
(2004) 03 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6962 of 2003

Banswara Syntex Ltd.

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 139, 147, 148, 149(1)

Citation : (2004) 188 CTR 457 : (2005) 272 ITR 154

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sanjay Jhanwar and Gajendra Maheshwari, for the Appellant; K.K. Bissa, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned counsel for the parties.

2. The case raises a short question. The assessee was issued a notice on 28th March, 2003 for reopening the assessment for the asst. yr. 1996-97, after expiry of 4 years from the end of assessment year of which reassessment is sought to be initiated.

3. The assessee raised an objection as to the jurisdiction of AO to initiate the proceedings as it was barred by time. On assessee's request, the reasons recorded for reopening the assessment were communicated to him vide communication dt. 5th Dec., 2003. On the basis of the said reasons, contention was raised before the AO that there being no satisfaction about escapement of assessment which is attributed to failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for asst. yr. 1996-97, the reopening cannot be made after four years from the end of relevant assessment year which ends on 31st March, 2001.

4. Section 147 of the IT Act, 1961, requires that if the AO has reason to believe

that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income subject to provisions of Sections 148 to 153. Section 148 requires that before making assessment, reassessment or recomputation of income u/s 147, the AO shall serve a notice on the assessee requiring him to furnish a return of income for such period. It also requires mandatorily that (before issuing any such notice u/s 148) the AO shall record reasons in writing for doing so. Thus, reasons recorded before issuing notice become relevant. Firstly to consider, in case the validity of such notice is challenged, whether the reasons so recorded have any relevant nexus with the formation of belief by the AO for taking action u/s 147. Sufficiency or adequacy of such reason is not subject to review but its nexus with formation of belief is subject to judicial review. Secondly, the reasons so recorded also have direct bearing on this question of limitation which governs the jurisdiction of the AO to initiate proceedings u/s 147.

5. Limitation within which action u/s 147 can be initiated is governed by Section 149 r/w proviso to Section 147.

Proviso to Section 147 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 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 u/s 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.

6. Apparently, if the escapement of income is believed by the AO to have escaped assessment is not attributable to any failure on the part of the assessee in filing return u/s 139 or 148 or to failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment, the proceedings for assessment or reassessment of any assessment year cannot be initiated after, expiry of four years from the end of assessment year for which assessment or reassessment is sought to be made u/s 147.

7. The reasons which led the AO to hold belief that income of the petitioner-assessee is chargeable to tax for asst. yr. 1996-97 have been produced along with writ petition, which reads as under:

"It is noticed that the assessee has claimed lease rent on accrual basis. On examination of the account it revealed that the claim represented principal amount and interest. The principal amount has not been allowed in the assessment as it represented the cost of machinery during the year i.e., asst. yr. 1996-97. The lease rent on accrued basis has been shown at Rs. 92,77,532. In this claim also at least Rs. 60,00,000 (approx.) represented the principal amount towards the cost of the machinery. Therefore, because of wrong claim, the

income chargeable to tax approx. 60,00,000 has escaped assessment.

A perusal of the aforesaid reasons goes to show that there was no satisfaction on the part of AO that escapement of income chargeable to tax is believed to be on account of failure on the part of the assessee to file returns or to disclose fully and truly all material facts necessary for his assessment for that asst. yr. 1996-97.

8. Apparently, the reasons recorded do not lay foundation, so as to claim extended period of limitation u/s 149(1)(b) which can be invoked only in cases falling outside proviso to Section 147. If facts are correctly disclosed and a claim has been laid to deduction or exemption, which on AO's view may not be sustainable in law, does not make the assessee guilty of failure to disclose truly and correctly all material facts. It is trite to say that assessee's duty ends with placing all material facts necessary for assessment before the AO. Once that duty is performed, it is not necessary for the assessee to instruct the AO to draw inference and assess the income. It is for the AO to correctly construe that material and frame assessment.

9. In this connection, reference may be made to Calcutta Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, wherein the Court said that, while duty of the assessee is to disclose fully and truly all primary facts, it does not extend beyond this.

The Court further explained :

"Does the duty, however, extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences have ultimately to be drawn. It is not for somebody else-far less the assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differs regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences-whether of facts of law-he would draw from the primary facts.

If; from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn."

10. In the present case, the petitioner is not challenging the sufficiency or adequacy of material, on the basis of which, belief has been found but his case is on the basis of reasons recorded by the AO himself. He had no jurisdiction to initiate proceedings on the date on which he issued notices which were clearly beyond four years from the end of relevant assessment year, which, in the

present case, comes to end on 31st March, 2001. It is apparent from the reasons that AO did not hold any belief that escapement of income chargeable to tax from the assessee was on account of any failure on the part of the assessee to disclose truly and fully all material facts necessary for his assessment for asst. yr. 1996-97. Thus, it was clearly a case falling within the ambit of proviso to Section 147 and notices issued after 31st Jan., 2001, were clearly barred by time. Thus, AO had no jurisdiction to issue the notices. 11. Learned counsel for the respondent sought to contend that since this objection could be taken before the AO and can be disposed of by him, this Court ought not to interfere in the case. However, he is unable to point out that this case is not governed by proviso to Section 147 nor he contends that if the case is governed by proviso to Section 147, the notices issued on 28th March, 2001, will be clearly barred by time. Since a case of patent lack of jurisdiction is made out on the basis of AO's own recorded reasons, we are not persuaded to relegate the petitioner to alternative remedy.

Accordingly, the writ petition is allowed and impugned notices are quashed. No costs.