

Marble Men Vs. Cit and ors

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Court : Allahabad

Decided On : Aug-20-2004

Reported in : (2004)192CTR(All)55; [2005]142TAXMAN360(All)

Appeal No. : Civil Misc. Writ Petn. No. 874 of 2000, 20 August 2004

Appellant : Marble Men

Respondent : Cit and ors

Advocate for Pet/Ap. : Manish Goel, for the Assessee A.N. Mahajan, for the Revenue

Judgement :

By The Court

In the present writ petition, notice issued under section 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act), for the assessment year 1997-98 has been challenged.

2. The petitioner is a dealer engaged in the business of handicraft items and marble goods in the city of Agra. It caters to the need of foreign tourists, who visit the city. The goods are sold against foreign exchange. While taking the goods out of the country, it requires customs clearance at the airport, The petitioner claimed benefit of special deduction under section 80HHC of the Act in respect of the turnover and profit of counter sales made against convertible foreign exchange to

the foreign tourists. The assessing authority in the original assessment order accepted the claim and granted deduction. However, he issued notice under section 148 of the Act seeking to withdraw the deduction granted to the petitioner under section 80HHC of the Act.

3. We have heard Sri Manish Goel, learned counsel for the petitioner, and Sri A.N. Mahajan, learned standing counsel appearing for the respondents,

4. It is not in dispute that notice under section 148 of the Act has been issued only to withdraw the deduction granted to the petitioner under section 80HHC of the Act in respect of the counter sales made against foreign exchange. A Division Bench of this court in the case of *Ram Babu & Sons v. Union of India & Anr.* : [1996]222ITR606(All) has held that benefit of special deduction under section 80HHC is available in respect of the counter sales effected against convertible foreign exchange if the goods are taken out of the country and the transaction is subjected to customs clearance. The aforesaid view has been approved by the Honble Supreme Court in the case of *CIT v. Silver Arts Palace* : [2003]259ITR684(SC) . Since the view taken by this court in the case of *Ram Babu & Sons & Anr.* (supra) has been approved by the Hon'ble Supreme Court in the case of *CIT v. Silver & Arts Palace* (supra) and this court has taken a view that even the counter sales made against foreign exchange and which are subjected to customs clearance, is entitled for deduction under section 80HHC of the Act, there cannot be any reasonable belief upon which the assessment year can form the opinion that any income has escaped assessment to tax or any deduction has been wrongly allowed so as to fall under section 147 of the Act and thus, only on that ground if the notice has been issued, it cannot be sustained and is liable to be quashed. It may be mentioned here that the view taken by this court, has been approved by Hon'ble Supreme Court in *Silver & Arts Palace* (supra). This is an additional reason that the notice cannot be sustained.

5. Sri A.N. Mahajan, learned standing counsel appearing for the revenue, relied upon a decision of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. ITO & Ors.* (2003) 259 ITR 19 and submitted that the petitioner ought to be relegated to file return in pursuance of the notice under section 148

and submit its reply and it will not be proper for the court to quash the proceedings. The submission is misconceived inasmuch as when the notice under section 148 of the Act was issued by the assessing officer, the law laid down in the case of Ram Babu & Sons (supra) was holding the field Till such time the said decision is not reversed or disapproved by the Honble Supreme Court, it cannot be said that the assessing officer could have formed any reasonable belief. In the present case the action under section 147 of the Act has been initiated solely on the ground that the counter sales effected against the convertible foreign exchange even though it has been exported out of India and has been subjected to customs clearance, the deduction is not to be allowed. In this view of the matter there is no necessity for relegating the petitioner to file a fresh return and submit reply before the assessing officer.

6. In view of the foreign discussion, the writ petition succeeds and is allowed. The notices issued under section 148 of the Act and all consequential proceedings are set aside. However, there shall be no order as to costs.

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