

Diwaker Engineers Ltd. Vs. Inspecting Assistant

Diwaker Engineers Ltd. Vs. Inspecting Assistant

SooperKanoon Citation : sooperkanoon.com/64537

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-18-1991

Reported in : (1991)37ITD197(Delhi)

Judge : D Sharma, P Goradia

Appellant : Diwaker Engineers Ltd.

Respondent : inspecting Assistant

Judgement :

1. This appeal, filed by the assessee, is directed against the order dated 9-9-1987 passed by the CIT (Appeals) for the assessment year 1983-84.
2. The first ground assails the order of the CIT (Appeals) confirming the action of the ITO in framing the assessment by taking recourse to Section 153(1)(b) of the Income-tax Act, 1961. According to the assessee, the assessment framed by the ITO was time barred and hence it was invalid. In order to appreciate the plea, raised by the assessee, it will be necessary to suite a few facts.
3. The assessee, a limited company, filed its return of income for the assessment year 1983-84 on 30th June 1982, declaring a loss of Rs. 37,689. A revised return was filed on 17-3-1986 and, therefore, the assessment in this case should have been normally completed by 16-3-1987 in view of the provisions contained in Clause (c) of Section 153(1). On 13-3-1987, the ITO recorded his satisfaction that the assessee has concealed income to the extent of Rs. 17,17,819 by way of

suppression of stock and by furnishing inaccurate particulars of income within the meaning of Section 271(1)(c) and that enquiry at that stage was likely to take some more time and, therefore, he was invoking the provisions of Section 153(1)(fc). He, therefore, extended the time limit for completion of assessment. Thereafter the assessment was completed on 31-3-1987. In the assessment, so framed, the ITO made an addition of Rs. 17,17,819 on account of suppression of stock.

4. In the assessment order as well as in the order-sheet entry dated 13-3-1987, wherein the assessee recorded his satisfaction about concealment of income by the assessee, it is stated that the assessee showed the closing stock of raw-material and finished goods on 30th June, 1982 as follows :-1. C.R. Coils 14.610 MT Rs. 4827 P.MT 70,522 imported3. Joist 6.135 MT Rs. 3300 P.MT 20,245 -----2. Steel Tubes 7.136 Rs. 4600 32,826 (O.S.)4. G.P.S.F. 1.883 Rs. 6000 11,298 ----- The value of stock of both raw material and finished goods is Rs. 16,34,076.

5. The ITO further mentioned that the statement of stock, hypothecated by the assessee with Central Bank of India, Parliament Street Branch, as on 30-6-1982 was as under:-Item Quantity Rate Rs.Per Value in M.T. M.T.1. GRS litted 14.510 4500 63,715 Coil2. Steel Pipes 71.503 5000 3,59,515 and tubes3. Side 38.845 4000 1,59,380 slitted coil4. C.R. Coils/ 150.390 4500 5,76,755 sheets5. G.P. 465.00 4500 20,92,500 sheets coil ----- Total value of stock- 33,51,895 (3351895) 6. The ITO, thus, observed that the particulars of stock, furnished by the assessee to the Department, were incorrect and that it was quite clear that the assessee has suppressed the stock to the extent of Rs. 17,17,819. As already stated above, this amount was added to the total income of the assessee on account of suppressed stock.

7. The matter was carried in appeal before the CIT(Appeals), before whom it was stated that the total closing stock declared by the company in the balance-sheet was Rs. 52,35,675. The CIT (Appeals) on going through the details of the closing stock found that the ITO had not taken into account G.P. Sheets, weighing 465 M.T. valued at Rs. 20,92,500, which were in transit but had been hypothecated to

the Bank on the basis of L.C. documents. The CIT (Appeals) has further observed that the ITO instead of going into these details made the addition. The CIT (Appeals) further found that the stock hypothecated with the Bank was inclusive of imported goods shown in transit by the company. He, thus, concluded that there was no discrepancy between the stock shown to the department and as hypothecated with the Bank or with reference to stock shown in the books of account. The CIT (Appeals), accordingly, deleted the addition of Rs. 17,17,819 made by the ITO on account of alleged suppression of stock, on the basis of wrong appreciation of facts. Against this part of the order of the CIT(Appeals), the Department has not come up in appeal before the Tribunal.

8. The CIT (Appeals), however, did not accept the assessee's contention that the assessment framed by the ITO was time barred. He held that the papers on record regarding valuation of closing stock, entries made regarding writing back the interest due on loan accounts as well as claims for expenses incurred and credits appearing in the books of the company raise bona fide doubts about the 'accurateness' of the particulars of income. He repealed the argument that the ITO had no reason to have a bona fide belief in regard to concealment. It was, thus, held that the assessment made was within time.

9. Shri K.P. Bhatnagar, learned counsel for the assessee, has contended before us that it was not a case of concealment of income and, therefore, the case did not fall under Section 271(1)(c), with the result that it was not open to the ITO to extend the limitation for framing the assessment by taking recourse to Section 153(1)(b). In this connection it was pointed out that the addition on account of alleged suppression of stock, on the basis of which the ITO recorded his satisfaction, that it was a case of concealment of income or furnishing inaccurate particulars thereof and hence provisions of Section 153(1)(b) were applicable, has been deleted in appeal by the CIT (Appeals) and against that deletion, no appeal has been preferred by the Revenue. Thus, according to Shri Bhatnagar, since it was not a case of concealment of income or furnishing inaccurate particulars of income, it was not open to the ITO to extend the period of limitation under Section 153(1)(b). In this connection it was further submitted that in the instant case, before recording his satisfaction on 13-3-1987, for the purpose of invoking the

provisions of Section 153(1)(b), the ITO did not give an opportunity of being heard to the assessee. It was further submitted that after 13-3-1987, no enquiry was conducted by the ITO regarding the alleged concealment of income, which showed that invocation of Section 153(1)(i) by the ITO was mala fide and was resorted to only to get the limitation extended for completing the assessment, even though the provisions of Section 153(1)(b) were clearly not attracted in this case. It was next contended by Shri Bhatnagar that there was no material before the ITO which could lead to a bona fide belief that it was a case of concealment of income under Section 271(1)(c). Reliance has been placed on the decisions of the Calcutta High Court in *Hansraj Dhingra v. Union of India* [1975] 98 ITR 397 and *M.B. Mercantile Co. v. CIT* [1988] 169 ITR 201 decisions of Allahabad High Court in *Ram Bilas Kedar Nath v. ITO* [1964] 54 ITR 11, *CIT v. Surajpal Singh* [1977] 108 ITR 746; and *CIT v. Mir Subha Hari Bhakta* [1978] 112 ITR 544; and decision of Delhi Bench of the Punjab High Court in *S. Kanwal Tej Singh v. ITO* [1966] 60 TR 23. Reliance has also been placed on the decision of the Karnataka High Court in *M.K.Srikanta Setty v. CIT* [1986] 160 ITR 517.

10. It was next contended by Shri Bhatnagar that the CIT (Appeals) considered certain matters in a general fashion, which did not form the basis of the satisfaction recorded by the ITO for the purpose of extending the period of limitation under Section 153(1)(b). It was further urged that it was not open to the CIT (Appeals) in appeal to consider those matters regarding which even the ITO did not seek extension of limitation in order to complete or hold an enquiry into those matters. Thus, according to Shri Bhatnagar, in the instant case the extended period of limitation of eight years, prescribed under Section 153(1)(fc) was not available to the ITO to complete the assessment and that he was bound to complete the assessment within the normal period of limitation, which expired on 16-3-1987. Since the assessment was completed on 31-3-1987, it was barred by limitation and was without jurisdiction.

11. Shri D.K. Singh, learned departmental representative, on the other hand fully supported the order of the CIT (Appeals) on the point under consideration. It was further submitted that for application of Section 153(1)(6) it was not necessary that the penalty must ultimately be levied under Section 271(1)(c). It was enough if the

ITO entertained reasonable and bona fide belief that it was a case of concealment of income or furnishing of inaccurate particulars of income under Section 271(1)(c) and that in view of the facts found by the ITO and recorded in the order-sheet entry dated 13-3-1987, he was justified in extending the period of limitation by invoking Section 153(1)(b). Learned departmental representative, besides placing reliance on the decisions in Ram B Has Kedar Nath's case (supra), and S. Kanwal Tej Singh's case (supra), cited on behalf of the assessee, also relied on the decision of the Madras High Court in T.B. Hanumantharaj v. CIT [1978] 111 ITR 12. We have considered the rival submissions as also the facts on record. Under Clause (b) of Section 153(1) the time limit prescribed is eight years from the end of the assessment year in which the income was first assessable, in a case falling within Clause (c) of Section 271(1). Thus, the extended period of limitation is applicable in a case of concealment of particulars of income or furnishing inaccurate particulars thereof by an assessee, within the meaning of Section 271, because the enquiry at the assessment stage in such cases is likely to take a lot more time than otherwise. The period of limitation cannot, however, be extended by the Assessing Officer under Clause (b) of Section 153(1) at his sweet will and pleasure. The ITO after giving an opportunity of being heard to the assessee must record a finding that there is a prima facie case of concealment of income or furnishing inaccurate particulars thereof under Section 271 (1)(c). In Ram Bilas Kedar Nath' s case (supra), the Allahabad High Court considered the question, whether, assessment could be framed beyond the period of four years, prescribed under Section 34(3) of the Income-tax Act, 1922. It was held that the ITO has to make a prima facie case that provisions of Section 28(1)(c), which correspond to Section 271(1)(c) of the Income-tax Act, 1961, would be applicable. The Delhi Bench of the Punjab High Court in the case of S. Kanwal Tej Singh (supra), had the occasion to consider a similar issue. It was held that if at the time of making the assessment order, the ITO found that the assessee had concealed that particulars of his income or deliberately furnished inaccurate particulars of his income, then he would be entitled to make the assessment order without any bar of limitation under Section 34(3) of the Income-tax Act, 1922. It was further held that where an assessment has been made after the expiry of four years, it would be open to the assessee to establish in appeal, revision or reference, as the case

may be, that since no delinquency contemplated by Section 28(1)(c) had been established, the assessment order made beyond four years was without jurisdiction. Thus, in appeal if the assessee succeeds in showing that there was no concealment of income or furnishing of inaccurate particulars thereof within the meaning of Section 271(1)(c), the assessment would be clearly time barred and without jurisdiction. For the purpose of the case in hand, Delhi High Court is the jurisdictional High Court and, therefore, the decision of the Delhi Bench of the Punjab High Court would be binding on us.

Moreover, no decision of any other High Court or of the Supreme Court, laying down a contrary view has been brought to our notice and for this added reason also we are bound to follow the aforesaid decision of Delhi Bench of the Punjab High Court.

13. Certain observations made by Their Lordships of the Calcutta High Court in the case of Hansraj Dhingra (supra), support the view canvassed before us on behalf of the assessee that before recording his satisfaction that it was a case of concealment of income under Section 271(1)(c), the ITO should have given an opportunity of hearing to the assessee. These observations, appearing at page 402 of the report, are to the effect that the major obstacle to the application of Section 271 (1)(c) is the fact that in order to bring it within the said provision, the Income-tax Officer has to satisfy himself that the assessee had concealed the particulars of his income or had deliberately furnished inaccurate particulars thereof. It was further observed that such a satisfaction had never been recorded in the proceeding. His Lordship entertained a great doubt whether such a satisfaction could have been recorded at all without giving an appropriate opportunity to the assessee to have his say in the matter.

14. In the case of Mir Subha Hari Bhakta (supra), it was held that the time for making the assessment would have stood extended in view of Section 34(3) of the Income-tax Act, 1922, only if the case fell within Section 28(1)(c). As the Tribunal had found that there was no concealment of income, the case would not fall within Section 28(1)(c), with the result that time for framing assessment would not get extended under Section 153(1)(b).

15. In the case of M.B. Mercantile Co. (supra), it was held by the Calcutta High Court that the ITO had no jurisdiction to enlarge the period of limitation under Section 153(1)(b), unless during the course of pending assessment proceedings, he has, on the materials, come to the prima facie finding that Section 271(1)(c) would be applicable to the facts of the case. It would not depend on the subjective satisfaction of the Income-tax Officer. It was further held that the ITO has to record a finding after making necessary enquiries why the assessment may not be completed within the normal period of limitation.

He has to determine the facts which would clearly demonstrate that the assessment in such a case cannot be completed within the normal period of limitation having regard to the nature and magnitude of enquiry and that a longer period would be necessary. It was further held that before such a finding is arrived at, the ITO is also required to hear the assessee and after giving an opportunity to the assessee on the question of alleged concealment, he has to record his finding. In the instant case, this principle of natural justice has been violated by the ITO, inasmuch as, before recording his finding vide order-sheet entry dated 13-3-1987 that the assessee concealed income to the extent of Rs. 17,17,819 by way of suppression of stock and by furnishing inaccurate particulars of income within the meaning of Section 271 (1)(c) and that enquiry at that assessment stage was likely to take some more time and, therefore, provisions of Section 153(1)(b) would be invoked, the ITO did not hear the assessee and did not give an opportunity to the assessee on the question of alleged concealment. He recorded his finding without giving any such opportunity to the assessee.

16. In the case of .B. Hanumantharaj (supra) cited by the learned D.R., it was held that it was immaterial whether penalty was ultimately leviable or not as the question to be considered for the purpose of Section 34(3) was only whether the provisions of Section 28(1)(c) applied. This authority is not in conflict with the decisions cited on behalf of the assessee. For the purpose of ascertaining whether Section 28(1)(c) applied, it has to be ascertained whether it was a case of concealment of income or furnishing of inaccurate particulars of such income.

17. In the background of the principles laid down in the aforesaid, authorities, we now proceed to consider the question, whether, in this case the extended period of eight years, prescribed under Clause (fo) of Section 153(1) was available to the ITO for completing the assessment beyond the normal period of limitation, which expired on 16-3-1987.

18. Learned departmental representative has filed a paper book which includes a copy of the order-sheet, maintained by the ITO. It is available at pages 1 to 3 of the paper book. A perusal of the entries contained in the order-sheet goes to show that on 13-3-1987 the ITO recorded his satisfaction that the assessee had concealed income to the extent of Rs. 17,17,819 by way of suppression of stock and by furnishing inaccurate particulars of income within the meaning of Section 271(1)(c). It is further stated in the entry dated 13-3-1987 that under these circumstances enquiry at this assessment stage is likely to take some more time and, therefore, provision of Section 153(1)(6) is invoked. There is nothing in this entry to show and no other material has been placed before us to indicate that before recording his finding for the purpose of invoking Section 153(1)(6) the ITO heard the assessee or gave the assessee an opportunity on the question of alleged concealment. Without doing so the ITO recorded an adverse finding against the assessee on the basis whereof he extended the period of limitation to eight years under Section 153(1)(f). This is clearly in violation of the principles of natural justice and, therefore, for this reason alone his action in extending the period of limitation and framing the assessment after the expiry of the normal period of limitation must be struck down as invalid. As has been held by the Calcutta High Court in the case of MB. Mercantile Co. {supra}, the ITO has to determine the facts which would clearly demonstrate that the assessment in such a case cannot be completed within the normal period of limitation having regard to the nature and magnitude of enquiry and that a longer period would be necessary. Though the assessing officer in his order dated 13-3-1987' as stated that enquiry at assessment stage was likely to take some more time, one fact is otherwise. After recording his finding on 13-3-1987 regarding alleged concealment of income the ITO did not conduct or hold any enquiry into the alleged concealment of income and completed the assessment on 31-3-1987. The object of enacting Clause (b) to Section 153(1) is that in cases of concealment it may not be possible

for the assessing officer to complete investigation within the normal period of limitation prescribed for completing the assessment. In such cases the ITO may have to investigate into further facts so as to find out the truth. The information as to the concealment may reach the Assessing Officer just before the expiry of the normal period of limitation and the investigation may not be completed in such a short time. It is for this reason that a longer time limit for completion of assessment in such cases would be available to the Assessing Officer under Clause (b) of Section 153(1). In order to obviate the difficulty that an Assessing Officer may have to face in cases of alleged concealment, the legislature has extended the period of limitation to eight years under Clause (b). The period of eight years, prescribed under Clause (b), commences from the end of the year in which the income was first assessable. In the instant case, the ITO has failed to determine the facts which would demonstrate that it was not possible to complete the assessment within the normal period of limitation available under Clause (c) of Section 153(1). The facts recorded by the ITO in his order dated 13-3-1987 were already available on the record. As stated above, after 13-3-1987 the ITO did not hold or conduct any enquiry into the allegation of concealment of income. The order-sheet entries shows that after 13-3-1987 the ITO did nothing except completing the assessment on 31-3-1987. Under these circumstances the invocation of Section 153(1)(b), in the instant case, was not bonafide.

19. The ITO invoked Section 153(1)(b) on the basis of suppression of stock to the extent of Rs. 17,17,819. He also added this amount to the total income of the assessee. On appeal, the learned CIT (Appeals) found as a fact that there was no discrepancy in the stock as shown in the books of account and as hypothecated with the Bank. The closing stock declared by the assessee in the balance-sheet was of Rs. 52,35,675 out of which stock of the value of only Rs. 33,51,895 was hypothecated with the Bank. The stock hypothecated with the Bank including G.P. sheets weighing 465 M.T. and valued at Rs. 20,92,500.

These G.P. sheets, which were in transit, were not taken into consideration by the ITO while considering the closing stock shown by the assessee in its books of account. The finding of the CIT (Appeals) on the point clearly goes to show that in value of the closing stock shown by the assessee in its books of account was

much more than the value of closing stock hypothecated with the bank and, therefore, absolutely no case of suppression of stock and, therefore, there was it was not at all a case of concealment of income or furnishing of inaccurate particulars thereof. The ITO without any basis and by ignoring the full details of the closing stock, declared by the company in the balance-sheet, made the addition of Rs. 17,17,819. Therefore, in the instant case there was no concealment of income so far as the amount of Rs. 17,17,819 is concerned and, therefore, there was no basis for taking recourse to Section 153(1)(fc). The facts discussed by the ITO in his order dated 13-3-1987 by ignoring complete details of the closing stock shown in the balance-sheet cannot go to establish that a prima facie case of concealment of income had been made out. On the facts of the case, therefore, extended period of limitation prescribed under Clause (b) of Section 153(1) was not available, with the result that the assessment framed by the ITO, beyond the period prescribed under Clause (c), was time barred and hence without jurisdiction.

20. As is observed above, before invoking Clause (b) of Section 153(1), it is incumbent upon the assessing officer to record a finding about concealment of income or furnishing inaccurate particulars of such income and for this purpose he has to give basis for such finding. The only basis given by the ITO was that the assessee suppressed its closing stock to the extent of Rs. 17,17,819. The CIT (Appeals) in exercising his jurisdiction as the first appellate authority was not empowered to enlarge the basis and hold that ITO was justified in invoking Section 153(1)(b). The other matters referred by the CIT (Appeals) while upholding the action of the ITO in extending the period of limitation Under Section 153(1)(fc) were not such as would have required a longer period for investigation or enquiry. Since those matters did not require any further investigation, the ITO did not invoke Section 153(1)(b) on the basis that enquiry into those matters would require a longer time and hence he required extended period of limitation, prescribed under Section 153(1)(b). In our opinion, on the facts of the case, the CIT (Appeals) was not justified in holding that the ITO had a reasonable or bonafide belief regarding concealment of income, particularly when the addition on the basis of which the ITO held that there was a concealment of income has been deleted by the CIT (Appeals) himself.

21. In view of the finding recorded above, the assessment has to be annulled. Therefore, we need not go into the merits of the other grounds raised in this appeal, challenging the additions of Rs. 1,76,371 and Rs. 1,17,000.

22. For the foregoing reasons, the assessment framed by the ITO Under Section 143(3) read with Section 153(1)(b) is annulled. The appeal, as such, stands allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com