

Aurobindo Sanitary Stores Vs. Cit

Aurobindo Sanitary Stores Vs. Cit

SooperKanoon Citation : sooperkanoon.com/536913

Court : Orissa

Decided On : Jan-31-2005

Reported in : [2005]144TAXMAN872(Orissa)

Appeal No. : IT Appeal No. 13 of 2002 31 January 2005

Appellant : Aurobindo Sanitary Stores

Respondent : Cit

Advocate for Pet/Ap. : S.N. Ratho & M.K. Badu, *for the Assessee* A.K. Mohapatra, *for the Revenue*.

Judgement :

A.K. Patnaik, J.

This is an appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') filed by the appellant against the order dated 12-3-2002 of the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack in I.T.A. No. 301/CTK/1997.

2. The facts briefly are that the appellant is a partnership firm consisting of three partners, namely, Sri Harish Chandra Bhol, Sri Rabindranath Bhol & Sri Jitendranath Bhol. The appellant carries on the business of Sanitary Stores and for the assessment year 1989-90 the appellant filed a return on 31-7-1989 disclosing

a total income of Rs.78,000. The return was accompanied by a trading and profit and loss account but no balance sheet. A letter dated 14-9-1989 was issued by the assessing officer to the appellant to file a balance sheet and in response to the said letter, a balance sheet was filed by the appellant enclosing the details of the sundry creditors and sundry debtors. The return was processed under section 143(1)(a) of the Act and intimation was sent to the assessee on 16-1-1990 raising a demand of only Rs. 48. Thereafter, on 16-6-1993 a search and seizure operation was conducted in the case of Sri R.N. Bhol, the partner of the appellant firm. A survey operation under section 133(a) of the Act was also conducted in the business premises of the appellant and certain books of account of the appellant were also seized from the custody of Sri R.N. Bhol. Action for re-assessment was initiated under section 147 of the Act for assessing the income which has escaped assessment for the assessment year 1989-90 and a notice was issued to the appellant under section 148 of the Act on 9-11-1993 to furnish a return of its income for the assessment year 1989-90. The appellant intimated the assessing officer by a letter dated 20-9-1994 to treat the original return filed on 31-7-1989 as the return in response to the notice under section 148 of the Act. The appellant was heard through its partner Sri R.N. Bhol and an order of re-assessment was passed under section 143(3)/147 of the Act determining the total income of the appellant at Rs. 3,79,090 for the assessment year 1989-90. In the said re-assessment order, the Assistant Commissioner of Income Tax, Investigation Circle-II, Cuttack (hereinafter referred to as 'the assessing officer') held: (i) that the book result of the appellant can never be relied upon as true and correct and as such the total income of the appellant ought to be determined on estimate by invoking section 145 of the Income Tax Act, and (ii) that an investment of Rs. 2,70,421 made by the appellant remained unexplained and is treated as deemed income of the appellant as per the provision of section 69 of the Act.

3. Aggrieved by the said order of re-assessment, the appellant filed an appeal before the Commissioner (Appeals), Orissa, Cuttack numbered as I.T. Appeal No. 14/S&S;/95-96 and contended inter alia that the assessing officer had no jurisdiction to initiate proceeding for reassessment under section 147 of the Act and that the addition of Rs. 2,70,421 to the income of the appellant under section 69 of the Act was not maintainable. By order dated 30-5-1997, the Commissioner

of Income Tax (Appeals), Orissa, Cuttack held that the exercise of jurisdiction under section 147 of the Act as well as the rejection of the trading results and the estimate of the gross profit under section 145 were correctly done by the assessing officer but the addition of Rs. 2,70,421 under section 69 of the Act was not maintainable. After recording the said findings, the Commissioner (Appeals), Orissa, Cuttack deleted the said addition of Rs. 2,70,421 and determined the income of the appellant on the basis of the estimate at Rs. 1,14,777. Aggrieved by the deletion of Rs. 2,70,421 from the income of the appellant, the department filed I.T.A. No. 301 CTK/1997 before the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as 'the Tribunal'). Aggrieved by the finding of the Commissioner (Appeals) that the initiation of proceedings for the re-assessment under section 147 of the Act was justified, the appellant filed a cross objection in the said appeal numbered as C.O. No. 97 CTK/1997. By the impugned order dated 12-3-2002, the Tribunal dismissed the cross objection filed by the appellant and allowed the appeal of the department with the findings that there was adequate ground for initiating proceeding under section 147 of the Act and that the addition of Rs. 2,70,421 in the income of the appellant was justified under section 69, read with section 68 of the Act.

4. When this appeal against the impugned order dated 12-3-2002 of the Tribunal was admitted on 11-12-2003, the court formulated the following two substantial questions of law which arise for decision in this case.

'(i) Whether, on the facts and in the circumstances of the case, the reopening of the assessment under section 147 of the Income Tax Act was justified and legal and

(it) Whether, on the facts and in the circumstances of the case, the addition of Rs. 2,70,421 as inflated liabilities under section 69 read with section 68 is legal and justified ?'

5. The first question of law which has to be decided in this appeal is whether on the facts and circumstances of the case the reopening of the assessment under section 147 of the Act was justified and legal. Mr. S.N. Ratho, learned counsel for the appellant, submitted that section 147 of the Act provides that if the assessing

officer has reasons to believe that any income chargeable to tax has escaped assessment for any assessment year, he may initiate action thereunder for re-assessment. He submitted that the reason for re-opening the assessment as recorded in the assessment order is that a partner of the appellant has declared a substantial sum as undisclosed income on 16-6-1993 when the search was conducted, but this fact cannot lead to an honest belief that income of the appellant has escaped assessment. He submitted that action under section 147 of the Act cannot be initiated for making a fishing or roving enquiry or on the basis of mere suspicion that income may have escaped assessment and relied on the decisions of the Supreme Court in *Chhugamal Rajpal v. S.P. Chaliha* : [1971]79ITR603(SC) and *ITO v. Lakhmani Mewal Das* : [1976]103ITR437(SC) , in support of this submission. Mr. A.K. Mohapatra, learned standing counsel for the department, submitted that the reasons given in the order of the assessing officer are good reasons for initiating action under section 147 of the Act and it has been so held by the Commissioner (Appeals), Orissa as well as the Tribunal in their respective appellate orders.

6. The reasons for initiating action under section 147 of the Act as indicated in the order of assessment are extracted herein below:

'In response to the deficiency letter dated 14-3-1993, assessee filed its balance sheet of the year enclosing the details of Sundry Creditors and Sundry Debtors. Thereafter, the return was processed under section 143(1)(a) on 16-1-1990 resulting in a demand of Rs. 48, status was accepted as P.F.

Subsequently, on 16-6-1993, a search and seizure operation was conducted in the case of Sri R.N. Bhol, partner of the firm. Simultaneously a survey operation under section 133A was too conducted in the business premises of the firm. Certain books of account relating to the firm were seized from the custody of Sri R.N. Bhol as per Annexure to Panchanama.

From the party ledgers seized and marked as CSS-78 and CSS-13, it was ascertained that the assessee had shown Rs. 5,47,687.71 in the balance sheet filed with the return on account of Sundry Creditors whereas the books revealed only Rs. 2,66,612.60 on this account. Hence, the presumption was that the

assessee had inflated this account by Rs. 2,81,072.02 and thereby evaded the tax liability on the aforesaid amount. For this reason, action under section 147 was initiated and notice under section 148 served on 9-11-1993.. ..'

It will be clear from the aforesaid reasons given in the assessment order that after the return filed by the appellant was processed under section 143(1)(a) on 16-1-1990 resulting in demand of Rs. 48 only, a search and seizure operation was conducted in the case of Sri R.N. Bhol, a partner of the appellant firm on 16-6-1993 and a survey operation was also conducted in the business premises of the appellant-firm during which certain party ledgers were seized and marked as CSS-78 and CSS-13 and it was ascertained there from that only Rs. 2,66,612.60 paise was in the account of the sundry creditors whereas in the balance sheet filed by the appellant pursuant to the letter dated 14-9-1989 a sum of Rs. 5,47,684.71 paise was shown in the account of the sundry creditors and a presumption was drawn by the assessing officer that the appellant had inflated the sundry creditors account of Rs. 2,81,072.02 paise and thereby evaded tax liability on the aforesaid amount. The Commissioner (Appeals) has held that in view of the inflated liability of the sundry creditors as per the balance sheet found on comparison of liabilities towards sundry creditors as per the seized party ledgers, there could indeed be a prima facie case that on the disclosure of excess liabilities towards sundry creditors in the balance sheet, the appellant had disclosed less income showing inflated liabilities and thus the income chargeable to tax had escaped assessment and in the circumstances it could not be said that the assessing officer did not have any reason to believe that the income chargeable to tax had escaped assessment. This conclusion of the Commissioner (Appeals) has been upheld by the Tribunal in the impugned order. We agree with the aforesaid view taken by the Commissioner (Appeals) and the Tribunal that if there is a substantial difference in the figures of liabilities towards sundry creditors in the party ledgers of the appellant-firm and the figures of liabilities towards sundry creditors in the balance sheet of the appellant for the previous year relevant to the assessment year 1989-90, the assessing officer may have a reason to believe that income of the assessee has escaped assessment so as to warrant initiation of action under section 147 of the Act.

7. In Chhugamal Rajpal's case (supra), the facts were that the Income Tax Officer submitted his report before the Commissioner of Income Tax stating therein that the assessee in that case has shown to have taken loans from various parties of Calcutta and, it appeared from the communication mentioned in the report that these persons were name-lenders and the transactions were bogus and hence proper investigation regarding the loans was necessary. On these facts, the Supreme Court held that the Income Tax Officer must have some prima facie grounds before him for action under section 148 and on the materials placed by the Income Tax Officer before the Commissioner, he could not have had reasons to believe that the income chargeable to tax had escaped assessment for that year. On sections 147 and 148 of the Act as they stood then, the Supreme Court observed:

' . . . Before issuing a notice under section 148, the Income Tax Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under section 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or clause (b) of section 147 are satisfied, the Income Tax Officer has no jurisdiction to issue a notice under section 148. From the report submitted by the Income Tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he, as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income Tax Officer had any material before him which could satisfy the requirements of either clause (a) or clause (b) of section 147. Therefore, he could not have issued a notice under section 148' (p. 607)

8. In Lakhmani Mewal Das's case (supra), the facts were that the Income Tax Officer placed a report before the Commissioner of Income Tax that there were hundi loan credits in the name of some of the parties who were name-lenders and they confessed that they were doing only name lending. In the original assessment these credits were not investigated in detail and as the information regarding the bogus nature, of the said credits came to be known, action under section 147(a) to re-open the assessment and assess these credits as the undisclosed income of the assessee was suggested in the said report and the Commissioner of Income Tax sanctioned action under section 147(a) of the Act. The Supreme Court held that the reference to the names of persons who had lent their names for the credits in the report does not stand on a better footing than the reference to the three names in the report made by the Income Tax Officer in the case of Chhugamal Rajpal (supra). Interpreting the provisions of section 147(a) of the Act then in force, the Supreme Court in particular held:

'The grounds or reasons which lead to the formation of the belief contemplated by section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income Tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of the grounds which induce the Income Tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that Income Tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not sufficiency of the reasons for the belief. The expression 'reason to believe' does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law. (See observations of this court

in the cases of *Calcutta Discount Co. Ltd. v. ITO* : [1961]41ITR191(SC) , and *S. Naryanappa v. CIT* : [1967]63ITR219(SC) , while dealing with the corresponding provisions of the Indian Income Tax Act, 1922.' (p. 445)

The Supreme Court has further observed in the aforesaid case of *Lakhmani Mewal Das* (supra) that action under section 147 of the Act cannot be taken for re-opening of the assessment if the information or the materials have no direct nexus or live link with the formation of the belief of the Income Tax Officer that there has been an escapement of the income of the assessee from the assessment of a particular year because of his failure to disclose fully and truly all the material facts or when the information in possession of the Income Tax Officer is wholly vague, indefinite, far-fetched and remote. The Supreme Court clarified that the expression used in section 147 of the Act is 'reasons to believe' and not 'reasons to suspect' and, therefore, on mere suspicion no action can be initiated under section 147 of the Act.

9. Even after the aforesaid decisions of the Supreme Court, the language of sections 147 and 148 of the Act has remained substantially the same. Hence, the aforesaid decisions equally apply to the present case of reopening of assessment under sections 147 and 148 of the Act. The materials on the basis of which the assessment of the appellant has been re-opened under section 147 of the Act are the party ledgers of the appellant-firm seized and marked as CSS-78 and CSS-13 which reveal Rs. 2,66,612.60 paise in the account of the sundry creditors whereas the balance sheet filed by the appellant at the time of the original assessment revealed that Rs. 5,47,684.71 paise is in the account of sundry creditors. This was thus a case where the balance sheet figures of the liability of the appellant towards sundry creditors did not tally with the figures of the liability of the appellant towards sundry creditors in the books of the appellant. These materials do have a direct link and nexus for formation of a belief by the Income Tax Officer that the same income of the appellant has escaped assessment because of his failure to disclose fully and truly all material facts necessary for the assessment of the appellant-firm. It is difficult to hold that the materials in this case on the basis of which action has been taken under section 147 are wholly vague, indefinite, far-fetched or remote to the formation of the belief that some income of the appellant

had escaped assessment for the assessment year 1989-90 because of the failure of the appellant to disclose fully and truly all material facts necessary for the assessment of the appellant for that assessment year. We, therefore, hold on the first question that in the facts and circumstances of the case, the re-opening of the assessment under section 147 of the Act was justified and legal.

10. The second question of law which has to be decided in this appeal is whether on the facts and circumstances of the case the addition of Rs. 2,70,421 as inflated liabilities under section 69, read with section 68 of the Act is legal and justified. Mr. Ratho, learned counsel for the appellant submitted that section 68 applies only when credit is given to a party in the books of account and the assessee offers no explanation about the nature and source of such credit and this is not a case where any credit has been found in the books of the appellant in favour of any party and the assessee had no explanation with regard to the nature and source thereof and therefore, section 68 does not apply. He further submitted that section 69 applies only when investment is not recorded in the books of the assessee and in this case, the appellant has not maintained any ledger account of the investments made nor any stock register and in any case there was no material whatsoever before the assessing officer that a particular investment was made during the financial year 1988-89 preceding the assessment year 1989-90, the nature and source of which could not be explained by the appellant. He further submitted that the balance sheet that was filed by the appellant at the time of the original assessment pursuant to the letter dated 14-9-1989 was prepared by an incompetent Accountant in an unprofessional manner and the wrong figures in the said balance sheet with regard to the liabilities of the appellant towards sundry creditors have been taken into consideration by the assessing officer for coming to the conclusion that the assessee had unexplained investments to the tune of Rs. 2,70,421 under section 69 of the Act. Mr. A.K. Mohapatra, learned Senior Standing counsel for the department, on the other hand, supported the assessment order as well as the order passed by the Tribunal justifying the said addition of Rs. 2,70,421 under section 69, read with section 68 of the Act.

11. For answering this question of law, the language of sections 68 and 69 of the Act are relevant and the said sections are, therefore, quoted herein below:

'68. Cash Credits.-Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

69. Unexplained Investments.-Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.'

12. A plain reading of section 68 of the Act quoted above shows that where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is, in the opinion of the assessing officer, not satisfactory, the sum so credited may be charged to income-tax as the income of the assessee as of the previous year. In the present case, as will be clear from the order of assessment passed by the assessing officer for the assessment year 1989-90, it is not the case of the department that any sum was found credited in the books of the appellant maintained for the previous year relevant to the assessment year 1989-90 and the appellant has not offered any explanation for such false or bogus credit in the books of account. The case of the department, on the other hand, is that whereas in the party ledgers of the appellant-firm for the previous year relevant to the assessment year 1989-90 a sum of Rs. 2,66,612.60 paise has been shown on account of sundry creditors, in the balance sheet that has been filed by the appellant in response to the letter dated 14-3-2003 of the assessing officer at the time of the original assessment a sum of Rs. 5,47,684.71 paise has been shown on the account of sundry creditors. Hence, section 68 of the Act is not at all attracted and cannot be applied. The assessing officer has in fact not applied section 68 and has applied only section 69 of the Act.

13. Section 69 provides that where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is, in the opinion of the assessing officer, not satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year. Thus, for applying section 69 of the Act, the assessing officer must first come to a finding that the assessee has made investments which are not recorded in the books of account and thereafter call for an explanation from the assessee about the nature and source of the investments and if he finds that no such explanation is furnished by the assessee or the explanation offered by him is not satisfactory, he can treat the value of the investments to be the income of the assessee of the financial year in which he has made the investments. It appears from the impugned assessment order that the assessing officer has sought to come to a finding that the appellant has during the financial year 1988-89 previous to the assessment year 1989-90 made an investment to the tune of Rs. 2,70,421 only on the basis of the differences in the figure of liabilities towards sundry creditors shown in the party ledgers seized from the custody of Sri R.N. Bhol, partner of the appellant-firm and the figure of liabilities towards sundry creditors in the balance sheet filed by the appellant-firm pursuant to the letter dated 14-9-1989 at the time of original assessment. The relevant portion of the assessment order is quoted herein below:

'Upto the assessment year 1988-89, assessee has not filed any balance sheet. For the first time, balance sheet is filed for the assessment year 1989-90. Precisely, the balance sheet as on 31-3-1989 reflects the following positions:

Liabilities

Asset

Partner's Capital

Stock

8,69,419=00

R.N. Bhol

1,62,772=86

Sundry Debtors

1,14,309=19

J.N. Bhol

2,23,850=42

P.N.B.

29,529=62

H.C. Bhol

83,776=32

Cash-in-hand

4,826=50

Sundry Creditors

5,47,684=71

10,18,084=31

10,18,084=31

Presently, after necessary verification, it has been established that the Sundry Creditor A/c. is not correct. Rs. 5,47,684.71=31 shown in this account includes bogus and unsubstantiated liabilities of Rs. 2,70,421=00. If this amount is ignored the real balance sheet will be as under:-

Liabilities

Assets

Partner's Capital

4,70,399=60

Stock

8,69,419=00

Sundry Creditors

Sundry Debtors

1,14,309=19

Shown

5,47,684=71

P.N.B.

29,529=62

Less Bogus

liabilities

2,70,421=00

Cash-in-hand

4,826=50

2,77,263=71

7,47,663=31

Balance sheet

difference arrived

at now

2,70,421 =00

10,18,084=31

10,18,084=31

On a proper analysis of the re-cast balance sheet it is now ascertained that the asset is more than liability by Rs. 2,70,421=00. The items appearing in the asset side i.e., Stock, Sundry Debtors, Bank and Cash balance are all fixed, duly valued and reflected. But, there is deficiency in the liability side since the liability does not match with the asset. As per the accounting principle, both sides must match with each other. If the asset is more, the question is to emerge where from the assessee got funds to make the investments appearing as assets in the balance sheet. There is no answer to it and obviously, source of investment in total asset valued at Rs. 10,18,084=31 remains un-explained to the tune of Rs. 2,70,421=00. The investment remaining unexplained is liable to be deemed as income of the assessee as per the provisions of section 69 of the Income Tax Act, 1961.'

The aforesaid portion of the assessment order would show that the assessing officer has come to conclusion that the appellant had made an investment of Rs. 2,70,421 during the financial year 1988-89 previous to the assessment year 1989-90 only on an analysis of different figures of assets and liabilities taken from the balance sheet and the party ledgers and not on the basis of any material or information that the appellant had in fact made investments of Rs. 2,70,421 in some form or the other such as immovable and movable assets which are not recorded in the books of the appellant, the source and nature which the appellant has failed to explain to the satisfaction of the assessing officer. The Tribunal has held in the impugned order:.. On having individually considered the nine parties wherein the total amount of inflated liabilities were enumerated amounting to Rs. 2,70,421 there was no ground for considering to what asset the same had been added. The assessing officer had sufficient material with him in absence of proper

books of account to point out that it was the stock-in-trade which have been inflated by the like amount. The learned assessing officer on the basis of difference in the balance sheet and the party's ledger together with the purchase account considered it to be added under section 69 without stopping that it would come under the mischief of section 68 of the Act as well

We do not agree with the aforesaid conclusion of the Tribunal because section 69 of the Act by a deeming provision provides for treating an unexplained investment made by an assessee during a financial year to be income of the assessee of the financial year for the purpose of assessment and unless the requirements of the section 69 are strictly satisfied by a finding by the assessing officer on relevant materials that the appellant has actually made some unexplained investments in stock-in-trade during the financial year 1988-89 to the tune of Rs. 2,70,421, section 69 cannot be applied to treat the said sum of Rs. 2,70,421 as income of the appellant for the assessment year 1989-90. In the facts and circumstances of the case, therefore, the addition of Rs. 2,70,421 by applying section 69 of the Act is not legal and justified. The second question of law is accordingly answered in favour of the appellant-assessee.

14. The appeal is allowed to the extent indicated above. Considering, however, the facts and circumstances of the case, the parties shall bear their own costs.