



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1306 OF 1989

M/s. Indian Express Newspapers (Bombay) Pvt. Ltd.
and anr. ..Petitioners.

Vs.

Union of India and
..Respondents.

Mr.D.D.Madon, Sr.Counsel with Ms. Poorvi Kamani & Mr.
Vinayak Shete for the Petitioners.

Mr.P.S.Sahadevan for the Respondent.

**CORAM : F.I. REBELLO & R.S. MOHITE, JJ.
DATED : 8TH JANUARY,2008.**

PC : (Per R.S. Mohite, J.)

1. This petition impugns eight notices all dated 30.3.1989 issued by the Dy. Commissioner of Income Tax and received by the petitioner on 3.4.1989. By the impugned notices the revenue seeks to reopen the petitioner's assessment for the years 1974 to 1981. Though the notices mentioned that there is reason to believe that the petitioners income chargeable to tax for each of the aforesaid years had escaped assessment, the reasons for such belief were not mentioned in the notices. The principal ground on which this petition has been pressed that there was no sufficient reason to believe that any income had escaped assessment. It has been contended that the notices were issued for malafide and extraneous reasons as set out in the petition.

2. It appears that after the petition was filed an affidavit in reply to oppose the admission of the petition came to be filed in June, 1989. In this reply, for the first time the reasons for seeking the reopening of assessments were set out.

3. In Paragraph-2 of the reply, it appears to be the contention of the revenue that subsequent to the finalization of the assessment of the petitioner for the Assessment Year 1980-81, it was found that one Premraj Hazarimal was paid interest. When questioned about this, the petitioners had initially denied having any transaction with the party. However, when the evidence pertaining to loans was pointed out to the petitioners and more particularly, they were confronted with the evidence of deduction of tax at source, the petitioners had nothing to say. That further in the course of search and seizure operation at the premises of the Calcutta party, they had stated on oath that certain loans alleged to have been paid by the petitioners were not genuine and the entries relating thereto were hawala entries. Reliance was placed on the copy of the deposition of such person by name J.K. Banthia.

4. It appears from the record that when this matter came up for hearing on an earlier occasion a Division Bench of this court passed an order stating that no reasons had been disclosed in the notices. The Court

directed that the respondent should produce before the court the reasons for reopening the assessment. When this order was passed, the affidavit in reply was before this court and therefore, we can presume that the court did not find the reasons given in the affidavit in reply to be sufficient for the purpose of reopening the assessments. The Advocate appearing for the revenue states that after the passing of this order dated 26.3.2007 no further material has been produce before this court in compliance of the aforesaid order.

5. We are informed by the Advocates that the case of the revenue rests on the deposition of J.K. Banthia who has since expired. It has been brought to our notice that Mr. J.K. Banthia has retracted his statement. In fact the affidavit of Mr. J.K. Banthia sworn before a Notary, retracting his deposition is placed on record as Annexure-G to the petition. As the revenue has failed to comply with the order dated 26.3.2007 directing them to produce the reasons with regard to the notices for reopening the assessment, it can be presumed that the reasons which were already provided were earlier found to be insufficient by the earlier bench. Even independently assessing the reasons as contained in the affidavit in reply filed at the stage of admission we find that the case of the revenue is based upon the statement of Mr. J.K. Banthia who expired after retracting the statement. The documentary evidence

indicates the existence of the loan and the payment of interest after deduction of TDS. As against this documentary evidence, the revenue has relied upon the statement of Mr. J.K. Banthia to the effect that these were only hawala entries. Mr. Banthia having expired no purpose will be served in proceeding further. In our view, there is no sufficient reason for reopening the assessment. Rule is therefore made absolute in terms of prayer clause (a).

(R.S. MOHITE, J.)

(F.I. REBELLO, J.)