# INCOME TAX OFFICER, INCOME TAX-CUM-WEALTH TAX CIRCLE II, HYDERABAD

*v.*

# NAWAB MIR BARKAT ALI KHAN BAHADUR

*October* 16, 1974

[H. R. KHANNA AND A. C. GUPTA, JJ.]

*Income tax Act*, 1961, *s.* 147—*Scope of—High Court's power of interference under Art.* 226.

In 1950, the respondent had executed three trust deeds for the benefit of three ladies who were described as his wives, and himself, as the father of their minor children. After the returns in respect of the assessment year 1955-56, 1956-57, 1957-58 and 1958-59 were filed by the respondent, the Income-tax Officer, who had the three trust deeds before him called upon the respondent for information regarding his relationship to those three ladies as well as his relationship to a fourth lady. A statement was filed, on behalf of the respondent, before the Income-tax Officer, wherein it was stated that only the fourth lady was his legally wedded wife, that the other three were merely referred to as the wives, and that their children were not the legitimate children of the respondent. The Income-tax Officer, in assessing the total income of the respondent did not include, under s. 16(3) of the 1922-Act, the income of those three ladies and their minor children arising out of the trust properties. In fact, he assessed them separately with respect to their income from the trust properties. In 1964 the Income-tax Officer issued notices under s. 148 of the 1961-Act seeking to re-open the assessments under s. 147 on the ground that there were two other trust deeds of 1957, which were not produced before the I. T. O. in which also two of the ladies were acknowledged as the wives of the respondent and their children as his children and that their marriage should be presumed because of the acknowledgement. The respondent there-upon challenged the validity of the proceedings and the High Court allowed his petition.

Dismissing the appeal to this Court,

HELD : (1) Section 147(a) provides that 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 any year, income chargeable to tax has escaped assessment for that year, he may assess or re-assess such income for the assessment year concerned. The fact that the ladies and their children had been described in the 1957-documents as wives and children of the respondent would have been material if the description were anything new that the Income-tax Officer happened to discover for the first time. But the 1950-deeds also contained the same description. The non-production of the 1957-documents at the time of the original assessment cannot therefore be regarded as non-disclosure of any material fact necessary for the assessment of the respondent for the relevant assessment years. Having second thoughts on the same material does not warrant the initiation of a proceeding under s. 147. [467G-H; 468B; D-E]

(2) The law has not changed or since the original assessments were made and it was open to the Income-tax Officer to have made the presumption that the ladies were the wives at the time when he made the assessment. He cannot avail of s. 147 to correct his mistake. [468F-G]

(3) The expression 'reason to believe' occurring in s. 147 of the 1961-Act or the corresponding s. 34 of the 1922-Act, does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reasons for the belief must have a rational connection or relevant bearing to the formation of the belief. Therefore, the High Court, under Art. 226, has power to set aside a notice under s. 147 of the 1961 Act or s. 34 of the 1922-Act, if the condition precedent to the exercise of the jurisdiction under those sections did not exist. [469C-D]

A CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1179—1782 of 1970.

From the Judgment & Order dated the 7th March, 1969 of the Andhra Pradesh High Court in Writ Petition Nos. 1042—1045 of 1964.

*S. C. Manchanda, B. B. Ahuja* and *R. N. Sachthey*, for the Appellant (In all the Appeals).

B *S. V. Gupte, Anwarulla Pasha, J. B. Dadachanji, A. Subba Rao* and *Anjali K. Varma*, for the Respondents (In all the Appeals).

*M. N. Phadke, A. V. Rangam, Gopal Nair* and *A. Subhashini*, for the Interveners (In all the Appeals).

C The Judgment of the Court was delivered by

GUPTA, J. These are four appeals by certificate from a common Judgment of the High Court of Andhra Pradesh at Hyderabad by which the High Court directed the appellant, Income Tax Officer, Income Tax-cum-Wealth Tax Circle II, Hyderabad to refrain from proceeding against the respondent under sec. 147 (a) of the Income Tax Act, 1961. The appellant had served on the respondent, Nawab Sahib Mir Osman D Alikhan Bahadur, H. E. H., the Nizam of Hyderabad, notices under sec. 148 of the Income Tax Act, 1961 stating that he had reasons to believe that income of the respondent chargeable to tax for the assessment years 1955-56, 1956-57, 1957-58 and 1958-59 had escaped assessment within the meaning of sec. 147 of the Act and proposing to reassess the income for the said assessment years. The respondent challenged the validity of the proceedings under sec. 147 sought to be initiated E by filing four writ petitions in the High Court of Andhra Pradesh at Hyderabad. The High Court by the impugned Judgment allowed all the four petitions and prevented the Income Tax Officer from proceeding further under sec. 147 of the Income Tax Act, 1961. In these appeals the appellant questions the correctness of the High Court's decision.

F The material facts are briefly these. Assessments for the aforesaid four years were completed respectively on March 18, 1958, March 19, 1958, July 20, 1958 and March 28, 1961 under the Income Tax Act of 1922. After the returns in respect of the said years were filed, the Income Tax Officer called upon the respondent to state his relationship with four ladies by putting three queries to him. The queries were G as follows:

"(a) The rites and ceremonies attendant on legal marriages according to Muslim law and how they were observed in the case of each of the four ladies viz., Dulhan Pasha Begum Saheba, Mazharunnisa Begumsaheba, Laila Begum Saheba and Jani Begum Saheba.

H (b) What legal status is accorded to the children of Mazharunnisa Begum Saheb, Laila Begum Saheba and Jani Begum Saheba, vis-a-vis, the children of the late Dulhan Pasha Begum Saheba?

(c) Any other factors from the point of view of the religion which distinguished the status of late Dulhan Pasha Begum Saheba from the other three ladies." A

It appears that on May 1, 1950, August 6, 1950 and December 29, 1950 the respondent had executed three trust deeds, described respectively as Family Trust, Miscellaneous Trust nand Family Pocket Money Trust, for the benefit of Mazharunnissa Begum, Laila Begum, Jani Begum and the minor children of the last two. In the aforesaid trust B deeds the three ladies were described as wives of the respondent who was also referred to as the father of their minor children. In one of these documents, viz., the family Pocket Money Trust Deed, the description of Laila Begum and Jani Begum as wives was preceded by the expression "ladies of position". Under sec. 16 (3) of the Income Tax Act of 1922, in computing the total income of any individual for the C purposes of assessment, the income of the wife or minor child of the assessee arising from assets transferred by the husband to the wife or the minor child otherwise than for adequate consideration was to be included. There is no dispute that these trust deeds were before the Income Tax Officer before he completed the assessments for the said four years.

D

On September 9, 1957 Shri C. B. Taraporewala, Financial Adviser and General Power of Attorney Agent of the respondent, filed a statement before the Income Tax Officer in reply to these queries. In this reply it was stated that the late Dulhan Pasha Begum Saheba was the only legally wedded wife of the respondent, that with the other three ladies the respondent had not gone through the essential formalities of a valid marriage under Mohammedan Law, that these three ladies E who occupied high social position and who were received in his palace were "ladies of position" and in view of the special favours bestowed upon them they were referred to as wives in the said three trust deeds thbugh in the strict legal sense the description was incorrect and the children of these ladies were not the legitimate children of the respondent and had no legal status as such. This explanation apparently satisfied the Income Tax Officer because in assessing the total income F of the respondent for the said four years he did not include the income of these three ladies and their minor children arising out of the trust properties. It is also admitted that the beneficiaries of the trusts were separately assessed on the income derived from the trusts along with their individual income.

On March 13, 1964 the notices under sec. 148 of the Income Tax G Act, 1961 were issued seeking to reopen the assessments under sec. 147 of the Act. After some correspondence with the Income Tax Officer, the authorised representatives of the respondent, M/s. S. G. Dastgir and Company, Chartered Accountants, filed supplemental returns for the aforesaid four years "without prejudice" to the respondent's right to question the validity of the notices. The supplemental returns merely affirmed the original returns filed by the respondent.

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By his letter dated April 15, 1964 addressed to M/s. Dastgir and Company, the Income Tax Officer stated the reasons for reopening the

A assessments under sec. 147(a). Referring to two subsequent trusts named Fern Hill and Race View created by the respondent on March 21, 1957 and December 5, 1957 respectively, it was stated that the material facts relating to these two documents were not brought to the notice of the Department in the course of the original assessment proceedings. Fern Hill Trust was created for the benfit of the children
B of Laila Begum and Race View Trust for the benefit of Jani Begum and her son Imdad Jah Bahadur. In the Fern Hill Trust Deed Laila Begum was described as wife of the respondent and her children as the children of the respondent by her. Similarly in the Race View Trust Deed Jani Begum was described as wife of the respondent and Imdad Jah Bahadur as his son by her. According to the Income Tax Officer the facts that Laila Begum and Jani Begum
C were described as wives and their children as the children of the respondent in the Trust Deeds executed in 1957 indicated that "certain material facts relevant for the assessment years were not disclosed to the Department, that the statement given by the Financial Adviser is untrue and that thereby income chargeable to tax has been underassessed". In his letter the Income Tax Officer also referred to sec. 268 of Mulla's Principles of Mohammedan Law which enumerates the
D circumstances from which marriage will be presumed in the absence of direct proof and stated that the respondent having acknowledged the three ladies as his wives and thier children as his children in the Trust Deeds executed in 1950 and 1957 all the circumstances mentioned in sec. 268 were present. The letter concluded by saying that it was established that the ladies and their children were the legal wives and legitimate children of the respondent.

E

The common counter-affidavit affirmed by the Income Tax Officer in answer to the writ petitions was on similar lines to the aforesaid latter. Admittedly Fern Hill and Race View Trust Deeds executed in 1957 were not produced before the Income Tax Officer when he made the original assessments for the four years in question. In the counter-affidavit it was alleged that these two Trust Deeds were "material
F and primary facts necessary for completing the assessments of the petitioner-assessee for the relevant assessment years" and it was submitted that if the said two documents had been disclosed at the time of the original assessments, the Income Tax Officer "would have certainly arrived at the conclusion" that he came to in his letter dated April 15, 1964.

G Clause (a) of Sec. 147 of the Income Tax Act, 1961 under which the assessments were sought to be reopened, so far as it is relevant for the present purpose, provides that if the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for any year, income chargeable to tax has escaped assessment for that year, he may assess or reassess such income for the as-
H sessment year concerned. The High Court held that the reasons assigned for reopening the assessments did not fall within the scope of omission or failure on the part of the assessee to disclose fully and truly all material facts, that all the material facts were before the Department

when it made the assessments in question and the trusts created in 1957 did not "throw a different light on the matters already disclosed". A

The question is whether the existence of the two trust deeds executed by the respondent in 1957 was a material fact necessary for his assessment for the relevant assessment years. The fact that the three ladies and their children have been described in these two documents as wives and children of the respondent would have been material if B the description were anything new that the Income Tax Officer happened to discover for the first time. The three trust deeds of 1950 also contained the same description of these ladies and their children and the Income Tax Officer accepted the statement made by respondent's Financial Adviser Shri G. B. Taraporewala seeking to explain why the ladies had been described as wives therein. It is true that the trust deeds of 1957 were not produced at the time of the original assessment but C we do not see what difference production of these two additional documents could have made which contain the same description of the ladies. Neither the letter addressed to the respondent's authorised representatives, M/s. S. G. Dastgir and Company, by the Income Tax Officer on April 15, 1964 nor the counter-affidavit filed in the High Court explains this point. The documents of 1957 conform to those of 1950 in material particulars; the trust deeds of 1957 only repeat what D the deeds of 1950 had disclosed. Non-production of the documents executed in 1957 at the time of the original assessments cannot therefore be regarded as non-disclosure of any material fact necessary for the assessment of the respondent for the relevant assessment years. The High Court was right in holding that the Income Tax Officer had no valid reasons to believe that the respondent had omitted or failed to disclose fully and truly all material E facts and consequently had no jurisdiction to reopen the assessments for the four years in question. Having second thoughts on the same material does not warrant the intiation of a proceeding under sec. 147 of the Income Tax Act, 1961.

Mr. Manchanda, learned counsel for the appellant, took us through several sections of Mulla's Principles of Mohammedan Law including F sec. 268 and submitted that in the circumstances of the case it must be presumed that the three ladies were the legally wedded wives of the respondent. The law has not changed since the original assessments were made and it was open to the Income Tax Officer to make that presumption at the time. If he should have but did not do so then, he cannot avail of sec. 147 to correct that mistake. In any event, we are not called upon in this proceeding to record a finding on G the question whether in fact the ladies were respondent's legally wedded wives. We are concerned only with the question whether the condition precedent to the exercise of jurisdiction under sec. 147 exists in this case; we have found that it does not.

Mr. Manchanda also contended that the High Court exercising jurisdiction under Art. 226 of the Constitution had no power to in- H vestigate whether on the material before him the Income-Tax Officer was justified in proceeding under sec. 147 of the Income Tax Act, 1961. He relied, among others, on the following decisions in support

A of his contention: *S. Narayanappa and others* vs. *Commissioner of Income Tax, Bangalore*, (1) *Kantamani Venkata Narayana and Sons* vs. *First Additional Income Tax Officer, Rajahmundry*, (2) *Commissioner of Income Tax, Gujarat* vs. *A. Raman & Co.* (3) and of course, *Calcutta Discount Co. Ltd.* vs. *Income tax Officer, Companies District I. Calcutta*, (4)

B We do not think that these decisions help him. In this case, the decision of the High Court is not that the material before the Income Tax Officer was insufficient or that he had failed to draw the correct conclusion from the material before him but that no fresh material had come to light justifying reopening of the assessments. The authorities to which Mr. Manchanda referred point out that the expression "reason to believe" occurring in sec. 147 of the Income Tax Act, 1961 or the C corresponding sec. 34 of the Act of 1922 does not mean a purely subjective satisfaction on the part of the Income Tax Officer, the reasons for the belief must have a rational connection or a relevant bearing to the formation of the belief, and that the High Court under Art. 226 of the Constitution has power to set aside a notice under sec. 147 of the Act of 1961 or sec. 34 of the Act of 1922 if the condition precedent to the exercise of jurisdiction under these sections does not exist.

D In the result, these appeals fail and are dismissed with costs. One hearing fee.

An application for intervention in these appeals made by three persons claiming to be sons of the respondent was not ultimately pressed; no order is therefore called for on this application.

V.P.S. *Appeals dismissed.*

(1) 63 I.T.R. 219.
(2) 63 I.T.R. 638.
(3) 67 I.T.R. 11.
(4) 41 I.T.R. 191.