

**Nand Kishore Jhajharia Vs. Income-tax Officer and anr.**

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**Court :** Kolkata

**Decided On :** Apr-02-1971

**Reported in :** [1973]89ITR229(Cal)

**Judge :** K.L. Roy, J.

**Acts :** [Income Tax Act, 1961](#) - Section 148

**Appeal No. :** Matter No. 249 of 1965

**Appellant :** Nand Kishore Jhajharia

**Respondent :** income-tax Officer and anr.

**Advocate for Def. :** B.K. Bachawat and ;Ajit Sengupta, Advs.

**Advocate for Pet/Ap. :** D. Pal and ;A. Chowdhury, Adv.

**Judgement :**

K.L. Roy, J.

1. By this application under Article 226 of the Constitution the petitioner, Nand Kishore Jhajharia, challenges the validity of certain reassessment proceedings for the assessment years 1946-47 to 1950-51 initiated by five several notices purported to be under Section 148 of the Income-tax Act, 1961. The original assessments for these years had been completed under Section 23 or under Sections 34/23 of the Indian Income-tax Act, 1922, before September, 1955, It also appears that for the assessment year 1949-50 a total income of Rs. 5,93,905 was determined under Section 23(3). Thereafter, the petitioner filed a petition of disclosure and a settlement in writing was arrived at between the petitioner and the Commissioner of Income-tax, West Bengal, on 20th September, 1955, wherein, inter alia, the petitioner agreed to the determination of his total undisclosed income including the undisclosed income of his wife at Rs. 6,87,527. Out of this Rs. 2,00,502 was agreed to be spread over a period of six years, from the assessment year 1939-40 to the year 1944-45 and the balance of Rs. 4,87,025, to be distributed equally over a period of five years from 1945-46 to 1949-50. It was further agreed that the total income including the disclosed income and the total demand including the excess profits tax due for each of the years 1945-46 to 1949-50 would be as follows :

Total income I. T. Total demand E. P. T. Rs. Rs. Rs.

1945-46	1,22,845	28,700	6-051,442	11-01	1946-47	2,23,731	146,815	3-01,22	961-5-01	1947-
481,43,78	661,670	1-026,203	5-01	1948-49	1,20,842	263,419	15-0			1949-

503,02,28770,394-11-0

Rs. 2,71,099-4-0 (?)

Rs. 2,01,907-5-0 (?)

2. There were also other terms regarding penalty, mode of payment of the tax provision for security, etc. In accordance with the aforesaid agreement reassessments for the years 1945-46 to 1949-50 were made under Section 34 of the old Act. On the 27th March, 1956, the assessment for the year 1951-52 was made under Section 23(3) on a total income of Rs. 90,139. This assessment was set aside on appeal by the Appellate Assistant Commissioner on the 29th May, 1959, who directed a fresh assessment. On the 29th March, 1967, the respondent, Income-tax Officer, made a fresh assessment for the year 1951-52 on a total income of Rs. 18,08,294, including therein (i) remittance from Pakistan of Rs. 4,58,155, (ii) deposits in Netherlands Trading Society amounting to Rs. 8,26,250 and (iii) Rs. 5,33,750, received by T. T. from Pondicherry. But the aforesaid assessment was again set aside by the Commissioner of Income-tax under Section 33A(2) on the 10th March, 1969, who directed the Income-tax Officer to make a fresh assessment for that year. By a letter dated the 1st July, 1970, the respondent. Income-tax Officer, asked the petitioner to explain the following deposits in the Netherlands Trading Society :

Rs.

12-7-19505,17,50014-7-19502,58,75019-7-19507,76,250

and also the remittance from Pakistan during the accounting year of Rs. 3,14,403 and receipt of Rs. 5,33,750, by T. T. from Pondicherry on the 22nd March, 1951, and the petitioner was further required to show cause why these amounts should not be assessed in the year 1951-52 as his income. In the meantime, on the 23rd March, 1963, five several notices purported to be under Section 148 of the Income-tax Act, 1961, in respect of the assessment years 1946-47 to 1950-51, were served on the petitioner, requiring him to file his returns for these years as his income had escaped assessment. The petitioner filed five several returns under protest in response to the said notices on the 25th April, 1963. Thereafter, repeated demands by the petitioner to the respondent, Income-tax Officer, for disclosing the reasons for his belief that the petitioner's income for these years had escaped assessment went unheeded and finally a rule was obtained from this court on the 10th May, 1963. The application and the rule were heard on the 3rd July, 1964, and on the counsel for the respondent agreeing to supply the substance of the reasons for the Income-tax Officer's belief that the petitioner's income had escaped assessment within a certain time, the hearing was adjourned., On the 17th July, 1964, the respondent forwarded a statement containing the said substance of the reasons. The petitioner's request to the respondent to clarify certain items of the said statement was rejected. On the 12th July, 1965, the application Under Article 226 of the Constitution was dismissed. An appeal was preferred from the order of dismissal. By an order of the court of appeal dated the 1st July, 1966, the appeal was allowed, a rule was issued in terms of the prayers of the petition and the trial court was directed to hear the rule. As the affidavit-in-opposition originally filed was found to be unsatisfactory, a further affidavit was affirmed by the respondent, Income-tax Officer, pursuant to a direction by this court on the 5th March, 1969, to be used in opposition to the petition. In this affidavit the substance of the reasons supplied to the petitioner was further explained

and a copy of the proposal for reopening the assessment of the petitioner for the years 1946-47 to 1950-51 under Section 147(a) was annexed. The reasons given for reopening the assessment were shortly as follows :

(1) The Income-tax Officer came to learn that the petitioner had a fixed deposit account with the National Bank of India Ltd. in which the following deposits had been made :

Date Amount Relevant assessment year Rs.

7-1-1950 3,00,000 1950-51 24-1-1950 50,000 1950-51 25-2-1950 50,000 1950-51

Though given an opportunity, the petitioner was unable to explain the nature of these deposits.

(2) The balance-sheet of the petitioner shows certain consistent credit accounts since the accounting year 1948-49 corresponding to the assessment year 1950-51 as follows :

Rs.

Rakhal Chandra Shah 25,000  
Paresh Lal Pal 20,000  
Ram Mohan Abani Mohan Saha 95,000  
Smt. Mamin Devi 35,450

Though these deposits also appear in the subsequent years, no withdrawals were shown and no interest was credited in this account. Here again, no satisfactory explanation was forthcoming as to the nature of these credits.

(3) The petitioner's account with the Netherlands Trading Society shows the following deposits :

Date Amount Relevant assessment year Rs.

10-1-1950 7,00,000 1950-51 12-7-1950 5,07,500 1951-52 14-7-1950 2,58,750 1951-52

It appears that these deposits represent not only credits relevant for the assessment years 1950-51 and 1951-52 but also the accumulated concealed income of earlier years, i.e., from 1946-47.

(4) A valuable house property at No. 12, Sunney Park, Ballygunge, was purchased in the name of Smt. Sabitri Devi, the wife of the petitioner, in April, 1951, for Rs. 4,50,000. The 'explanation offered was that the purchase price was paid out of a loan of Rs. 3,00,000 from the National Insurance Corporation Ltd., taken on mortgage of the house property and a loan of Rs. 1,25,000 from the petitioner and the balance was made up by the wife from her own funds. Enquiries reveal the fact that an account in the name of one Gangadhar was opened in the Netherlands Trading Society in March, 1951, and Rs. 5,33,750 was received by T.T. in the name of Gangadhar from the French Bank, Pondicherry, and was deposited in the aforesaid account on the 22nd March, 1951. This amount was in fact withdrawn on the very same date and the cash book of the petitioner showed that on the 22nd March, 1951, a sum of Rs. 5,33,750 was received by T.T. from Pondicherry in the name of Gangadhar and the petitioner's Chittagong account was credited. Out of this sum an amount of Rs. 5,00,000 was

deposited in cash in the petitioner's account in the Netherlands Trading Society on the same date and the house property was purchased only one month after these transactions. The petitioner was unable to explain the nature of the amount transferred from Pondicherry in the name of Gangadhar.

3. It is further contended that none of these amounts appear to have been considered in the petitioner's assessment for the relevant assessment years and considering the magnitude of the amounts in the background of the petitioner's assets and/or disclosed income for the various years the presumption is inevitable that these amounts and deposits represent the accumulated profit of the petitioner for at least five previous years.

4. It is not quite correct to say that the aforesaid amounts were not considered for the assessment of the petitioner in any year. As I have already pointed out, attempts were made to include these amounts in the assessment of the petitioner for the assessment year 1951-52 which was ultimately set aside by the Commissioner of Income-tax under Section 23A with a direction to the respondent. Income-tax Officer, to write to the petitioner asking him to explain the three deposits of Rs. 5,70,500, Rs. 2,58,750 and Rs. 7,76,250 in the Netherlands Trading Society in July, 1950, as also the remittance from Pakistan of an amount of Rs. 3,14,403 and a further remittance of Rs. 5,33,750 from Pondicherry and requiring him to show cause why these amounts should not be assessed as his income for the year 1951-52. It is, therefore, clear that all these amounts were considered for the assessment of the petitioner for the assessment year 1951-52.

5. There is no substance in the contention of Mr. Roy Choudhury, for the petitioner, that under Section 147(a) the assessment for several years could not be reopened as a failure to disclose must be in respect of a particular year and the income must escape assessment for that year. In *Kantamani Venkata Narayana & Sons. v. First Addl. Income-tax Officer*, : [1967]63ITR638(SC) twelve years' assessments were reopened under Section 34 of the old Act and this was sustained by the Supreme Court while in the case of *Sowdagar Ahmed Khan v. Income-tax Officer*, : [1968]70ITR79(SC) six years' assessments were validly re-opened. There is no substance in the contention of Mr. Roy Choudhury that the several years assessments should not be re-opened on the ground that certain amounts found credited in a particular year are suspected to be the accumulated profits of these several years. Dr. Pal, also appearing for the petitioner, pointed out that the four credits appearing in Clause (c) of the proposal have been appearing in the assessee's books from year to year and are still being shown in his balance-sheet. These credits had been considered for the assessment of each year and it could not be said that they represent concealed income. Further, the deposits in the Netherlands Trading Society all related to the assessment year 1951-52 and have been considered in the assessment for that year. Similarly, the remittance from Pakistan and the amount received by T.T. from Pondicherry have both been considered in the assessment for the year 1951-52. None of these amounts could be said to have escaped assessment in any of the years 1946-47 to 1950-51.

6. Mr. Bachawat for the department contended that the huge amount of deposits in the later year gave the Income-tax Officer bona fide grounds for belief that these amounts represented the accumulated concealed income of the earlier year and he had the jurisdiction to re-open the assessment for these years, Mr. Bachawat pointed out that by several notices, all dated the 22nd October, 1965, the respondent. Income-

tax Officer, gave notice to the petitioner requiring him to explain the various deposits in the petitioner's books as well as in his banking account in respect of the assessment years 1948-49, 1949-50 and 1950-51, but no explanation was forthcoming. In his affidavit-in-opposition the Income-tax Officer has stated that in view of the magnitude of the amounts in deposit taken in the bank account of the assessee and/or disclosed income of the earlier years as well as the disclosed assets of the petitioner, the amounts must be taken to represent the accumulated profits of at least five previous years. The learned counsel submits that this would bring the present case within the ratio of Kantamani Venkata Narayana's case. It is submitted that the various deposits in the different banks mentioned in paragraphs 4, 5 and 6 of the affidavit-in-opposition would amount to about Rs. 17,00,000. So, it was not unreasonable for the Income-tax Officer to believe that this accumulation represented the assessee's undisclosed income for five or more years. In Kantamani's case the Supreme Court observed as follows :

From the affidavit of the Income-tax Officer it clearly appears that there had been considerable increase since 1938 in the investments in the money-lending transactions of the assessee and in the wealth of the assessee. The Income-tax Officer was not seeking to reassess the income on a mere change of opinion. The increase in the wealth discovered was wholly disproportionate to the known sources of income of the assessee. That was, prima facie, evidence on which he had reason to believe that the assessee had omitted to disclose fully and truly all material facts and that in consequence of such non-disclosure income had escaped assessment. '

7. In that case also there was no explanation and no proof as to the source of the increase in the wealth of the assessee during the years. The court further observed that: 'The Income-tax Officer had, therefore, prima facie, reasons to believe that information material to the assessment had been withheld, and that on account of withholding of that information income liable to tax had escaped assessment. From the mere production of the books of account it cannot be inferred that there had been full disclosure of the material facts necessary for the purpose of assessment.'

8. More or less similar observation was made in Sowdagar Ahmed's case.

9. Dr. Pal tried to distinguish Kantamani's case on the ground that there the Income-tax Officer had found a disproportionate rise in the total wealth of the assessee after the lapse of several years which could not be explained by the disclosed or assessed income for these years. But, in the present case also the very large amounts deposited in the various bank accounts of the assessee and/or received by transfer from Pakistan or Pondichery could not be co-ordinated with the previous disclosed or the assessed income of the assessee and Mr. Bachawat is certainly justified in asserting that the total deposits amounting to over Rs. 17,00,000 in one year could certainly raise a reasonable presumption that this amount represented the accumulated concealed profits of several earlier years. Though several opportunities were given to the assessee to explain the source and the nature of these deposits and receipts no explanation was forthcoming and in my opinion the ratio of the aforesaid two decisions of the Supreme Court would be applicable and the Income-tax Officer would be justified in his belief that these amounts represent the concealed income of the assessee of several past years. The department's case is strengthened by the fact that the petitioner had already made a disclosure petition disclosing certain concealed income of previous years but such disclosure could in no way account for the huge deposits and transfers received during the years 1950-51 and 1951-52. While

undoubtedly the amounts received and/or shown as received in the accounting year corresponding to the assessment year 1951-52 would be primarily assessable in that year, if the department wants to assess any of the amounts aforesaid in any other assessment year it would be for the department to establish satisfactorily that such amounts constitute the income of the petitioner for that particular year. At this stage it cannot be said that the respondent, Income-tax Officer, was not justified in issuing the impugned notices under Section 148. In the above view, the application is dismissed. The rule is discharged. There would be no order as to costs.

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