

(2011) 03 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No. 2891 of 2001

A.G. Group Corporation

APPELLANT

Vs

Harsh Prakash

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 142(1), 143(2), 143(3), 147, 148

Citation : (2013) 353 ITR 158

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Advocate : B.D. Karia and R.K. Patel, for the Appellant; Mauna M. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

Harsha Devani, J.—By this petition under article 226 of the Constitution of India, the petitioner has challenged the notice dated March 29, 2001, issued u/s 148 of the income tax. Act, 1961 ("the Act"), whereby the petitioner's assessment for the assessment year 1994-95 has been reopened. The petitioner, a registered firm, filed return, of income for the assessment year 1994-95 along with statement of income and necessary supporting evidence on October 31, 1994. During the course of assessment proceedings, a show-cause notice, dated September 8, 1995, came to be issued to the petitioner calling for information on different aspects for the purpose of finalizing the assessment. The petitioner gave all explanatory details during the course of hearing as well as by way of submissions. Thereafter, the Assessing Officer finalized the assessment u/s 143(3) of the Act, vide order dated March 29, 1996, after making certain additions and disallowances. The assessee preferred an appeal before the Commissioner (Appeals), who partly allowed the same, vide order dated February 20, 1997. Against the said order, the petitioner preferred a second appeal before the income tax Appellate Tribunal which was pending for hearing at the relevant time when the petition was filed. Subsequently, the Deputy

Commissioner of income tax, Special Range-II, Rajkot, issued notice dated December 24, 1997, u/s 148 of the Act. The petitioner filed the same return as per the original return since no reasons were communicated in spite of the best efforts of the petitioner. On February 3, 2000, the Joint Commissioner of income tax, issued notice u/s 143(2) and 142(1) of the Act asking for information on various aspects specified on the reverse side of the notice u/s 142(1) of the Act. The petitioner objected to the reopening of the assessment in view of the fact that the original assessment had been finalized after detailed scrutiny u/s 143(3) of the Act. However, the Joint Commissioner of income tax, Special Range-II, Rajkot, once again passed a second assessment order by way of reassessment u/s 143(3) read with section 147 of the Act, vide order dated March 28, 2000, making several additions and disallowances. Against the said order, the petitioner preferred a first appeal before the Commissioner of income tax (Appeals) who allowed the appeal, vide order dated January 30, 2001. Thereafter, the Assessing Officer issued the impugned notice dated March 29, 2001, u/s 148 of the Act. Being aggrieved, the petitioner has filed the present petition challenging the aforesaid notice.

2. Mr. B.D. Karia, learned advocate appearing on behalf of the petitioner, submitted that in this case, original assessment was framed after a thorough scrutiny of details filed by the petitioner and after several explanations and evidence were furnished by the petitioner during the course of assessment as required by the income tax Department. Over and above the original assessment, the reassessment u/s 143(3) read with section 147 of the Act has also been completed. Despite the existing factual position, the respondent issued notice u/s 148 of the Act. The learned advocate invited the attention to the earlier assessment order framed u/s 143(3) read with section 147 of the Act as well as to the reasons recorded, to submit that the assessment is sought to be reopened again on the very same grounds on which the assessment was reopened by issuance of notice u/s 148 of the Act on December 24, 1997. It was submitted that on the same grounds in respect of which assessment was also reopened and set aside by the Commissioner (Appeals), it is not permissible for the respondent to reopen the assessment.

3. Next it was submitted that the assessment year is 1994-95 whereas, notice u/s 148 of the Act has been issued on March 29, 2001, which is clearly beyond the period of four years from the end of the relevant assessment year and as such, in the absence of any failure on the part of the petitioner to disclose fully and truly all material facts, the assumption of jurisdiction u/s 147 of the Act is invalid. Inviting attention to the reasons recorded, it was submitted that there is not even a whisper as regards any failure on the part of the petitioner to disclose fully and truly all material facts.

4. Opposing the petition, Mr. M.R. Bhatt, learned senior advocate appearing on behalf of the respondent, invited attention to the order passed by the Commissioner (Appeals) in respect of the assessment framed u/s 143(3) read

with section 147 of the Act, to submit that the entire assessment had been set aside on the ground that the Assessing Officer, at the relevant time had not recorded any reasons for reopening of the completed assessment. It was submitted that in the circumstances, there is no bar against the respondent in initiating proceedings u/s 147 on the same ground in respect of which the assessment was sought to be reopened earlier. Inviting attention to the reasons recorded, it was submitted that it is apparent that the same duly reflect that income chargeable to tax has escaped assessment on account of failure on the part of the petitioner to disclose fully and truly all material facts and as such, the requirements of section 147 are duly satisfied. It was, accordingly, urged that the petition being devoid of any merit, deserves to be dismissed.

5. A perusal of the earlier assessment order framed u/s 143(3) read with section 147 of the Act along with the reasons recorded in the present case makes it apparent that the grounds for reopening the assessment are similar. In the circumstances, the first question which is required to be considered is as to whether it was permissible for the Assessing Officer to reopen the assessment on the same grounds on which the assessment was reopened earlier and was quashed by the Commissioner (Appeals) in the assessee's appeal. From the order dated January 30, 2001, passed by the Commissioner (Appeals), it is apparent that the earlier assessment was set aside on the ground that the Assessing Officer had not recorded reasons for reopening the assessment which is a condition precedent for issuing notice u/s 148(2) of the Act. Thus, proceedings initiated earlier had been set aside on the ground that the same were initiated without compliance with the mandatory provisions of section 148(2) of the Act. In the circumstances, when earlier order stood annulled on the ground of lack of fulfilment of the basic requirement for exercise of jurisdiction u/s 147, there is no bar against reopening the assessment once again on the same grounds after following due procedure in accordance with law.

6. The next question that arises for consideration is as to whether the reopening of assessment beyond a period of four years from the end of the relevant assessment year is valid. In the light of the proviso to section 147 of the Act, for the purpose of reopening assessment after the expiry of a period of four years from the end of the relevant assessment year, in a case where earlier the assessment had been made u/s 143(3) of the Act, the Assessing Officer is required to record two fold satisfaction. Firstly, that income chargeable to tax has escaped assessment; and, secondly, that such escapement is by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for that assessment year. A perusal of the reasons recorded for reopening the assessment, inter alia, indicates that upon a scrutiny of the record, it was found that there was irregularity in valuation of closing stock as per the details filed in the last year in the audited accounts. The closing stock was shown at Rs. 31,17,091 in the audited report. The machinery as enumerated in the reasons recorded was shown as machinery in the closing stock. Thus, on March 31, 1994, machinery of the value of Rs. 16,03,820 was shown in the

closing stock. However, in the current year, such machinery and its value had not been shown in the opening stock. The Assessing Officer, therefore, was of the opinion that it was clear that such machinery shown as closing stock in the last year acquired after dismantling of four ships had been sold outside the books during the year.

7. Another ground for reopening is that on verification of copies of accounts furnished by the petitioner, it was found that the petitioner had shown receipt of 745 barrels of oil from the ships referred to therein. Out of such stock, 449 barrels were sold during the year for Rs. 4,99,423 and the remaining 301 barrels were stated to have been sold in the subsequent year. Value of the sales in the subsequent year was shown at Rs. 3,14,442. According to the Assessing Officer, since 301 barrels were shown to have been sold in the subsequent year, the same should have been shown as closing stock in the assessment, year 1994-95. However, on detailed examination of the closing stock, break-up furnished in the audited accounts, as well as copies of accounts, it was found that the assessee had ignored the value of 301 barrels in its closing stock.

8. The Assessing Officer was, therefore, of the view that the petitioner has suppressed its closing stock with respect to four generator sets valued at Rs. 16,03,820 and 301 barrels of oil valued at Rs. 2,83,000 which was required to be added to the petitioner's income and, therefore, income had escaped assessment. The Assessing Officer has recorded other grounds for reopening also. However, it is not necessary to refer to all the grounds individually inasmuch as it is settled legal position that if the reopening is valid on one ground, the same would be sustainable.

9. From the facts noted hereinabove, it is apparent that the Assessing Officer has recorded twin satisfaction as required under the proviso to section 147 of the Act. From the reasons recorded it is clear that income chargeable to tax has escaped assessment. Considering the fact that such income has escaped assessment because the petitioner had suppressed the closing stock of generator sets as well as barrels of oil as referred to hereinabove, the logical conclusion is that such escapement is by reason of failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment. When there is suppression, it goes without saying that there is failure to disclose fully and truly all material facts, even if the same is not expressly stated in such terms. In the circumstances, the contention raised on behalf of the petitioner that the requirements for reopening assessment after the expiry of a period of four years from the end of the relevant assessment year are not satisfied is misconceived and does not merit acceptance. For the foregoing reasons, there being no infirmity in the action of the respondent in reopening the petitioner's assessment for the assessment year under consideration by issuance of notice u/s 148 of the Act, the petition fails and is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.