

Smt. Comilla Mohan Vs. Asstt. Controller of Estate Duty and anr.

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Court : Allahabad

Decided On : Aug-28-1978

Reported in : (1979)8CTR(All)196

Appeal No. : C.M.W. No. 4403 of 1974

Appellant : Smt. Comilla Mohan

Respondent : Asstt. Controller of Estate Duty and anr.

Judgement :

1. JUDGMENT : K. C. Agrawal, J. - This is a petition under Article 226 of the Constitution for quashing the notices dated 31st March, 1976 and 6th September, 1976 issued by the Income-tax Officer A Ward, Varanasi and for a writ of mandamus directing the respondents from taking any proceeding in pursuance of the notices mentioned above. These notices had been issued u/s 148 of the Income-tax Act, 1961 (hereinafter referred to as "The Act").

2. The facts of the case lie within a narrow compass. Messrs. Renusagar Power Company Limited, the petitioner is a subsidiary company of Messrs. Hindustan Aluminium Corporation Limited, Renukoot, Mirzapur. The petitioner company is engaged in the business of generation and supply of power. For the assessment year 1972-73, the corresponding financial year of which is from 1st January, 1971 to 31st December, 1971, the petitioner filed its returns of income. By an order of assessment dated March 22, 1975 the Income-tax Officer assessed the petitioner

company and substantially accepted the returns filed by it. On an application made by the petitioner on May 24, 1975, u/s 154 of the Act, the Income-tax Officer rectified the mistake alleged to have crept in the assessment order dated 22nd March, 1975.

3. On March 31, 1976, the Income-tax Officer A Ward, Circle I, Varanasi issued a notice u/s 148 of the Act in respect of the assessment year 1972-73 and others on the allegations that certain incomes chargeable to income-tax had escaped assessment within the meaning of s. 147 of the Act. The Income-tax Officer proposed to re-assess the income of the aforesaid assessment years. By the said notice the petitioner-Company was required to file return within 30 days from the date of the service of the same. It may be noticed that this notice sent u/s 148 of the Act did not specify whether the same was under cl. (a) or (b) of s. 147 of the Act. In response to the said notice the petitioner sent a reply on April 21, 1976 stating that there was no material in possession of the Income-tax Officer on the basis of which action could be taken against the petitioner-company for reassessment. Through this reply the petitioner-company also called upon the Income-tax Officer to intimate the provision of the Income-tax Act under which the proceedings for re-assessment were intended to be taken. Thereafter, similar notices in respect of the assessment years 1968-69 and 1971-72 had been sent by the Income-tax Officer to the petitioner.

Instead of submitting a fresh return the petitioner-company preferred the present writ petition challenging the validity of the notice as well as of the proceedings for re-assessment started against the petitioner on the grounds disclosed in the writ petition. The writ petition was admitted on 12-10-1976. The High Court although admitted the writ petition on 12-10-1976 but directed the petitioner-company through the order passed on the aforesaid date to file return before the Income-tax Officer concerned within the time granted by the notice issued u/s 148 of the Act.

4. A counter-affidavit was filed by Shri K. K. Rai, Income-tax Officer A Ward Circle I, Varanasi refuting the allegation made by the petitioner in the writ petition. The counter-affidavit disclosed that by the order dated 22nd March, 1975 the Income-tax Officer, after relying implicitly upon the information given to him by the

authorised representative of the petitioner-company, had granted the following concessions :-

Business loss Nil Unabsorbed depreciation

Rs. 4,87,50,782/-

Development rebate

Rs. 2,36,03,035/-

Tax holiday benefit

Rs. 39,96,588/-

The counter-affidavit states that as the Income-tax Officer did not doubt the correctness of the adjustments made by the petitioner-company, he allowed the same without questioning the correctness of the facts and figures contained in the statements submitted before him on behalf of the petitioner-company. While disclosing the reasons which led him to believe that the income had escaped assessment due to the failure of the petitioner-company to disclose truly and fully the particulars of the income-chargeable to tax, the Income-tax Officer stated. -

"The deponent did have the required reason to believe for reopening the assessment u/s 147 of the Act. Information was received by the deponent vide audit note dated 10th February, 1976 that the petitioners income chargeable to income-tax for the assessment year 1972-73 had escaped assessment. The deponent scrutinised the information and having reason to believe that the petitioners income chargeable to income-tax for the said assessment year had escaped assessment by reason of the omission and failure on the part of the petitioner to disclose fully and truly the material facts necessary for its assessment for that year; the deponent prepared a record of his reasons and issued a notice u/s 148 of the Act."

This averment was further amplified in paragraph 11 of the counter-affidavit. Along with the counter-affidavit, the respondent also had filed as Annexure 8 a copy of the reasons for reopening the case u/s 148 of the Income-tax Act. Besides the

facts stated above, the counter-affidavit alleges that the petitioner had not furnished all the requisite details, statements and books of accounts relevant for the purposes of assessment of its income in respect of the assessment year 1973-74.

5. The petitioner-company filed a rejoinder-affidavit to the counter-affidavit filed on behalf of the respondent. It has re-iterated the stand taken by it in the main writ petition. It, however, denied that either the Income-tax Officer implicitly placed reliance on the information given by the petitioners representative or that the petitioner did not fully and truly disclose the primary facts necessary for assessment of its income.

6. We have already dealt with the main point urged in the writ petition for quashing the notices issued u/s 148 of the Act. As mentioned in the judgment of the connected writ petition No. 579 of 1976, the contention of the petitioner was that it had placed before the Income-tax Officer all the material facts. The Income-tax Officer before making the assessment had examined those facts and was satisfied with the explanation given by the petitioner-company. The petitioner-company denied that the Income-tax Officer had any reason to believe that by reason of omission or failure on the part of the company to disclose fully and truly all material facts necessary for its assessment, for the year in question profits or gains chargeable to income-tax had escaped assessment for that year or had been under assessed. The Company further disputed that the Income-tax Officer had any reason to have the required belief. While repelling the aforesaid plea in the connected writ petition we found that it was not possible to say in the instant case that the Income-tax Officer concerned had no reasons to believe that income had escaped assessment due to the omission or failure of the petitioner and on account of his having failed to disclose fully and truly the materials required for assessment. It is undeniable that reasonable belief of the Income-tax Officer was the sine-qua-non for the initiation of the proceeding u/s 148 of the Act. This was the foundational fact for acquiring the jurisdiction by the Income Tax Officer to start proceedings u/s 148 of the Act.

7. After having examined the materials placed before us and the law cited, we found that s. 147 casts an obligation upon an assessee not merely of disclosing fully all material facts but also of placing them truly. The assessee was under a duty not to mislead the Assessing Authority by presenting facts which did not represent the correct situation. In this view of the matter, we find that the Income-tax Officers belief that escapement of income had been due to the assessee's having not disclosed the material facts truly, would give him jurisdiction to re-open the assessment. As in writ petition No. 579, so also in this case another difficulty which appears to be insurmountable was that the assertion of the petitioner to have placed all the materials and papers before the Income-tax Officer had been denied in the counter affidavit by the Income-tax Officer. This would require investigation into the rival stand on a question of fact. In these circumstances, we find ourselves unable to adjudicate upon or decide as to which of the two versions had been correct. We, therefore, find ourselves unable to quash the impugned notice issued u/s 148 of the Act on the ground stated above.

8. There is yet another ground on which the present writ petition cannot be allowed. We have already noticed that the impugned notice dated 31st March, 1976 issued for reassessment was in respect of the assessment year 1972-73. The notice mentions that the income had escaped assessment within the meaning of s. 147 of the Act. It does not state whether the income was sought to be reassessed under cl. (a) or (b) of s. 147. S. 149 of the Act provides a period of limitation for issuing a notice u/s 148 of the Act. This lays down four periods of limitation from the end of the relevant assessment year within which a notice u/s 148 could be issued :-

(i) 8 years in cases falling u/s 147(a) i.e. cases of failure to file a return or of concealment where the escaped income is likely to amount to less than Rs. 50,000/- for that year.

(ii) 16 years in cases falling u/s 147(a) where the amount of tax was more than Rs. 50,000/-.

(iii) 4 years in cases falling u/s 147(b) i.e. where there was no failure on the part of the assessee to file a return : and

(iv) two years where the assessee was sought to be assessed as an agent of a non-residents income.

9. In the instant case the notice was issued within four years of the relevant assessment year. Action thus could be taken against the petitioner-company both under cl. (a) and (b) of s. 147 of the Act. The argument advanced by Dr. Pal, the learned counsel for the petitioner was that the counter-affidavit along with the reasons for re-assessment filed along with it indicated that the Income-tax Officer had decided to take proceedings against the petitioner under cls. (a) of s. 147 of the Act hence the action and not under cl. (b) of s. 147 of the Act.

S. 147 contemplates two distinct classes of cases in which the Income-tax Officer may take proceedings to assess or re-assess an income chargeable to tax which has escaped assessment. One class of cases is that falling under cl. (a) while the other class is contemplated by cl. (b). It is true that cls. (a) and (b) of s. 34(1) of Indian income-tax Act provide for two separate jurisdictions vide CIT v. Sunderam Company (P) Ltd. In other words, the situations to which these clauses apply are different from each other. This cannot, however, be interpreted to mean that on given circumstances action cannot be taken both under cls. (a) and (b) of the Act. It is possible that the escapement may be due to the omission or failure of the assessee to disclose fully and truly all material facts and even if there was no failure and omission on the part of the assessee, information gathered by the Income-tax Officer required the reopening of the assessment on the basis or escapement of the escapement of the escaped tax. The submission, therefore, of the learned counsel for the petitioner that the two beliefs under cls. (a) and (b) of s. 147 of the Act cannot be held by the Income-tax Officer at the same time cannot be accepted. It is not correct, as emphasised by him that belief cl. (a) of s. 147 excludes belief u/s 147(b). In our opinion there is no difficulty in converting the proceedings started u/s 147(a) into one u/s 147(b), provided of course that the requirement for taking action under the latter provision was made out.

10. The learned counsel for the petitioner placed reliance on two authorities in support of his submission. One of them is reported in Johari Lal v. CIT and the other is to be found in Jamna Lal Kabra v. ITO B Ward Bareilly and others. In our

opinion, neither of the two cases support the contention advanced by the learned counsel for the petitioner. In the Supreme Court case, the question was whether on the facts and in the circumstances of the case the proceedings which were commenced u/s 34(1)(b) could have been transferred u/s 34(1)(a) by the Income-tax Officer. Dealing with this the Supreme Court observed on page 442 thus :-

In the instant case, as seen earlier, the Income-tax Officer did not choose to proceed u/s 34(1)(a). Consequently, he may or may not have recorded the reasons as required by this section nor do we know whether those reasons were submitted to the required authority and his sanction obtained on the basis of those reasons. This Court also has ruled that the Commissioner or the Board or Revenue, while granting sanction will have to examine the reasons given by the Income-tax Officer and come to an independent decision and the authority in question should not act mechanically. From the material on record there is no basis to hold that these requirements had been fulfilled. Possibly, they could not have been fulfilled because the Income-tax Officer proceeded only on the basis of s. 34(1)(b) and not on the basis of s. 34(1)(a). He himself had declined to proceed on the basis of s. 34(1)(a) for whatever reason it may be. Therefore, it was not open to the Tribunal to justify the proceedings taken by the Income-tax Officer u/s 34(1)(a). The Tribunal could not have initiated proceedings u/s 34(1)(a). If the Tribunal converts the proceedings into one u/s 34(1)(a) then the conditions prescribed in s. 34(1)(a) cannot be satisfied."

The observations of the Supreme Court quoted above would indicate that where proceedings had been taken under cl. (b) of s. 34(1) of the Act, the same cannot be converted into one under cl. (a) of s. 34(1). The fact that a proceeding taken under cl. (a) of s. 147 could not be converted into one under cl. (b) of s. 147 does not establish that the reverse proposition advanced by the learned counsel for the petitioner. There is good reason for holding that a proceeding under cl. (b) of s. 147 could not be treated as being one under cl. (a) of s. 147 but we are unable to accept that proceedings started under cl. (a) could not be justified under cl. (b) s. 147 of the Act even though the conditions of cl. (b) are made out. It is of course true that the requirement of cl. (b) had to be ascertained before reassessment is made under it. The view taken by us is amply supported by the authority of the

Calcutta High Court, reported in Bhupatrai Hira Chand v. CIT.

11. In Jamna Lal v. ITO the controversy raised before us was neither canvassed nor decided. In that case the High Court was concerned whether the recording of reason before issue of notice u/s 148 was mandatory and pre-requisite to the assumption of the jurisdiction by the Officer for initiating proceedings for assessing or reassessing the income which had escaped assessment. The High Court found that there was nothing in the reasons recorded by the Officer attracting cl. (a) s. 147 and had quashed the notice issued u/s 148 of the Act. As observed above, the High Court was not called upon to decide the controversy raised before us.

12. In our opinion, therefore, as the proceedings started against the petitioner company are capable of being converted into one under cl. (b) of s. 147, therefore, even if the requirements of cl. (a) of s. 147 were not made out, the notice u/s 148 of the Act cannot be quashed at this stage.

13. It was next contended by Dr. Pal that the Income-tax Officer concerned had disclosed that he was proceeding under cl. (a) of s. 147 of the Act, there was no occasion for treating the proceedings to be one under cl. (b). It was further contended in this behalf that it is not open to this Court to substitute its own opinion in place of the Income-tax Officer. None of the two grounds, in our opinion, justify the quashing of the notice u/s 148 of the Act. As already observed, even if the Income-tax Officer is proceeding under cl. (a), it will be open to him to take action under cl. (b) of s. 147 of the Act if the requirements of the said clause are made out. In doing so we are not substituting our opinion but are only indicating the basis on which the argument of the learned counsel for the petitioner cannot be accepted. At the cost of repetition it may also be mentioned that the Income-tax Officer would be justified in taking the proceedings against the petitioner under cl. (b) if the pre-requisites for taking action under that clause are made out.

In the result, the writ petition fails and is dismissed, with costs.

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