
(2014) 11 DEL CK 0325

In the Delhi High Court

Case No : Writ Petition (Civil) 6159/2013 and CM 13549/2013

Balasubramanian Ramachandran

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Income Tax Act, 1961 — Section 10A, 139, 142, 143, 143(3)

Citation : (2014) 146 DRJ 555

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Deepak Chopra and Amit Srivastava, Advocate for the Appellant;
Kamal Sawhney and Sanjay Kumar, Advocate for the Respondent

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "said Act"), which was issued to the petitioner on 28.03.2012 seeking to re-open the assessment which had been completed under Section 143(3) of the said Act on 30.11.2007 in respect of the assessment year 2005-06.

2. It is evident that the notice under Section 148 was issued beyond the period of four years from the end of the relevant assessment year. Consequently, the first proviso to Section 147 of the said Act would be applicable. The said Section 147 along with the said first proviso reads as under:-

"147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:"

3. The learned counsel for the petitioner submitted that the re-assessment proceedings were bad in law inasmuch as the conditions stipulated in the first proviso to Section 147 of the said Act had not been fulfilled. In essence, he submitted that there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. He submitted that apart from there being no such failure on the part of the petitioner, there was not even any allegation with regard to such failure in the reasons which were supplied to the petitioner subsequent to the issuance of the said notice.

4. The learned counsel for the petitioner submitted that the entire controversy revolves around the deduction which had been claimed and allowed to the petitioner under Section 10A of the said Act in the original assessment order dated 30.11.2007. In the assessment order, it was specifically stated that the assessee company deals in software design, development and modification services and had claimed exemption under Section 10A of the said Act. After making certain disallowances on account of certain other items and examining the return and accompanying documents, the Assessing Officer assessed the profit and gains from business and profession as nil as claimed by the petitioner/ assessee on account of the exemption claimed under Section 10A. The learned counsel for the petitioner also drew our attention to the fact that the computation, accompanying the return, specifically referred to the claim of deduction under Section 10A and also gave the details of such claim.

5. It was also pointed out by the learned counsel for the petitioner that the company had, in fact, been wound up on 15.11.2011 by virtue of an order passed by the Andhra Pradesh High Court. However, we are not examining that aspect of the matter inasmuch as this petition can be disposed of on the simple point as to whether the petitioner had made a full and true disclosure of the material facts necessary for its assessment or not.

6. As mentioned above, on the issuance of the notice dated 28.03.2012, the petitioner asked for the reasons behind the issuance of the notice and the same were thereafter supplied to the petitioner. The purported reasons were as under:-

"Reasons for issuance of notice u/s. 148 of the I.T. Act, 1961

Assessment u/s. 143(3) was completed in November, 2007 in total income of Rs. 41,86,880/- u/s. It has been noticed that while completing the assessment, deduction u/s. 10A has been wrongly allowed which resulted in under

assessment of the Income to the tune of Rs. 5,85,472/-.

Section u/s. 147 reads as under:

Section 147....

Explanation 2 for the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment namely:

- (a)
- (b)
- (c) Where the assessment has been made, but
- (i) Income chargeable to tax has been under assessed; or
- (ii) Such Income has been assessed at too low a rate or
- (iii) Such Income has been made the subject of excessive relief under this Act; or
- (iv) Excessive loss or depreciation allowance or any other allowance under this Act has been computed:"

In view of explanation 2(c) (i) & (iv) to section 147, as quoted above, I have reason to believe that taxable Income to the tune of Rs. 5,85,472/-, has escaped assessment. Therefore it is proposed to issue notice u/s. 148 of the IT Act, 1961 in order to tax the above said escaped income. In view of the above, as per provisions of section 151, it is requested to kindly accord approval for issuance of notice u/s. 148 in this case for the assessment year 2005-06.

Sd/-

Income Tax Officer

Ward 8(2), New Delhi"

7. The petitioner filed its objections to the said reasons and in paragraph 2.5 of the said objections the specific plea of time bar and non-compliance with the conditions precedent stipulated in the proviso to Section 147 were taken. The relevant portion of the objections is as under:-

"2.5 Initiation of re-assessment proceedings is time barred It is respectfully submitted that there has been no escapement as alleged and the said purported proceedings are barred by limitation and have been initiated in violation of the provisions of the Act. In this regard it would be pertinent to refer to the proviso to Section 147 of the Act which reads as under:

"Provided that where an assessment under sub-Section (3) of Section 143 or this Section has been made for the relevant assessment year, no action shall be taken under this Section after the expiry Of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the

assessee to make a return under Section 139 or in response to a notice issued under sub Section (1) of Section 142 Or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

The assessment in the case of Skyworks India for the subject AY was completed under Section 143(3) of the Act. Detailed scrutiny proceedings were initiated and the assessment was concluded vide order dated November 30, 2007. However, the notice under Section 148 of the Act seeking to reopen the assessment for the assessment year is issued after the expiry of four years from the end of the relevant assessment year i.e. beyond the period of limitation which in the instant case expires on March 31, 2010.

Hence, after the expiry of four years from the end of the relevant assessment year, the proviso to Section 147 of the Act would be attracted and no action can be taken after 4 years from the end of relevant assessment year under Section 147 of the Act, unless such income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts for his assessment for that assessment year.

It would be appreciated that Skyworks India has provided all the documents and details called for in the course of assessment proceedings initiated by your office. Also, there is no indication in the notice issued under Section 147 of the Act that there was a failure or omission on part of Skyworks India to truly disclose the material facts necessary for assessment."

8. However, the Assessing Officer was not convinced with the objections taken by the petitioner and passed an order dated 20.12.2012 rejecting the objections. The order, however, did not consider the point raised by the assessee that the reasons themselves did not contain any allegation that there was a failure on the part of the petitioner / assessee to disclose fully and truly all material facts necessary for its assessment. Thereafter, the re-assessment order was passed on 22.03.2013, once again, without referring to the specific point raised by the petitioner.

9. We have heard the learned counsel for the petitioner as well as the learned counsel for the respondent and we are of the view that the essential ingredient of there being a failure to disclose fully and truly all material facts necessary for assessment is conspicuous by its absence. In fact, there is not even an allegation or a whisper or suggestion with regard to this in the reasons recorded. It is well settled by several decisions starting from Haryana Acrylic Manufacturing Company Vs. The Commissioner of Income Tax IV and Another, and including Wel Intertrade Private Limited (formerly Wel Intertrade Limited) and Another Vs. Income Tax Officer, and Commissioner of Income Tax-III Vs. M/s. Suren International Pvt. Ltd., that the reasons must record that there was such a failure on the part of the assessee or, in the least, the reasons must lead to the clear and direct inference that there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. The reasons must

indicate which material fact was not fully and truly disclosed. In the last mentioned case, this Court, after referring to the earlier decisions observed as under:-

"In the reasons as furnished by the Assessing Officer, we find that there is neither any allegation that the assessee had failed to truly disclose any material facts at the time of assessment, nor can we readily infer the same in view of the fact that a detailed enquiry had been conducted by the Assessing Officer with regard to the identity and creditworthiness of the share-applicants and genuineness of the transactions in relation to the share application money received by the assessee. Further the mere statement that the DRI has seized certain goods of the assessee and levied a penalty also cannot be stated to be a reason for reopening of assessment of the assessee as the said statement made is neither followed by the recording of a belief that the income escaped on that count or that the assessee has failed to disclose all relevant material, fully and truly, at the stage of the first assessment."

10. Similarly, in the present case, we find that in the reasons recorded, there is neither any allegation that the assessee had failed to truly and fully disclose material facts at the time of the assessment nor can we readily infer the same. Consequently, one of the essential ingredients for re-opening an assessment beyond the period of four years has not been satisfied in the present case. The re-assessment proceedings are, therefore, bad in law. The impugned notice under Section 148 dated 28.03.2012 as well as all proceedings pursuant thereto, including the re-assessment order dated 22.03.2013, are set aside. The writ petition is allowed as above. There shall be no order as to costs.