

INCOME TAX OFFICER & ORS.

v.

M/S. MADNANI ENGINEERING WORKS LTD.,
CALCUTTA

January 4, 1979

[P. N. BHAGWATI AND A. D. KOSHAL, JJ.]

Income Tax Act, 1961—S. 147(a)—Scope of—Income Tax Officer at first refused to give reasons for believing that income escaped assessment—In the second affidavit did not set out any material for the basis of his belief—Validity of.

In respect of the assessment year 1959-60 the assessee was allowed deduction of interest paid to creditors from whom it claimed to have borrowed moneys on hundis. In January, 1968 the Income Tax Officer issued a notice to the assessee under s. 147(a) of the Income-tax Act, 1961 on the ground that the transactions of loans represented by the hundis were bogus and no interest was paid by it to any of the creditors shown in the hundis, that it was wrongly allowed as a deduction and therefore a part of the assessee's income had escaped assessment by reason of its failure to disclose fully and truly all material facts necessary for the assessment.

In the assessee's writ petition before the High Court the Income Tax Officer at first declined to disclose the facts which had weighed with him in reaching the belief that income had escaped assessment on the ground that if they were disclosed it would cause great prejudice to the interests of revenue and would frustrate the object of reopening the assessment. Later however, realising that this stand was untenable he gave his reasons for issuing the notice.

A Single Judge of the High Court dismissed the assessee's writ petition. On appeal a Division Bench held that there was no failure on the part of the assessee to disclose fully and truly all material facts and that in any event the Income Tax Officer had no reason to believe that any part of the income had escaped assessment by reason of such failure on the assessee's part. Dismissing the appeal,

HELD :

There was no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment and the condition for the applicability of s. 147(a) was not satisfied. The notice in the circumstances was void. [910 A]

(1) In *CIT v. Burlop Dealers Ltd.*, 79 ITR 609 this Court held that there was no obligation on the part of the assessee to disclose that the documents produced by it were bogus and that the entries made in its books of account were false. The assessee discharged its obligation by disclosing its books of accounts and evidence from which material facts could be discovered and it is for the Income Tax Officer to decide whether the documents were genuine or false. [909 F]

A In the instant case the assessee could not be said to have failed to make a true and full disclosure of the material facts by not confessing before the Income Tax Officer that the hundis and the entries in the books of account produced before him were bogus. [909 G]

CIT v. Burlop Dealers Ltd. 79 ITR 609; applied.

B (2) All that the Income Tax Officer stated in his affidavit was that he discovered that the transactions of loan against security of hundis were not genuine and that the credits against the names of certain persons who were alleged to have advanced the loans were bogus. He merely stated his belief but did not set out any material on the basis of which he had arrived at such belief. [910 C]

C (3) The existence of reason to believe on the part of the Income Tax Officer is a justiciable issue and it is for the court to be satisfied whether in fact the Income Tax Officer had any material on the basis of which he could reasonably entertain such belief. [907 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 829 of 1975

D From the Judgment and Order dated 11-4-74 of the Calcutta High Court in Appeal from original Order dated 221/70.

S. C. Manchanda, and Miss A. Subhashini for the Appellant

V. S. Desai, Sanjay Bhattacharya and Rathin Dass for the Respondent.

E The Judgment of the Court was delivered by

BHAGWATI, J.—This appeal by certificate is directed against an order passed by a Division Bench of the High Court of Calcutta allowing an appeal against a decision of a Single Judge dismissing the writ petition of the respondent. The facts giving rise to the appeal

F may be briefly stated as follows :

G The respondent was assessed to income-tax for the assessment year 1959-60 and certain interest paid by the respondent to creditors from whom it claimed to have borrowed monies on hundis, was allowed as deductible expenditure. The assessment of the respondent was completed on 23rd August, 1960. On or about 25th January, 1968, however, a Notice was issued by the Income Tax Officer under Section 148 of the Income Tax Act, 1961 to re-open the assessment of the respondent for the assessment year 1959-60. The Notice was obviously under Section 147(a) since a period of four years had already elapsed from the close of the assessment year 1959-60 and no

H Notice could be issued under Section 147(b). The Income Tax Officer claimed that the transactions of loan represented by the hundis were bogus and no interest was paid by the respondent to any of the

creditors shown in the hundis and it was wrongly allowed as a deduction and hence a part of the income of the respondent had escaped assessment by reason of the failure of the respondent to disclose fully and truly all material facts necessary for its assessment. The respondent challenged the validity of the Notice issued by the Income Tax Officer by filing a writ petition in the Calcutta High Court. The respondent contended that there was no failure on its part to disclose fully and truly all material facts necessary for its assessment and that in any event the Income Tax Officer had no reason to believe that any part of the income of the respondent had escaped assessment by reason of such failure on the part of the respondent. The Income Tax Officer in the affidavit in reply filed by him on 5th December, 1968 declined to disclose the facts which had weighed with him in reaching the belief that the income of the respondent had escaped assessment by reason of its failure to disclose fully and truly all material facts, on the ground that if such facts were disclosed to the respondent, it would cause great prejudice to the interests of the Revenue and would frustrate the object of re-opening the assessment. This was obviously an untenable stand because the existence of reason to believe on the part of the Income Tax Officer was a justiceable issue and it was for the court to be satisfied whether in fact the Income Tax Officer had reason to believe that income had escaped assessment by reason of failure of the respondent to make a full and true disclosure. The Income Tax Officer realising this position filed a further affidavit on 27th January, 1970 stating as follows :

"In January 1968 I was the Income Tax Officer 'P' Ward, Hundi Circle, Calcutta. On or about the 25th January 1968 I issued a notice under Section 148 of the Income Tax Act, 1961 on the petitioner. My reasons for issuing such notice were these. In the course of assessment of the petitioner for assessment year 1963-64 it was discovered that various items shown as loans against the security of hundis in the petitioner's books of account for the previous year relevant to assessment year 1959-60 were in fact fictitious. Credits against the names of certain persons, as having advanced loans viz. Anarlal Moolchand, Girdharidas, Reghoomal, Murlidhar, Kanhaiyalal and Deudaram Basdeo in the petitioner's books were found not to be genuine. It appeared during assessment proceedings for 1963-64 that none of such loans were genuine. In the premises, it appeared to me that the petitioner had failed to disclose fully and truly all material facts necessary for its assessment, and a portion of the petitioner's income had escaped assessment by reason of such failure".

A The writ petition was heard by a Single Judge of the High Court and he took the view that the affidavit of the Income Tax Officer dated 27th January, 1970 clearly showed that he had reason to believe that income of the respondent had escaped assessment by reason of its failure to disclose fully and truly all material facts and he accordingly dismissed the writ petition. The respondent preferred an appeal and a Division Bench of the High Court disagreeing with the view taken by the Single Judge held that there was no failure on the part of the respondent to disclose fully and truly all material facts and in any event there was no material on the basis of which it could be said that the Income Tax Officer had reason to believe that any part of the income had escaped assessment by reason of such failure on the part of the respondent. The Division Bench accordingly allowed the writ petition and quashed and set aside the Notice for re-opening the assessment. The Income Tax Officer thereupon preferred the present appeal to this Court after obtaining a certificate from the High Court.

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D The present case is clearly covered by the decision of this Court in *Commissioner of Income Tax, Calcutta v. Burlop Dealers Ltd.*⁽¹⁾ There the assessee in the course of its original assessment to income-tax for the assessment year 1949-50 had produced a partnership agreement with one Ratiram Tansukhrai and claimed that the profits earned by it from H. Manory Ltd. had been divided between itself and Ratiram Tansukhrai under the partnership agreement and its one-half share of the profit, namely, Rs. 87,937/- was the only amount assessable to tax in respect of this source. The Income Tax Officer accepted the partnership agreement and assessed the assessee only on the profit of Rs. 87,937/-. It appears that while making assessment for the assessment year 1950-51 the Income Tax Officer found that the partnership agreement between the assessee and Ratiram Tansukhrai was a got up device to reduce the profit received from H. Manory Ltd. and the assessee was, therefore, liable to tax on the entire amount of profit coming from H. Manory Ltd. This view taken by the Income Tax Officer was confirmed on appeal by the Appellate Assistant Commissioner and the Income Tax Tribunal. The High Court also on a reference agreed with the view of the Tribunal. The Income Tax Officer thereupon issued a Notice under Section 34(1)(a) of the Income Tax Act to re-open the assessment of the assessee for the assessment year 1949-50 in order to bring to tax the further amount of Rs. 87,937/- being the half share of the profit from H. Manory Ltd. alleged to have been paid to Ratiram Tansukhrai under the partnership agreement. The assessee con-

(1) [1971] 79 I.T.R. 609

tended that it had produced all the relevant accounts and documents necessary for completing the assessment and it was under no obligation to inform the Income Tax Officer about the true nature of the transaction and there was accordingly no failure on its part to disclose fully and truly all material facts necessary for its assessment. This contention was negated by the Income Tax Officer and the income of the assessee was re-assessed by adding Rs. 87,937/- to the income returned by the assessee. The Appellate Assistant Commissioner confirmed the order of the Income Tax Officer on appeal, but on further appeal, the Tribunal accepted the contention of the assessee and held that there was no failure on the part of the assessee to make a full and true disclosure of the material facts and hence the Income Tax Officer was not justified in seeking to re-open the assessment under Section 34(1) (a) of the Income Tax Act. The Revenue applied to the Tribunal for a reference but the application was rejected and the High Court also dismissed the application of the Revenue for calling for a reference from the Tribunal. The Revenue thereupon preferred an appeal to this Court by special leave. The appeal was rejected by this Court on the ground that the assessee had disclosed all its books of account and evidence from which material facts could be discovered and it was under no obligation to inform the Income Tax Officer about the possible inferences which might be raised against him and hence there was no failure on its part to disclose the preliminary facts relevant to the assessment which would invite the applicability of Section 34(1) (a). It will thus be seen that according to this judgment, there was no obligation on the assessee to disclose that the partnership agreement produced by it was bogus and that the entries made by it in its books of accounts were false. The assessee discharged the obligation which lay upon it by disclosing its books of account and evidence from which material facts could be discovered and it was for the Income Tax Officer to decide whether the documents produced by the assessee were genuine or false. Here also the respondent produced all the hundis on the strength of which it had obtained loans from creditors as also entries in the books of account showing payment of interest and it was for the Income Tax Officer to investigate and determine whether these documents were genuine or not. The respondent could not be said to have failed to make a true and full disclosure of the material facts by not confessing before the Income Tax Officer that the hundis and the entries in the books of account produced by it were bogus. We do not see any distinction at all between *Burlop Dealers case* (supra) and the present one and the language of Section 147(a) being identical with that of Section 34(1) (a), the ratio of the decision in *Burlop Dealers case* (supra) must govern the decision of the present case. We

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A must, therefore, hold that there was no failure on the part of the respondent to disclose fully and truly all material facts necessary for its assessment and the condition for the applicability of Section 147(a) was not satisfied.

We may also point out that though it was contended in the Writ
B Petition that the Income Tax Officer could have no reason to believe that any part of the income of the respondent had escaped assessment by reason of its failure to make a full and true disclosure of material facts, the Income Tax Officer did not disclose in his affidavit any material on the basis of which it could be said that he had come to the requisite belief. All that the Income Tax Officer stated in his affidavit
C was that he discovered that the transactions of loan against security of hundis were not genuine and that the credits against the names of certain persons who were alleged to have advanced loans were bogus. The Income Tax Officer merely stated his belief but did not set out any material on the basis of which he had arrived at such belief so
D that the Court could decide for itself whether there was any material on the basis of which the Income Tax Officer could reasonably entertain such belief. We are, therefore, not at all satisfied on the affidavit that the Income Tax Officer had reason to believe that a part of the income of the respondent had escaped assessment by reason of its failure to make a true and full disclosure of the material facts.
E The Notice under Section 147(a) of the Income Tax Act for re-opening the assessment must in the circumstances be held to be void.

We accordingly dismiss the appeal with costs.

P.B.R.

Appeal dismissed.