

PETITIONER:  
INCOME TAX OFFICER, CUTTACK AND ORS.

Vs.

RESPONDENT:  
BIJU PATNAIK

DATE OF JUDGMENT 07/12/1990

BENCH:  
RAMASWAMY, K.  
BENCH:  
RAMASWAMY, K.  
KULDIP SINGH (J)

CITATION:  
1991 AIR 464                      1990 SCR Supl. (3) 488  
1991 SCC Supl. (1) 161 JT 1990 (4) 731  
1990 SCALE (2)1248

ACT:  
Income Tax Act, 1961: Sections 147 & 148--Condition  
Precedent for exercise of jurisdiction by I.T.O.

HEADNOTE:

The respondent-assessee was assessed to income tax for the assessment year 1957-58 ending with financial year March 31, 1957. Subsequently, it came to the notice of the Income Tax Officer that the assessee had not shown in his return a sum of Rs.15 lakhs which he had earned as capital gains by the sale of his mining business. According to the assessee, the transfer of the business had been made on 31.3.1956 and as such the capital gain was not leviable to taxation since capital gain was not subjected to taxation in the assessment year 1956-57. But from the information available with the Income Tax Officer it appeared that the transfer of business took place on 3.11.1956.

On the basis of this information the Income Tax Officer, with the approval of the Commissioner of Income Tax, issued notice to reopen the assessment in question under sections 147 (a) and 148 of the Income Tax Act, 1961.

The assessee challenged the notice by way of writ petition under Article 226 of the Constitution which was dismissed by the learned Single Judge. On appeal, the Division Bench, while upholding the exercise of the power under section 147 (a) of the Act, held that the income derived by the respondent was towards sale of goodwill and, therefore, the income was not liable to capital gains tax.

On behalf of the assessee it was contended before this Court that (i) the sum received by him was consideration for the transfer of the goodwill of the business as an ongoing concern; (ii) the Income Tax Officer had no reason to believe that the income had escaped assessment for that year; and (iii) the satisfaction arrived at by the Income-Tax Officer under section 147(a) did not exist on the facts of the case, and the Income-Tax Officer merely communicated the notice without complying with the provisions of section 147(a) read with section 148 of the Act.

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Allowing the appeal, setting aside the judgment of the Division Bench and restoring that of the Single Judge, this

Court,

HELD: (1) Section 147 (a) of the Income Tax Act postulates two conditions, namely, that the Income-Tax Officer must, on the basis of material facts on record, prima facie, be satisfied that the income of the assessee is exigible to tax for that relevant assessment year and that he had reason to believe that it had escaped assessment. Further, he must have reason to believe that the escapement of income was on account of the omission or failure of the part of the assessee to fully and truly disclose all the material facts necessary for the assessment. Both the conditions are conditions precedent to the exercise of the jurisdiction under section 147 (a) read with section 148. [492B-C]

Calcutta Discount Co. Ltd. v. I.T.O., [1961] 41 I.T.R. 191 (SC), referred to.

(2) It is true that the notice does not prima facie disclose the satisfaction of the two conditions precedent enjoined under section 147 (a), but in the counter affidavit filed by the Income-Tax Officer in the High Court, he has stated all the material facts. It is settled law that in an administrative actum, though the order does not ex facie disclose the satisfaction by the Officer of the necessary facts, but if the record discloses the same, the notice or the order does not per se become illegal. [492G-493B]

(3) The Division Bench has committed illegality in coming to the conclusion that the sum of Rs.15,00,000 was received towards consideration for sale of goodwill of the on-going business. It is premature on the facts and circumstances in this case to reach such a decision. Whether assets and goodwill together were transferred or the goodwill alone was transferred as on-going concern of the mining business is a matter yet to be gone into by the Income-Tax Officer. [493E-G]

JUDGMENT: