
(1978) 03 BOM CK 0036

In the Bombay High Court

Case No : Appeal No. 111 of 1974. Miscellaneous Petition No. 411 of 1968

C.A. Gulanikar, Income Tax Officer

APPELLANT

Vs

Ramnarain Sons Private Ltd.

RESPONDENT

Date of Decision : 02-03-1978

Acts Referred:

Income Tax Act, 1961 — Section 148, 153(3)

Citation : (1979) 9 CTR 74 : (1979) 119 ITR 83 : (1979) 1 TAXMAN 436

Hon'ble Judges : R.M. Kantawala, C.J.; S.K. Desai, J

Bench : Division Bench

Advocate : R.J. Joshi, for the Appellant; V.H. Patel, for the Respondent

Judgement

Kantawala, C.J.—This appeal can be disposed of by a short order, as the controversy between the parties is limited.

2. Ramnarain Sons Private Ltd., the petitioners, were assessed for the year 1949-50 by an order dated March 30, 1954. In the assessment order for the said year, certain amounts shown as losses in shares forward business and losses in cotton forward business relating to K. H. Jhunhunwalla and P. H. Nerurkar were disallowed. In a revision preferred by the petitioners under s. 33A(2) of the Indian I. T. Act, 1922, certain negotiations took place and the assessment order was modified. The CIT by his order dated December 6, 1957, accepted the contention of the petitioners and allowed an amount of Rs. 14,66,720, which was included in the previous assessment order as a loss in speculation business.

3. Later on, assessment proceedings were taken up in respect of the income of Messrs. Ramdas Dossa & Company of Bombay, a firm carrying on business as a broker in cotton. In the course of the assessment proceedings of this firm, a question arose for consideration, whether the speculation loss of Rs. 10,15,360, alleged to have been paid by the petitioner to Messrs. Ramdas Dossa & Company was genuine or not. In the said assessment of Messrs. Ramdas Dossa & Company for the year 1949-50, the Income Tax authorities found that the said

losses were paid as profits to Kesardeo Hanumanbux and P. H. Nerurkar and, therefore, disallowed the said losses on various grounds, inter alia, holding that the said two parties were benamidars of Messrs. Ramdas Dossa & Company.

4. In an appeal preferred by Messrs. Ramdas Dossa & Company, the AAC remanded the matter to the ITO, inter alia, directing him to examine and record the evidence, amongst others, of the petitioners, Ramnarain Sons Private Ltd. Pursuant to these directions, one of the directors of the petitioners, by name M. R. Ruia, was examined by the ITO. On the basis of the evidence of M. R. Ruia and on other evidence, the AAC of Income Tax took the view that Kesardeo Hanumanbux and P. N. Nerurkar were the benamidars of the petitioners. This finding of the AAC was confirmed in appeal by the Income Tax Appellate Tribunal by its order dated August 31, 1967.

5. Thereafter, by a letter dated May 4, 1968, addressed to the petitioners, the respondent set out the facts mentioned above, and informed the petitioners that he intended to reopen the assessment of the petitioners for the assessment year 1949-50, in order to give effect to the finding of the Tribunal. It was stated in the said letter that, according to the respondent, specific opportunity was given during the remand proceedings and such opportunity saved the bar of limitation by virtue of Explan. 3 to sub-s. (3) of s. 153 of the I. T. Act, 1961 (hereinafter referred to as "the Act"). Thereafter, the respondent served upon the petitioners the impugned notice dated June 14, 1968, under s. 148 of the Act, after obtaining the necessary sanction of the Central Board of Direct Taxes on the ground that he had reason to believe that the income of the petitioners chargeable to tax for the assessment year 1949-50 had escaped assessment and that he proposed to reassess the same.

6. The impugned notice was proposed to be challenged by the petitioners in the petition, inter alia, on the ground that the notice was barred by limitation and the provision of s. 153(3) of the Act has no application to the case. That contention of the petitioners has been accepted by the learned judge and he quashed the said notice. It is against that order that the present appeal is filed by the ITO.

7. Mr. Joshi, on behalf of the appellant, contended that having regard to the provisions of Explan. 3 to s. 153 of the Act, there was no question of bar of limitation, as the petitioners were given an opportunity of being heard before the order of assessment as regards Messrs. Ramdas Dossa & Company was passed by the taxing authority and the Tribunal. He, therefore, submitted that, when such is the provision, the bar of limitation is not attracted.

8. Section 153 of the Act provides for time limit for completion of assessments and reassessments. Such time limit is prescribed in sub-s. (1) and sub-s. (2) of the said section. Sub-section (3) thereof provides that the provisions of sub-ss. (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-s. (2A), be completed at any time :

"(3). (ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;....."

9. There are three Explanations to this sub-section, and we are concerned with Expln. 3, which is relevant for our purpose. It reads as under :

"Where, by an order referred to in clause (ii) of sub-section (3), any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed."

10. It is by reason of the provisions of this Explanation that it is sought to be urged by Mr. Joshi, on behalf of the ITO, that the bar of limitation is not attracted and in view of the order of the AAC and the Income Tax Appellate Tribunal as regards the assessment of the firm of Messrs. Ramdas Dossa & Company, the taxing authorities are entitled to reopen the assessment, irrespective of the bar of limitation, since M. R. Ruia, a director of the petitioners, was examined in that case. After appreciating his evidence, the AAC as well as Tribunal came to the conclusion that Kesardeo Hanumanbux and P. H. Nerurkar were the benamidars of the petitioners.

11. The short question that has to be considered in this appeal is, whether examining M. R. Ruia, a director of the petitioners, was equivalent to an opportunity of being heard being given to the petitioners before the said order was passed by the AAC or by the Tribunal with reference to the assessment of the firm of Ramdas Dossa & Company for the assessment year 1949-50.

12. Section 4, which is the charging section, provides for assessment of every person. The word "person" is defined in s. 2(31) of the Act and, under the said definition, "person" includes -

"(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-

clauses."

13. It is clear from this definition of "person" from sub-clause (31) (iii) of the section that a company is one of the entities capable of being taxed under the section. Here the petitioners which are a private limited company were given (sic) an opportunity of being heard, when the assessment order was passed by the AAC qua the firm of M/s. Ramdas Dossa & Company for the assessment year 1949-50, and which order in appeal was confirmed by the Tribunal. It is a well settled position in law that a limited company is a separate entity and the mere fact that M. R. Ruia, who happened to be one of the directors of the petitioners, was examined as a witness, after an order of remand was made by the AAC in the assessment of the firm of M/s. Ramdas Dossa & Company, is not a sufficient compliance with the requirements of the provisions of Expln. 3 to s. 153 of the Act.

14. Under the said Explanation, the person whose assessment is required to be reopened, has to be given an opportunity of being heard. Mere examination of a director of the petitioners cannot be equated with an opportunity being given to the petitioners of being heard. If the petitioners, during the course of the assessment proceedings of the firm of M/s. Ramdas Dossa & Company, were given an opportunity of being heard, they could have asked any representative of theirs or an employee to give evidence qua the matters required to be examined. In the said assessment proceedings of the firm, the petitioners were not called upon to send their representatives to give evidence in respect of the matters required to be examined. Thus, mere taking evidence of a witness, who is a director of the petitioners, is not sufficient compliance with the requirements of the provisions of Expln. 3 of s. 153 of the Act, as the petitioners were not given an opportunity of being heard before the order was passed as regards the assessment of the firm of M/s. Ramdas Dossa & Company for the assessment year 1949-50. That being the position, the provisions of Expln. 3 to sub-s. (3) of s. 153 of the Act are not applicable to the petitioners and the impugned notice has been rightly quashed by the learned trial judge on the ground of bar of limitation.

15. In the result, the appeal fails and is dismissed with costs. The appellant will pay the costs, which are quantified at Rs. 250. Liberty to the respondent to withdraw Rs. 250 (two hundred and fifty) out of the amount deposited as security for costs and the balance of the amount so deposited be returned to the appellant.