargeable to tax has escaped assessment. The question that arises is as to whether the circular sent by the Board of Direct Taxes is information as contemplated by the statute.

5. Now, the circular sent by the Central Board of Direct Taxes was as respects the point of law. It hardly admits of doubt after the decision of the Supreme Court in *Kamal Singh (Maharaj Kumar) v. Commissioner of Income-tax* : [1959]35ITR1(SC) , *Commissioner of Wealth-tax v. Imperial Tobacco Co. of India Ltd.* : [1966]61ITR461(SC) and *Jaganmohan Rao v. Commissioner of Income-tax* : [1970]75ITR373(SC) and the recent decision in the case of *Kalyanji Mavji & Co. v. Commissioner of Income-tax* : [1976]102ITR287(SC) that the word 'information' as used in the Section embraces both information as to fact and information as to law. We are tempted to quote here a passage from the decision of the Supreme Court in *Kalyanji's case* [1975] 102 ITR 287 which is apposite to the present case:

'Another pertinent fact which may be mentioned here is that although Section 34 was the subject of several amendments, yet the word 'information' which was introduced in 1939 has not been defined at all. Since the word 'information' has not been defined, it is difficult to lay down any rule of universal application. At the same time it cannot be disputed that the object of the Act was to see that the tax collecting machinery is made as perfect and effective as possible so that the taxpayer is not allowed to get away with escaped income-tax. The fact that the adjective 'definite' qualified the word 'information' and the word 'discovers' which were introduced in the Income-tax (Amendment) Act 1939, were deleted by the

Amendment Act of 1948, would lead to the irresistible inference that the word 'information' is of the widest amplitude and comprehends a variety of factors. Nevertheless, the power under Section 34(1)(b), however wide it may be, is not plenary, because the discretion of the Income-tax Officer is controlled by the words 'reason to believe'. It was so held by this court in *Bhimraj Pannalal v. Commissioner of Income-tax* : [1961]41ITR221(SC) while affirming the decision of the Patna High Court in *Bhimraj Pannalal v. Commissioner of Income-tax* [1951] 32 ITR 289. This legal proposition, however, is not disputed. It, therefore, follows that information may come from external sources or even from materials already on the record or may be derived from the discovery of new and important matter or fresh facts. The word 'information' will also include true and correct state of the law derived from relevant judicial decisions either of the income-tax authorities or other courts of law which decide income-tax matters. Where the ground on which the original assessment is based is held to be erroneous by a superior court in some other case, that will also amount to a fresh information which comes into existence subsequent to the original assessment. A subsequent Privy Council decision is also included in the word 'information'. Thus, it is very difficult to lay down any hard and fast rule.'

6. This being the correct position of law, we fail to see how a circular sent by the Central Board of Direct Taxes on a point of law would not constitute information as contemplated by the Section. As we read the decision of the Supreme Court, the only restriction is that the information must be of such a nature that the Income-tax Officer must have reason to believe that the income has escaped assessment. Now the belief which the Income-tax Officer has to form on the information received by him is the conviction which a reasonable and prudent man would form on the basis of the objective information received by him that the income has escaped assessment. Inasmuch as the statute does not restrict the sources from which the information as to a question of law can be derived by the Income-tax Officer, we find it difficult to understand as to how any restriction as respects the source of information could be read into the statute. The only restriction, as we have already indicated earlier, is that the information must be from such a source as would lead a prudent man to form the belief that the information is, *prima facie*, correct and, if believed, it will lead to the inference that the assessee has evaded

payment of income-tax on some income. Although, it is not feasible nor possible to lay down exhaustively the sources of such information, we may by way of illustration narrate some of these sources, e.g., treatise on law on the subject, articles on the subject by jurists or lawyers, information from other authoritative source, judicial decisions and the like. Counsel for the petitioner objects to such wide view of the source from which the information is received being taken. It would, he contends, give unbridled power to the Income-tax Officer to change his view on a question of law, even if such information is received from some lay man. The contention as put is not correct. We have already seen that the word 'information' is controlled by the words 'reason to believe'. This means that information must come from such source as would instil confidence in the Income-tax Officer and, as a prudent man, he would have reason to believe that the income has escaped assessment. Information from a layman as respects the question of law, cannot lead a prudent man to form opinion that that information is, *prima facie*, correct, for the layman concerned not being versed in the law could hardly be in a position to give a correct exposition of the law. This, however, cannot be said of the Central Board of Direct Taxes for the members constituting the Board are individuals who are well-versed in the income-tax law. If the Income-tax Officer, acting on the circular letter of the Board of Direct Taxes, entertains the belief that there has been a misapplication of the law as a result of which the income has escaped assessment, it cannot be said that he acted arbitrarily in the matter or without any subsequent information. Counsel for the petitioner contended by reference to certain decisions that the Central Board of Direct Taxes cannot issue directions in respect of a quasi-judicial function performed by the Income-tax Officer while making an assessment. One cannot doubt this. The Central Board of Direct Taxes does not have statutory authority to give directions to the Income-tax Officer to decide a particular matter in accordance with the view of law which it takes. However, we see no impediment in the Central Board of Direct Taxes in issuing a circular informing the Income-tax Officer of the correct position of law on a disputed matter. Thus, the circular sent by the Central Board of Direct Taxes constitutes information as contemplated by the statute, and the Income-tax Officer can form a *prima facie* belief that the income has escaped assessment on account of misapplication of law.

7. Counsel for both sides cited a large number of cases but we do not propose to refer to all of them except the following as, in our view, they do not help in resolving the controversy.

8. Counsel for the petitioner has strongly relied on a decision by the Gujarat High Court in *Kasturhhai Lalbhai v. R. K. Malhotra, Income-tax Officer* : [1971]80ITR188(Guj) . There the question arose as to whether information given on a question of law by the audit department would constitute information on which reassessment could be made. The Gujarat High Court took the view that, although it is not possible to formulate a precise definition as regards the source from which information on a question of law would entitle the Income-tax Officer to reopen an assessment, in their view opinion about the state of law must be from some person, body or authority competent and authorised to pronounce upon the law so that the information was invested with some definiteness and authority. It took the view that the audit department was not the authority competent and authorised to declare the correct state of law or to pronounce upon it and as such the assessment could not be reopened on the information of the audit department. A contrary view was taken by the Delhi High Court in the case of *Commissioner of Income-tax v. H. H. Smt. Chand Kanwarji* : [1972]84ITR584(Delhi) as also by the Kerala High Court in the case of *Muthukrishna Reddiar v. Commissioner of Income-tax* : [1973]90ITR503(Ker) . The Delhi High Court, in the case of *Vashist Bhargava v. Income-tax Officer* : [1975]99ITR148(Delhi) , after referring to the test laid down by the Gujarat High Court, held that the test laid down by that court was, if narrowly construed, not very appropriate. It held that the information coming from the audit department or the Ministry of Law would amount to 'information' within the meaning of Section 147. We are in respectful agreement with that law. There is nothing in the statute which curtails the source of information to the effect that it must come from some person who was authorised to pronounce upon the law. If such a test was applied then it might lead to the result that only judicial decisions would answer the test, We are not prepared to accept this test in view of the phraseology of the Section. All that is required is that the information must come from some external source and must be of such a nature as would lead a prudent man to believe that it is correct. We have already indicated some of the sources of information which could lead the Income-tax Officer to form the belief that the

information was prima facie correct and that the income has escaped assessment. The Central Board of Direct Taxes being an authority conversant with the tax laws, would be such a source.

9. In view of these conclusions, the challenge to the notice issued under Sections 148/147 must fail. The petition is accordingly dismissed with costs. The stay order is discharged.

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