INCOME-TAX REFERENCE

Before O. Chinnappa Reddy and K. S. Tiwana, JJ.

COMMISSIONER OF INCOME-TAX,—*Applicant.*

versus

M/S. YASH PAL MEHRA & CO., AMRITSAR-Respondent.

Income Tax Reference No. 56, 56-A of 1975.

December 15, 1976.

Income Tax Act (XLIII of 1961)—Section 147(b)—Income-tax Officer allowing a deduction not warranted by law—Assessment re-opened on receipt of report from the Internal Audit Party of Income-tax department—Such report—Whether constitutes 'information'.

Held, that in order to constitute 'information' within the meaning of section 147(b) of the Income Tax Act, 1961, the knowledge need not be acquired from an external source only, but it may well be acquired by the Income Tax Officer himself on further research and discovery of facts or law which had previously passed unnoticed. Thus, it may be 'self-generated'. This knowledge he may also acquire from his attention being drawn to it by some other agency. Whatever be the source of knowledge, what is essential is that it must be something of which the Income Tax Officer was not truly conscious previsouly. Thus, where he is not conscious of the true position in law or the true facts in existence, he may re-open the assessment on acquiring knowledge of the same. The report of the audit party can, therefore, be considered to be 'information' within the meaning of section 147 (b) of the Act.

(Para 5)

Reference made under section 256(1) of the Income-tax Act, 1961 by the Income-tax Appellate Tribunal, Amritsar Bench, for opinion of this Hon'ble Court referred the following question of law arising out of I.T.A. Nos. 464 and 465 (ASR) of 1973-74. Assessment years 1968-69 & 1969-70.

> *"Whether on the facts and in the circumstances of the case, the proceedings under section 147(b) of the Income-tax Act, 1961; are legal and valid ?*

D. N. Awasthy, Advocate, with B. K. Jhingan, Advocate, *for the Petitioner.*

M/s. Bhagirath Dass & Co., Advocates, *for the Respondents.*

JUDGMENT

O. Chinnappa Reddy, J.

(1) The assessments of M/s. Yash Pal Mehra and Co., Amritsar, for the Assessment Years 1968-69 and 1969-70 were completed by the Income-tax Officer on 18th July, 1970. In the profit and loss accounts filed along with the returns, the assessee claimed 'Langer' expenses (expenses incurred in connection with food supplied to customers) of Rs. 12,868 and Rs. 10,497 for the years 1968-69 and 1969-70, respectively. The expenses claimed by the assessee were allowed by the Income-tax Officer without any question. Subsequently, the Internal Audit Party of the Income-tax Department pointed out by its note, dated 25th September, 1971, that entertainment expenses had wrongly been allowed in excess of Rs. 5,000 contrary to the provisions of section 37(2) of the Income-tax Act, 1961. On the basis of the Audit Party's note, the Income-tax Officer reopened the assessments under section 147(b) of the Income-tax Act and re-assessed the assessee by including an additional sum of Rs. 7,868 for the assessment year 1968-69 and an additional sum of Rs. 5,497 for the assessment year 1969-70. The Appellate Assistant Commissioner, however, cancelled both the re-assessments on the ground that there was not before the Income-tax Officer 'information' within the meaning of section 147(b) of the Act. According to the Appellate Assistant Commissioner, the view expressed by the Internal Audit Party of the Income-tax Department that the limit of Rs. 5,000 prescribed by section 37 had been exceeded, was not such information. The orders of the Appellate Assistant Commissioner were confirmed by the Income-tax Appellate Tribunal, Amritsar Branch. The Appellate Tribunal reiterated the view expressed by the Appellate Assistant Commissioner that the report of the Internal Audit Party did not constitute 'information' within the meaning of section 147(b). In arriving at that conclusion, the Appellate Tribunal followed the decision of Gujarat High Court in *Kasturbhai Lalbhai* v. *R. K. Malhotra*, 80 ILR 188, in preference to the decisions in *Commissioner of Income-tax* v. *H. H. Smt. Chand Kanwarji* (1), *Mathukrishna Reddiar* v. *Commissioner of Income-tax, Kerala* (2) and *Vashist Bhargava* v. *Income-tax Officer* (3).

(1) 84 I.T.R. 584.
(2) 90 I.T.R. 503.
(3) 99 I.T.R. 148.

(2) At the instance of the Revenue, the following question has been referred to us for our opinion:—

> "Whether on the facts and in the circumstances of the case, the proceedings under section 147(b) of the Income-tax Act, 1961, are legal and valid?".

(3) In *Anandji Hari Das and Co. (P) Ltd.* v *S. P. Kushare* (4), the Supreme Court held that the term 'information' meant Knowledge, that 'to inform' meant 'to impart knowledge' and that mere availability of a detail to the Income-tax Officer did not make it 'information'. It became transmuted into 'information' only if and when its existence was realised and its implications recognised. They quoted with approval the following observations of a Division Bench of the Madras High Court in *Salem Provident Fund Society Ltd.* v. *Commissioner of Income-tax*, (5):—

> "We are unable to accept the extreme proposition, that nothing that can be found in the record of the assessment, which itself would show escape of assessment or under-assessment, can be viewed as information which led to the belief that there has been escape from assessment or under-assessment. Suppose a mistake in the original order of assessment is not discovered by the Income-tax Officer himself on further scrutiny, but it is brought to his notice by another assessee or even by a subordinate or a superior officer, that would appear to be information disclosed to the Income-tax Officer. If the mistake itself is not extraneous to the record and the informant gathered the information from the record, the immediate source of information to the Income-tax Officer in such circumstances is in one sense extraneous to the record. It is difficult to accept the position that while what is seen by another in the record is 'information' what is seen by the Income-tax Officer himself is not information to him. In the latter case he just informs himself. It will be information in his possession within the meaning of section 34. In such cases of obvious mistakes apparent on the face of the record of

(4) 21 S.T.C. 326.
(5) 42 I.T.R. 547.

assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment or under-assessment".

(4) In *Commissioner of Income-tax* v. *A. Raman and Co.*, (6), Shah J., observed:—

"The expression 'information' in the context in which it occurs in section 147(b) of the Income-tax Act. 1961, must, in our judgment, mean instruction or knowledge derived from an external source concerning facts or particulars or as to law relating to a matter bearing on the assessment .....".

These observations were relied upon by the learned counsel for the assessee to argue that 'information' must be from an external source and that the view of the Internal Audit Party could not be said to be 'information' from an external source. We do not agree with the submission. In that very decision, the learned Judges observed:—

" ..... 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."

The matter has been settled beyond doubt by a recent decision of the Supreme Court in *Kalyanji Mavji & Co.* v. *Commissioner of Income-tax* (7), where on a review of the earlier decisions of the Court, the learned Judge laid down the following tests to determine the applicability of section 34(1)(b) of the Income-tax Act, 1922 [which corresponded to section 147(b) of the Income-tax Act, 1961]:—

"(1) Where the information is as to the true and correct state of the law derived from relevant judicial decisions;

(2) Where in the original assessment the income liable to tax has escaped assesment due to oversight, inadvertence or a

(6) 67 I.T.R. 11.

(7) 102 I.T.R. 287.

mistake committed by the Income-tax Officer. This is obviously based on the principle that the tax payer would not be allowed to take advantage of an oversight or mistake committed by the taxing authority ;

(3) where the information is derived from an external source of any kind. Such external source would include discovery of new and important matters or knowledge of fresh facts which were not present at the time of the original assessment ;

(4) where the information may be obtained even from the record of the original 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."

(5) It is clear from the decisions noticed above, that in order to constitute 'information' within the meaning of section 147(b) of the Income-tax Act, 1961, the knowledge need not be acquired from an external source only, but it may well be acquired by the Income-tax Officer himself on further research and discovery of facts or law which had previously passed unnoticed. Thus, it may be 'self-generated.' This knowledge he may also acquire from his attention being drawn to it by some other agency. Whatever be the source of knowledge, what is essential is that it must be something of which the Income-tax Officer was not truly conscious previously. Thus, where he is not conscious of the true position in law or the true facts in existence, he may, re-open the assessment on acquiring knowledge of the same.

(6) The very question whether the report of the Audit Party could be considered to be 'information' within the meaning of section 147(b), was considered in *Commissioner of Income-tax* v. *H. H. Smt. Chand Kanwarji*, (1) (supra), *Muthukrishna Reddiar* v. *Commissioner of Income-tax, Kerala* (2) (supra) and *Vashist Bhargava* v. *Income-tax Officer* (3) (supra) and it was held that it did.

(7) The sheet-anchor of the argument of Shri Bhagirath Dass was the decision of the Gujarat High Court in *Kasturbhai Lalbhai* v. *R. K. Malhotra* (8). Bhagwati, C. J. and Mehta, J., expressed the

(8) 80 I.T.R. 188.

view that instruction or knowledge as to the correct state of the Law must be derived from a person, body or authority competent and authorised to declare the correct state of the law or to pronounce upon it and that the Audit Party was not such a body or authority. We respectfully agree, if the learned Judges meant to say, for example, that the opinion expressed by the Audit Department or the view of an eminent lawyer as to the interpretation of a statutory provision could not constitute 'information' within the meaning of section 147(b). On the other hand, if the learned Judges meant to lay down that derivation of knowledge of statutory provisions which was not previously noticed, from whatever source, a clerk in the office, a superior officer, the Audit Department or a lawyer arguing some other case, etc., would not constitute 'information' we respectfully disagree. As we said earlier, if the Income-tax Officer discovered the statutory provisions by his own efforts, it would be information (*See Kulbushan* v. *Controller of Estate Duty*) (9), following *Commissioner of Income-tax* v. *A. Raman and Co.* (6) (supra). We do not see why it would not be 'information' if someone drew the attention of the Income-tax Officer to it.

(8) Relying upon the decisions of the Supreme Court in *Commissioner of Income-tax* v. *Dinesh Chandra* (10) and *Bankipur Club. Ltd.* v. *Commissioner of Income-tax* (11), Shri Bhagirath Dass, argued that there was, but a mere change of opinion on the part of the Income-tax Officer and, therefore, there was no valid ground for reopening the assessment under section 147(b). He urged that 'Langer' expenses had been allowed at the time of original assessment as business expenditure and that the Income-tax Officer had latter changed, his opinion and treated 'Langer' expenses as entertainment expenses which fell within section 37 of the Act. We do not agree with the submission of Shri Bhagirath Dass. The assessment orders of the Income-tax Officer show that the Income-tax Officer never applied his mind to the question and was blissfully unaware of the limit of Rs. 5,000 prescribed by section 37(2) in regard to "Expenditure in the nature of entertainment expenditure".

(9) For the foregoing reasons, we answer the question referred to us in the affirmative.

K.T.S.

(9) 88 I.T.R. 65.
(10) 82 I.T.R. 367.
(11) 82 I.T.R. 831.