
(2008) 06 GUJ CK 0033
In the Gujarat High Court

Case No : Special Civil Application No's. 12050, 12053, 12054 and 12055 of 2000

Austin Engineering Co. Ltd.

APPELLANT

Vs

Joint Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-06-2008

Acts Referred:

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

Citation : (2009) 223 CTR 405 : (2009) 312 ITR 70

Hon'ble Judges : H.B. Antani, J; D.A. Mehta, J

Bench : Division Bench

Advocate : S.N. Soparkar and Varun Patel, for the Appellant; M.M. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—In each of these petitions, the parties are common and the challenge is to notice dated 10-05-2000 issued by the respondent u/s 148 of the Income Tax, 1961 ("the Act"). The parties are ad idem that the facts and contentions in all material particulars remain identical in each of the petitions. Hence, the petitions are taken up for hearing together and disposed of by this common judgment.

2. The facts, as are obtained in Special Civil Application No. 12050 of 2000, are narrated for appreciating the controversy between the parties.

The petitioner, a limited Company, has claimed deductions under Sections 80HH and 80I of the Act for each of the four Assessment Years in question, namely, Assessment Years 1990-91, 1991-92, 1992-93 and 1993-94 respectively. It is also an accepted position between the parties that the assessments were finalised by the Assessing Officer on 15-04-1991, 06-03-1992, 23-03-1995 and 27-11-1995 respectively all u/s 143(3) of the Act. The Assessing Officer issued the impugned notice dated 10-05-2000 for each of the four Assessment Years

after recording the following reasons which form part of the affidavit-in-reply tendered by the respondent:

1. In this case assessment was completed u/s 143(3) on 15-04-1991 and in the assessment the assessee was allowed deduction on Unit-1 at the rate of 20% u/s 80HH of the IT Act. The amount allowed was Rs. 22,22,617/-. The assessee was also allowed deduction u/s 80HH at the rate of 20% and 80I at the rate of 25% on Unit-2. Total deduction allowed on this unit was Rs. 16,43,160/-. On examination of records, it was found that the assessee had earned other income of Rs. 19,91,000/- by way of CCS and of Rs. 19,14,000/- by way of IPRS i.e. export incentive. In addition, the assessee had interest on NSC and fixed deposit of about Rs. 60,000/-. The assessee was allowed deduction u/s 80HH and 80I on all these incomes.

2. After the assessment was completed, Hon''ble Supreme Court rendered a decision in the case of Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, that export incentive benefits are not income derived from manufacturing and therefore they are not eligible for deduction under Sections 80H and 80I. On the basis of this decision of Hon''ble Supreme Court, I now form a belief that income chargeable to tax has escaped assessment because excess deduction under Sections 80HH and 80I was allowed. It was further found that the assessee has also done some trading during the year. Sale of trade goods was of Rs. 6,07,510/-. On the profits relatable to this trade goods, the assessee is not eligible for deduction under Sections 80HH and 80I. The assessee has made incorrect disclosure of income by showing trading income as income from manufacturing.

3. In view of the above, I have reason to believe that by reason of failure on the part of the assessee to disclose income truly and fully, income chargeable to tax has escaped assessment. I also have reason to believe on the basis of Hon''ble Supreme Court decision, as discussed above that income chargeable to tax has escaped assessment. The case is covered by Section 147, hence, notice u/s 148 is to be issued. Since more years have already passed from the end of the assessment year, hence such notice can be issued only with the approval of CIT, Rajkot, hence, the proposal is submitted to Hon''ble CIT, Rajkot for according approval in the case.

3. On behalf of the assessee, Mr. Varun Patel, learned Advocate submitted that as the assessment notices for all the four Assessment Years were issued beyond the period of four years from the end of the relevant Assessment Year, provisions of Section 147 and the Proviso thereunder cannot be invoked against the assessee. It was further contended that there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Merely because the Supreme Court had subsequently pronounced that deduction of the nature claimed by the petitioner-assessee was not allowable, action of the petitioner-assessee in making the claim at the relevant point of time would not render the action of the assessee either amounting to

non-disclosure, nor would it amount to partial disclosure, nor would it amount to false disclosure. It was, therefore, submitted that the impugned notices for all the four Assessment Years were bad in law and were required to be quashed. In support of the submissions made, reliance has been placed on the decision of this Court in the case of Denish Industries Ltd. Vs. Income Tax Officer,

4. On behalf of the respondent, Ms. M.M. Bhatt, learned Standing Counsel submitted that the judgment of the Supreme Court would always constitute information for the purpose of re-opening of the assessment, and hence, the action of the respondent-authority was perfectly justified. In support of the submissions, reliance has been placed on the Apex Court's decision in the case of (2000) 243 ITR 1 and A.L.A. Firm Vs. Commissioner of Income Tax, Madras, . Attention was also invited to Explanation 2 to Section 147 of the Act to submit that under Clause (c) of the said Explanation, there was escapement of income, and once escapement of income was shown, the respondent-authority was justified in initiating re-assessment proceedings.

5. There is no dispute as to the fact that for each of the four Assessment Years, the period of four years expires on 31-03-1995, 31-03-1996, 31-03-1997 and 31-03-1998 respectively from the end of each of the relevant Assessment Years. The impugned notice u/s 148 is dated 10-05-2000 for each of the Assessment Years. u/s 147, if any income has escaped assessment, the Assessing Officer is empowered to bring to tax income which has escaped assessment if the Assessing Officer records the requisite reasons as provided u/s 148(2) of the Act. However, the Proviso u/s 147 of the Act stipulates that in case where the assessment is framed u/s 143(3) of the Act and a period of four years from the end of the relevant Assessment Year has expired, unless and until the income chargeable to tax has escaped the assessment by virtue of: (i) failure to file return as statutorily prescribed; or, (ii) failure to respond to notice issued Section 142(1) of the Act or Section 148 of the Act; or (iii) to disclose fully and truly all material facts necessary for assessment of the relevant Assessment Year, no action can be taken by the Assessing Officer. In the present case, admittedly, the first two contingencies cannot be pressed into service by the respondent.

6. The only question that would then survive would be whether there was any failure on the part of the petitioner-assessee to disclose fully and truly all material facts necessary for the assessment. Though in the reasons recorded, the respondent has stated so, apparently, the said statement does not merit acceptance for the simple reason that if all material facts had not been fully and truly disclosed by the assessee, there was no occasion for the Assessing Officer to frame the assessment u/s 143(3) of the Act by allowing the claim of the assessee. In fact, the law as it then stood was understood identically both by the assessee and the Assessing Officer. Merely because subsequently the Apex Court pronounced the law to be otherwise, on the date of the filing of the return of the income when the assessee made a claim for deduction, the claim could not be termed to be either lacking in material particulars or could not be termed to be

untrue. In other words, all the material facts were fully disclosed and no false facts were stated in support of the claim made. The reasons recorded themselves show that the Assessing Officer has changed his opinion only on the basis of subsequent judgment rendered by the Apex Court. Thus, this is a case of change of opinion by the Assessing Officer and not a case of any failure on the part of the assessee.

7. The two decisions of the Supreme Court on which reliance has been placed on the respondent-authority are both in context of the provisions of Section 147(b) of the Act as it then stood before 01-04-1989 and hence, cannot carry the case of the Revenue any further. Section 147(b) of the Act itself stipulates that re-assessment is permissible within a period of four years on receipt of information from an external source. But the present is a case where the period of four years has already elapsed. Hence, even if one proceeds on a footing that the Apex Court judgment constitutes information yet if the period of four years has expired, unless and until the prerequisite conditions stipulated by the Proviso to Section 147 of the Act are shown to be fulfilled, no action can be initiated for re-assessment.

8. Reference to provisions of Explanation 2 of the Act also cannot assist the case of the Revenue. The language employed by the Proviso itself indicates that the legislature has consciously laid down a time frame within which re-assessment proceedings in relation to escaped income can be initiated, and beyond the prescribed period of limitation, even if income has escaped assessment, if the required conditions enumerated in the Proviso are not shown to exist, no action can be initiated u/s 147 of the Act regardless of the fact that income may have escaped assessment.

9. In the circumstances, impugned notice dated 10-05-2000 for each of the Assessment Years in question is hereby quashed.

10. All the petitions are allowed accordingly. Rule made absolute in each of the petitions with no order as to costs.