Supreme Court of India
R.K. Malhotra, Ito, Group Circle ... vs Kasturbhai Lalbhai (Huf) on 11 August, 1977
Equivalent citations: AIR 1977 SC 2129, 1975 CriLJ 1545, (1977) 0 GLR 905, 1977 109 ITR 537 SC, (1977) 3 SCC 519, 1978 1 SCR 289, 1977 (9) UJ 559 SC
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Bench: P Kailasam, Y Chandrachud
JUDGMENT P.S. Kailasam, J.

1. This appeal is by the Income-tax Officer, Group Circle 11(1), Ahmedabad, by certificate granted under Article 133(1)(c) by the High Court of Gujarat against its Judgment June 23, 1970, allowing the application filed by the respondent assessee and issuing a writ of mandamus quashing and setting aside the notice dated September 12, 1969, issued by the Income-tax Officer under Section 148 of the Income-tax Act.

2. The respondent who is a Hindu undivided family is an assessee owning two house properties: one in Ahmedabad and the other in Bombay. During the relevant assessment year 1965-66 both the properties were occupied by the respondent. The Income-tax Officer treated the properties as self-occupied properties. The respondent claimed that a sum of Rs. 4,052 being the municipal taxes be deducted in determining the annual valuation of the properties under Section 23(2) of the Income-tax Act. The Income-tax Officer allowed the claim. The order of assessment was made by the Income-tax Officer on March 14, 1966. Subsequently after a lapse of over 3 years the Income-tax Officer by a letter dated July 15, 1969 called upon the respondent assessee to show cause why the amount of municipal taxes allowed as deduction should not be added back on the ground that it was wrongly allowed. The respondent on July, 13, 1969 replied that the Income-tax Officer was not competent to reopen the assessment under Section 147 and that the municipal taxes were validly allowed as a deduction in computing the income from self-occupied properties. Not satisfied with the explanation the Income-tax Officer issued a notice dated September 12, 1969, to the respondent under Section 148 stating that whereas he had reason to believe that the income of the respondent chargeable to tax for the assessment year 1965-66 had escaped assessment within the meaning of Section 147, he proposed to re-assess the income for the said assessment year and required the respondent to file a return of his income within 30 days from the date of receipt of the notice. The respondent then filed a writ under Article 226 of the Constitution for a writ in the nature of mandamus for quashing the notice dated September 12, 1969 issued by the Income-tax Officer. The High Court by its Judgment dated June 23, 1970 in Special Civil Application No. 1372 of 1969 allowed the application and issued the writ of mandamus quashing the notice dated September 12, 1969. On an application filed by the appellant the High Court granted a certificate and the appeal is thus before us.

3. It is not in dispute that for determining the annual value of the house which is in the occupation of the owner Section 23(2) of the Income-tax Act is applicable and that the assessee is not entitled to deduct the sum of Rs. 4,052 being the municipal tax. The Income-tax Officer when he assessed the tax for the year 1965-66 was aware of the fact that the property was self-occupied but erroneously thought that the assessee was entitled to deduction of the municipal taxes. Sub- sequently when the assessments were scrutinised in the office of Comptroller and Auditor-General of India, that office

pointed out to the Income-tax Officer that on a true interpretation of Section 23(2), the deduction of municipal taxes in respect of self-occupied properties was not admissible. On receipt of this intimation from the Audit Department the Income-tax Officer treated the intimation as 'Information' within the meaning of Section 147(b) and in consequence of this in-formation he was satisfied that he had reason to believe that the income of the respondent for the assessment year 1965-66 had escaped assessment and therefore proceeded to issue the impugned notice under Section 148 read with Section 147(b) of the Income-tax Act.

4. The only question that arises for consideration in this appeal is whether the intimation which the Income-tax Officer received from the Audit Department would constitute 'information' within the meaning of Section 147(b). Section 147(b) provides:

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 assess or reassess such income for the assessment year concerned.

5. Sub-section (b) of Section 147 enables the Income-tax Officer to assess or reassess the income if in consequence of information in his possession he has reason to believe that income chargeable to tax has escaped assessment. Two conditions are necessary for invoking the Sub-section: (1) the officer should receive information after the original assessment; (2) in consequence of such information he should have reason to believe that income has escaped assessment. The 'information' may be of facts or of law. The 'information' of a fact may be from external source. The fact that the Income-tax Officer with

6. In Maharaj Kumar Kamal Singh v. Commissioner of Income-tax, Bihar and Orissa 35 I.T.R. 1., the Income-tax Officer omitted to bring to assessment for the year 1945-46, the sum of Rs. 93,604 representing interest on arrears of rent due to the assessee in respect of agricultural land on the ground that the amount was agricultural income. The Privy Council held that interest on arrears of rent payable in respect of agricultural land was not agricultural income. As a result of the decision the Income-tax Officer initiated re-assessment proceedings under Section 34(1)(b) of the Income-tax Act. The Supreme Court held that the word 'information' in Section 34(1)(b) included information as to the true and correct state of the law and so would cover information as to relevant judicial decisions. Section 34(1)(b) of the Income-tax Act, 1948, which the court was dealing with had a similar provision the material words being, "The Income-tax Officer has in consequence of information in his possession reason to believe,".

7. In R. B. Bansilal Abirachand Firm v. Commissioner of Income-tax, M.P. 70 I.T.R. 74., the first assessment of the appellant firm was made on the Officer's information that the assessee wa a partner and that the interest was received by him in the capacity of a partner, but after the Tribunal gave its decision in subsequent proceedings the Income-tax Officer came to know that the interest was not received by the appellant in the capacity of a partner but in its capacity of financier. In the circums-tances, this Court held that the information received from the decision of the Tribunal and the High Court in assessment proceedings would be 'information'.

8. In Assistant Controller of Estate Duty, Hyderabad v. Nawab Sir Mir Osman Ali Khan Bahadur, H.E.H. The Nizam of Hyderabad and Ors. 72 I.T.R. 376. this Court was considering the question whether the opinion of the Central Board if Revenue would amount to 'information 'within Section 59(b) of the Estate Duty Act.After citing the decision in Maharaj Kumar Singh v. Commissioner of Income -tax, Bihar and Orissa 35 I.T.R. 1. under Section 34(1) of Income -tax Act,this Court reiterated the view taken in that case and observed that the opinion expressed by the Board of Revenue as to valuation was clearly 'information'.

9. The authorities cited above make it clear that a subsequent decision of the Privy Council(35 I.T.R 1), the Income-tax Appellate Tribunal (70 I.T.R.74) and the opinion of the Central Board of Revenue 72 I.T.R . 376 as to the state of law would be 'information' under Section 147(b). While conceding this position Mr. B.Sen, the learned Counself, submitted that a note by the Audit Department that the I.T.O.'s view of law that the assessee is entitled to deduct the municipal taxes is erroneous, would not amount to'information' especially when the I.T.O. was aware of the fact that the houses were self-occupied. The fact that the I.T.O. was aware of the fact that the houses were self- occupied and that he could have with diligence found that the assessee would not be entitled to the exemption will not preclude the officer from using the auditor's note as fresh 'information'.

10. This Court in Commissioner of Income-tax, Gujarat v. A. Raman and Co.67 I.T.R.11. disagreed with the view taken by the High Court of Gujarat that the information in consequence of which proceedings of reassessment were intended to be started could have been gathered by the Income-tax Officer in charge of the assessment in the previous years from the disclosures made by the two Hindu undivided families and would not be 'information'. This court held:

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, 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 enquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the Income-tax Officer is not affected.

11. The Court further observed that 'information' means instruction or knowledge derived from an external source. But the words "external source" cannot be construed as implying that the source must be outside the record. The 'information' may be gathered from the assessment record itself.

12. The plea of the learned Counsel that the audit report is not 'information' remains to be considered. A few decisions of the High Court on this point may now be referred to. In Commissioner of Income-tax, Delhi v. H. H. Smt. Chand Kanwarji 84 I.T.R.584. the Delhi High Court held that 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. The Income-tax Officer treated the income derived by way of interest from bank deposits as "earned income" and accepted the assessee's claim of expenditure on the salary paid to her daughter-in-law. Subsequently, the revenue audit staff

working under the Comptroller and Auditor-General of India, while scrutinising these assessments, brought to the notice of the department that the Income-tax Officer had wrongly treated the "interest income" as "business income" and also that the Income-tax Officer had wrongly allowed the assessee's claim with regard to the salary paid to her daughter-in-law. The Income-tax Officer acted upon this note and reopened the original assessment. A Bench of the Delhi High Court relying on the reasoning of this Court in 72 I.T.R. 376 that the opinion expressed by the Central Board of Revenue in appeal under the Estate Duty Act would be 'information' held that the note of the revenue audit under the Comptroller and Auditor-General of India would be 'infor- mation'. The same view was expressed in Commissioner of Income-tax v. Kelukuttyi85 I.T.R. 102. by the Kerala High Court. Mathew J. speaking for the court held that 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 would constitute 'information'. In Vushist Bhargava v. Income-tax Officer, Salary Circle, New Delhi 99 I.T.R. 148., a Bench of the Delhi High Court held that when subsequent to the assessment the Ministry of Law and the Revenue Audit pointed out that as a question of fact the payment of interest by the petitioner was made to his own account in the Provident Fund and as a question of law the money so paid did not vest in the Government but continued to belong to the petitioner and therefore, the income of the petitioner had escaped assessment, it would be 'information' available to the Income-tax Officer.

13. We feel that the view of the Delhi High Court in 84 I.T.R. 584 and 99 I.T.R. 148 and that of the Kerala High Court in 85 I.T.R. 102 is correct. Ample support is derived for that view from the law laid down by this Court in Commissioner of Income-tax, Gujarat, v. A. Raman and Co. 67 I.T.R. 11.where it was held that the expression 'information' in the context would mean instruction or knowledge derived from an external source concerning fact or particulars or as to law relating to a matter bearing on the assessment. It is not disputed that the decisions of courts of law and Income-tax Appellate Tribunal would be 'information' of law. This Court, as already pointed out in 72 I.T.R. 376 has held that the opinion of the Central Board of Revenue as regard the valuation of securities for the purpose of Estate Duty would be information.

14. The Gujarat High Court was correct in its view that it would be information of law if it is stated by a person, body or authority competent and authorised to pronounce upon the law and is invested with authority to do so. In applying this principle the Court erred in holding that Audit department is not an authority competent and authorised to declare the correct state of law or to pronounce upon it. The Audit Department is the proper machinery to scrutinise the assessments of the Income-tax Officer and point out the errors, if any, in law.

15. For the reasons stated we are unable to accept the conclusion arrived at by the Gujarat High Court. We allow this appeal and hold that the Income-tax Officer in the circumstances is entitled to reopen the assessment under Section 147(b) of the Income-tax Act. The appeal is allowed with costs.