

(2002) 02 BOM CK 0132
In the Bombay High Court
Case No : Writ Petition No. 938 of 2001

Caprihans India Ltd.

APPELLANT

Vs

Mr. Prakash Chandra and Others

RESPONDENT

Date of Decision : 07-02-2002

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 148, 154, 155

Citation : (2002) 3 ALLMR 80 : (2002) 256 ITR 721 : (2002) 2 MhLj 766

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : P.J. Pardiwalla, instructed by A.K. Jasani, for the Appellant;
R.V.Desai, Sr.Counsel, P.S. Jetly and B.M. Chatterjee, instructed by H.D.Rathod
and Co., for the Respondent

Final Decision : Allowed

Judgement

J.P. Devadhar, J.—Rule returnable forthwith. By consent of the parties, rule is taken up for final hearing.

2. In this petition, Petitioners challenge the notice dated 31.1.2001 for reopening of the assessment issued u/s 148 of the Income Tax Act, 1961 (in short Act). January, 2001.

3. The assessment year relevant for the purpose herein is Account year 1994-95.

4.The Petitioner is engaged in the business of manufacturing P.V.C. sheeting, decorative laminates, extruded sheets, etc. In the course of its manufacturing operations, Petitioner imports certain raw materials on which it incurs a liability to pay the customs duty. The goods manufactured out of the imported raw materials are liable to excise duty.

5. In the assessment year relevant for the purpose herein, return of income was filed on 30th November, 1994 declaring the income of Rs.98,03,840/along with accounts and tax audit report. In note No.9 to the notes of accounts, it was

indicated that the excise duty on finished goods and customs duty on raw materials and component lying in bonded warehouse on 31st March, 1994 estimated at Rs.120.79 lakhs and Rs.80.32 lakhs respectively were neither provided in the books nor included in the valuation of such stocks as per the practice consistently followed and the same was accounted at the time of clearance of goods and that accounting statement has no impact on the profits. On 20th December, 1996 the Assessing Officer passed an assessment order u/s 143(3) of the Act determining the total income of Rs.3,10,13,370/-. On appeal filed by the assessee, the Commissioner of income tax (Appeals) passed an order dated 2nd January, 1998 granting partial reliefs to the Petitioner. Thereupon, both the Petitioner and the Revenue filed appeals before the Income Tax Appellate Tribunal against the order of the Commissioner, income tax (Appeals) and the same are pending.

6. In the meantime time, on 20th November, 1997 the Assessing Officer issued a notice u/s 154/155 of the said Act stating therein as to why the assessment ought not to be rectified on account of excise duty and customs duty totalling to Rs.201.11 lakhs, being not included in valuing the closing stocks. The Petitioners by a reply letter dated 16.12.1997 informed the Assessing Officer that there is neither mistake in the assessment order nor there is any mistake in the method of accounting followed by the assessee as the customs duty is payable at the time of the clearance of the goods and at the rate prevalent on the date of exbounding of the warehoused goods. Apparently, being satisfied with the above explanation, it appears that the assessing officer has dropped the rectification as no further action was taken thereafter.

7. However, by a notice u/s 148 of the Act dated 31.1.2001, the assessing officer has sought to reopen the assessment u/s 147 of the Act. The validity of this is the subject matter of the present Writ Petition.

8. On behalf of the Respondents, Shri. Jitendra Yadav, Asstt. Commissioner of Income Tax, Circle 6(2) filed an affidavit furnishing reasons for reopening of the assessment, which reads as under :-

"Reasons for issue of Notice u/s.148 " In this case, the asstt. was completed u/s. 143(3) on 20.12.96 determining the total income at Rs.3,10,13,366/-. On a review of the records, it was seen that Excise Duty on finished goods at Rs.120.79 lakhs and Custom Duty on raw material and components lying in bonded warehouse at the closing stock as on 31.3.1994. The Supreme Court has held in the case of M/s. Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise, that the taxable event in the manufacture or the production of an excisable article. Hence, for valuation of closing stock, the Excise duty and Custom Duty payable on it should have been taken into consideration and by doing so the taxable profit stood short by Rs.201.11 lakhs (120.79 + 80.32). I have, therefore, reasons to believe that taxable income amounting to Rs.201.11 lakhs has escaped asstt. for the asstt. year 1994-95. The assessment is, therefore, u/s. 147 of the I.T. Act, 1961. Issue notice u/s.148 of the I.T. Act,

1961."

9. From the aforesaid reasons, it is evident that the reasons for reopening the assessment is the decision of the Apex Court in the case of M/s. Wallace Flour Mills Co. Ltd., wherein it is held that the taxable event for the purpose of excise duty is the date of manufacturing or production of an excisable articles. There can be no dispute that the taxable event for the purpose of excise duty is date of manufacturing, but as held by the Apex Court in the case of Collector of Central Excise Vs. Polyset Corporation, , the relevant date for the payment of excise duty is the date of clearance of the excisable goods and not the date of manufacturing of the excisable goods. In the instant case, it was specifically set out in the returns of the income filed by the assessee that the excise duty on finished goods and the customs duty on raw materials and components lying in bonded warehouse on 31st March, 1994 were neither provided in the books nor included in the valuation of such stocks as per the practice consistently followed by the assessee. There is no dispute that in the assessment order dated 15.2.2001, for the assessment year 1998-99, the method adopted by the assessee has been accepted by the Revenue. Moreover, the fact that the said excise duty and customs duty components were not included in the books nor in the valuation of the stocks, were known to the Department and the steps were sought to be taken as on 29th November, 1997 to rectify the assessment u/s 154/155 of the Act. However, on being satisfied, no action was taken in the matter. Under these circumstances, when the method of accounting followed by the assessee has been accepted by the revenue for subsequent years and the duty liability on the bonded goods crystallise only on the date of exbounding it cannot be said that there was any reason to believe that the income has escaped assessment so as to empower the Assessing Officer to initiate proceedings u/s 148 of the said Act to reopen the assessment.

10. Apart from the above, it is not disputed by the Respondents the statement made in the petition that the excise duty and customs duty have been paid before the due date of furnishing the returns of income. If that be so, the provisions of Section 43B of the said Act will be squarely applicable and in that view of the matter, it cannot be said that the income has escaped the assessment. A Division Bench of this Court in the case of Hindustan Lever Ltd. Vs. V.K. Pandey, Joint Commissioner of Income Tax and Another, in similar circumstances, though restricted to the facts of that case, had quashed similar notice issued u/s. 148 of the Act. In the facts and circumstances of the present case, we are satisfied that the conditions which are required to be fulfilled before issuing notice u/s. 148 of the Act, have not been fulfilled and in that view of the matter, the notice impugned in the petition is liable to be quashed and set aside.

11. For the aforesaid reasons, we allow the petition and quash and set aside the notice dated 31st Jan., 2001, being Exhibit-F to the petition. Accordingly, the rule is made absolute in terms of prayer clause (a) of the petition. However, in the facts and circumstances of the case, there will be no order as to costs.