

(1980) 10 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 6225, 6226, 6228 to 6234 and 6236 of 1974

Auto and Metal Engineerings

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-10-1980

Acts Referred:

Income Tax Act, 1961 — Section 153

Citation : (1981) 129 ITR 482 : (1981) 6 TAXMAN 68

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : D.D. Verma, for the Appellant; D.N. Awasthy, for the Respondent

Judgement

Rajendra Nath Mittal, J.—This judgment will dispose of Civil Writ Petitions Nos. 6225, 6226, 6228 to 6234 and 6236 of 1974, which involved same questions of law and fact. In the judgment, the facts are being given from C.W.P. No. 6230 of 1974.

2. The petitioner is a partnership firm and is running a factory in Faridabad. It is registered under the Indian Partnership Act as well as the I.T. Act. It consists of two partners, namely, Smt. Sunanda Rani Jain, wife of V. K. Jain, and Smt. Karuna Jain, wife of S. K. Jain. Its financial year is from April to March each year. There is another firm, viz., M/s. Auto Agro Industries. It is also a registered partnership concern consisting of V. K. Jain, S. K. Jain, Smt. Swarna Jain, wife of O. P. Jain, and Smt. Santosh Jain, wife of late S. P. Jain. Both the firms are Income Tax assesseees.

3. On April 24, 1971, the premises of the petitioner were raided by the Income Tax authorities. During the course of search, they seized all books of account, the documents including challans, receipt books, inspection reports, correspondence files, etc. Aggrieved against the raids, searches and seizure, Smt. Sunanda Rani, partner of the petitioner, filed a writ petition (C. W. P. No. 744 of 1971) in the Delhi High Court. V. K. Jain, partner of M/s. Auto Agro Industries and Smt.

Karuna Jain also filed two writ petitions (C.W.P. Nos. 741 and 745 of 1971, respectively) for the same purpose. They also filed applications for stay of further proceedings along with the writ petitions. The petitions were admitted and further proceedings were stayed by the Motion Bench.

4. Civil Miscellaneous No. 2126-W of 1961 was moved in C.W.P. No. 741 of 1971 by the Income Tax department for clarification of the order of stay. It came up for hearing before Rajinder Sachar J. on November 23, 1971, and the learned judge after notice to the writ petitioners passed the following order:

" After hearing the counsel of the parties I direct that the respondents may proceed on in pursuance of the notice but no final order be passed till the pendency of this writ petition. Mr. Sharma counsel for the respondents informed me that the matter is urgent as the assessment is liable to be time barred by March, 1972. I am informed that the case is complete inasmuch as the return of the respondents and rejoinder by the petitioner have already been filed. Let the matter be heard in the second week of January, 1972."

5. Thereafter, the department made another application in the same writ petition which was numbered as C.M. No. 139/W of 1973. It came up for hearing before V.S. Deshpande J. on January 24, 1973, and the learned judge passed the following order :

" Present :--Shri B. N. Kirpal and Shri D.D. Verma.

Further proceedings for assessment for the year 1970-71 onwards are stayed pending the disposal of the application. Shri D. D. Verma prays for time for filing a reply. Case for 12-2-1973."

6. The application was posted thereafter before the same learned judge on February 12, 1973, who confirmed the order dated January 24, 1973. The department again moved a civil miscellaneous in the said case which was numbered as C. M. No. 469-W of 1973. It was disposed of by Rajinder Sachar J. on March 5, 1973, by passing the following order :

"This is an application seeking clarification of my order dated 23rd November, 1971. The clarification sought is whether the stay order given by me would cover only the case of the firm or the partners or both. The stay will naturally operate for the assessment of the firm as well as the partners till the disposal of the writ petition. "

7. The department filed yet another application for a similar purpose in the same writ petition. It was registered as C. M. No. 501/W of 1973. It was listed before Deshpande J. on July 8, 1973. The learned judge passed the following order in the application :

"Present:--Shri B.N. Kirpal. The clarification given by Sachar J. by his order dated 5th March, 1973, also holds good in respect of my order dated 24-1-1973 confirmed on 12-2-1973."

8. It is alleged that the aforesaid orders were applicable in all the writ petitions. The petitions were dismissed by a common order by Rangarajan J., vide order dated August 12, 1974. After the dismissal of the writ petitions, the department served on the petitioner notices relating to assessment years 1967-68, 1968-69 and 1969-70, u/s 142(1), 143(2) and 143(3) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), on different dates, requiring it to produce various records and answer several queries. On November 21, 1974, it filed a reply to the said notices raising a preliminary objection to the effect that the assessments had become time barred. The ITO did not dispose of the preliminary objections and held that the objection would be decided at the time when an order u/s 143(3) or u/s 144 of the Act would be passed. The case of the petitioner is that the department cannot make the assessment, now as its cases had become barred by time on March 31, 1972. It has filed three writ petitions, namely, C.W.P. Nos. 6236, 6233 and 6230 of 1974, relating to the assessment years 1967-68, 1968-69 and 1969-70, respectively, praying that the impugned notices be quashed and the ITO prohibited from making the assessment against it. Similarly, three writ petitions have been filed by Smt. Karuna Rani Jain, namely, C.W.P. No. 6231, 6232 and 6228 of 1974, relating to the assessment years 1967-68, 1968-69 and 1969-70, respectively, and three by Smt. Sunanda Rani Jain, namely, C.W.P. Nos. 6226, 6234 and 6225 of 1974, relating to the said assessment years, respectively.

9. The writ petitions have been contested by the respondents who have, inter alia, pleaded that the petitioner-firm had failed to co-operate with the department during the pendency of the writ petitions at Delhi. Shortly after the disposal of the writ petitions by the Delhi High Court, respondent Xo. 3 issued notices in order to give opportunity to it to clarify certain points before passing the final assessment order. It is further averred that the Delhi High Court stayed the assessment till the decision of the writ petitions and, therefore, the department could proceed to pass assessment orders against it after the decision thereof. The assessment orders were stayed on November 23, 1971, and, therefore, there were still 4 months and 8 days to make final assessment. That period is permissible while calculating the limitation for passing the final order after August 12, 1974, the date of decision of the writ petitions. Thus, the assessment orders could be made up to December 20, 1974.

10. It is contended by the learned counsel for the petitioner that from the various orders of the Delhi High Court, it is evident that proceedings of the assessment has not been stayed, that only the pronouncement of the order had been stayed by it. He argues that the ITO could continue the proceedings and after completing the same he should have stayed them and passed the final order immediately after the dismissal of the writ petitions.

11. I have heard the learned counsel for the parties at considerable length and given due considerations to their arguments. In order to determine the question it will be relevant to refer to Section 153 of the Act which relates to the time-

limit for completion of assessments and reassessments. It reads as follows :

" 153. (1) No order of assessment shall be made u/s 143 or Section 144 at any time after-

(a) the expiry of-

(i) four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or before the 1st day of April, 1967 ;

(ii) three years from the end of the assessment year in which the income was first assessable, where such assessment year is the assessment year commencing on the 1st day of April, 1968 ;

(iii) two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969 ; or.....

Explanation 1.--In computing the period of limitation for the purposes of this section, the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to Section 129 or any period during which the assessment Proceeding is stayed by an order or injunction of any court, shall be excluded. "

12. The assessment year in this writ petition is 1969-70. According to Section 153(1)(a)(iii) the order of assessment could be passed with regard to that assessment year within a period of 2 years, that is, up to March 31, 1972. Similarly, with regard to the assessment years 1967-68 and 1968-69, the assessment could be made within four and three years u/s 153(1)(a)(i) and 153(1)(a)(ii), respectively. The last date of passing the assessment orders in the said two cases also came to March 31, 1972. The petitioner, however, filed the writ petition in the Delhi High Court and obtained an order of stay on November 23, 1971. Various clarifications were obtained by the department subsequently. At the time when the stay order was obtained, there were still 4 months and 8 days to pass orders in the cases of the petitioner. The case of the respondents is that under Expln. 1 to Section 153 the respondents are entitled to pass an order in the case of the petitioner before the expiry of the said period from the date of the dismissal of the writ petitions. The writ petitions were dismissed on August 12, 1974. According to them, the case of the petitioner could be decided by December 20, 1974. It is said by the respondents that as there was ample time to pass the order, the ITO in fairness to the petitioner, issued notices to it. The case hinges on the interpretation of Expln. 1 to Section 153.

13. From a reading of the Explanation, it is evident that in case the assessment proceeding is stayed by an order or injunction of any court that period shall be excluded in computing the period of limitation for the purpose of Section 153. The question arises as to what the assessment proceeding means. The counsel for the petitioner urged that the " assessment proceeding " does not include an

order of assessment. The words " assessment proceeding " have not been defined. Kanga and Palkhivala in the Law and Practice of Income Tax, 7th Edn., Vol. 1, at pp. 842 and 843, have commented upon the word " assessment ". They have observed that the word " assessment" is used in the Act as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable, and sometimes the whole procedure laid down in the Act for imposing liability on the taxpayer. The word must be understood in each section of this Act with reference to the context in which it is used. In some sections it has a comprehensive meaning and includes reassessment and in some sections it has a restricted meaning and is used as distinct from reassessment. They have further observed that the method prescribed by the Act for making an assessment to tax--using the word " assessment" in its most comprehensive sense as including the whole procedure for imposing liability upon the taxpayer--consists of the following steps. In the first place, the taxable income of the assessee has to be computed. In the next place, the sum payable by him on the basis of such computation has to be determined. Finally, a notice of demand in the prescribed form specifying the sum so payable has to be served upon the assessee. After taking into consideration the above-said observations, I am of the opinion that the word " assessment " as used in Expln. 1 is comprehensive enough to include an order of assessment. Therefore, if the passing of the order is stayed, the ITO shall be entitled to exclude that period in computing the period of, limitation for the purpose of completing the assessment.

14. It is evident from the various orders of the High Court that it had no objection in case the proceedings regarding assessment continued but it had directed that the final order be not passed. From the order, it cannot be spelt out that all the proceedings regarding the assessment should have been completed before the decision of the writ petitions and the order should have been passed" immediately after the decision thereof. If that had been the intention it would have been specifically said so in the order. Therefore, if the order dated November 23, 1971, of Sachar J. as reproduced above, is read in conjunction with Expln. 1 of Section 153 of the Act, it is clear that the ITO could decide the case within a period of 4 months and 8 days from the date of dismissal of the writ petitions. In the circumstances, it cannot be held that the impugned notices could not be issued by the ITO. I am, therefore, of the view that there are no grounds to quash them.

15. No other point has been raised in the other writ petitions and the above observations equally apply to them.

16. For the aforesaid reasons, these writ petitions fail and are dismissed with costs. Counsel fee, in each case, Rs. 150.