

(2011) 11 DEL CK 0398
In the Delhi High Court
Case No : ITA No. 489 of 2011

CIT

APPELLANT

Vs

Purolator India Ltd

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Income Tax Act, 1922 — Section 2(22), 34

Income Tax Act, 1961 — Section 143(3), 147, 148, 154, 250

Citation : (2012) 343 ITR 155 : (2012) 207 TAXMAN 76

Hon'ble Judges : Sanjiv Khanna, J; R.V. Easwar, J

Bench : Division Bench

Advocate : N.P. Sahni, for the Appellant; Kavita Jha and Mr. Somnath Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The present appeal filed by the Revenue u/s 260A of the Income Tax Act, 1961 (the Act) relates to assessment year 2000-01 and is directed against the order of the Income Tax Appellate Tribunal (tribunal, for short) dated 13th May, 2010 in the case of Purolator India Ltd. now known as Mahle Filter System (India) Ltd. (respondent-assessee).

2. By the impugned order the tribunal has set aside the reassessment order on the ground that the jurisdictional pre-conditions for initiation of proceedings were not satisfied. Reassessment proceedings had been initiated by the Assessing Officer after recording that the computation of deduction u/s 80HHC was allowed without reducing the deduction claimed and allowed u/s 80IB as required by Section 80IA(9), which is also applicable to Section 80IB.

3. It is not disputed that the original return of income of Rs.2,37,64,670/- was filed on 28.11.2000. The assessment was completed u/s 143(3) at Rs.3,00,51,422/-. There were two subsequent orders u/s 154/143(3) and Section 250/143(3) before the reassessment proceedings were initiated vide notice dated 7.3.2006.

4. The Assessing Officer in the original assessment proceedings had specifically examined the deduction claimed u/s 80HHC, as a question/issue had arisen whether the said deduction as claimed by the assessee was as per the said Section. The assessee had claimed deduction u/s 80HHC at Rs.94,13,277/-. The same was reduced by the Assessing Officer by Rs.18,35,706/- and restricted to Rs.75,77,571/-. The original return of income was accompanied by audited accounts and auditor's report. The copy of the auditor report was required to be submitted in terms of Section 80HHC(4) of the Act. Similarly, the assessee had claimed deduction u/s 80IB of the Act, which was specifically mentioned in the audited accounts and the auditor's report.

5. Interpretation and applicability of Section 80IA(9) to deduction u/s 80HHC was/is subject matter of considerable doubt, debate and controversy. There are conflicting decisions of various courts, whether Section 80IA(9) is applicable when deduction u/s 80HHC is claimed, both in favour of the Revenue and the assessee.

6. Keeping in view the aforesaid position, the tribunal examined and went into the question whether there was failure or omission on the part of the respondent-assessee in making full and true disclosure of material facts. In the present case, as the reassessment were initiated after 4 years of end of the financial year, the proviso of Section 147 of the Act is applicable. One of the jurisdictional pre-conditions for reopening assessment in the present case is that there should have been failure or omission on the part of assessee to make true disclosure of material facts. The findings recorded by the tribunal in this regard are as under :

Now, we have to see as to whether there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the relevant assessment year. In the reasons recorded by the AO for issuing notice u/s. 148 of the Act, the AO has himself stated that on perusal of return of income and annexure thereto filed by the assessee, it was revealed to him that deduction u/s. 80HHC was allowed to the assessee without reducing the amount of deduction claimed and allowed u/s. 80IB of the Act, and in that view of the matter a notice u/s. 148 dated 07.03.2006 was issued to the assessee. Therefore, from the averments made by him in the reasons recorded, it is clear that the AO has issued notice u/s. 148 of the Act in the light of the details or facts available in the return of income and annexure thereto filed by the assessee. The Id. AO has not pointed out any material or basic fact which came to his notice subsequently after the assessment was made u/s. 143(3) of the Act, and which were not disclosed by the assessee during the original assessment proceedings. The AO has further sated (sic) in the reasons that deduction u/s. 80HHC was allowed to the assessee without reducing the amount of deduction claimed and allowed u/s. 80IB of the Act, which goes to mean that the claim u/s. 80HHC was allowed by the AO himself without reducing the amount of deduction claimed and allowed u/s. 80IB of the Act. The reasons recorded by the AO, therefore, makes it clear without any doubt that there was

no failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The fact that the assessee claimed deduction u/s. 80HHC as well as 80IB were duly available in the return of income as well as annexure thereto, which were duly considered by the AO at the time of the making the original assessment order u/s. 143(3) of the Act. It is also pertinent to note that even no allegation has been made by the AO in the reasons record for issuing notice u/s. 148 that the assessee had failed to disclose fully and truly all facts necessary for his assessment. It is not the case of the AO made out in the reasons recorded that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Therefore, the initiation of reassessment proceedings u/s. 147 of the Act and issuance of notice u/s. 148 dated 07.03.2006 after the expiry of four years from the end of the relevant assessment year, in the present case, is clearly hit by the proviso to section 147 of the Act, which make the proceedings initiated by the AO as without jurisdiction in as much as without satisfying the conditions mentioned in proviso to section 147 of the Act, the AO has no power to take action u/s. 147 of the Act, after expiry of four years from the end of the relevant assessment year when there was a regular assessment already made u/s. 143(3) of the Act.

7. Ld. counsel for the appellant has relied upon Explanation 1 and Explanation 2(c)(iv) to Section 147 of the Act. As far as Explanation 2 clause c(iv) is concerned the same only postulates and points out circumstances in which income chargeable to tax is deemed to have escaped assessment. This explanation is not directly relevant when we examine the question, whether the assessee had failed or omitted to make full and true disclosure of material facts.

8. Explanation 1, also does not help the Revenue. The expression "material facts" in explanation (1) refers to primary facts. The term "primary facts" or "material facts" are those facts which are material and relevant for the decision of the question before the assessing officer and non-disclosure of which would have a material bearing on the question of escapement of income from assessment. Whether or not "primary facts" have been disclosed is normally a question of fact and depends upon the facts and circumstances of each case. The requirement of explanation (1) is that there should be full and true disclosure of the primary or material facts and not beyond that. It is the obligation of the assessee to disclose fully and truly the primary facts. It is not the obligation of the assessee to indicate and state what legal inference can be drawn from the primary facts. While examining the implication of a similar provision in Section 34 of the Income Tax Act, 1922, the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , had observed:

From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts interred from them, the

authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable.

9. Dwelling of the said aspect in *Sri Krishna Private Ltd. Etc. Vs. I.T.O., Calcutta and Others*, , it was held that the assessing officer for the purpose of determining the tax due from the assessee is required to know all facts which would help him in coming to the said conclusion. Material facts are in the possession of the assessee and, therefore, should be fully and truly disclosed. However, once these are disclosed then it is for the assessing officer/authority to draw proper legal inferences, and ascertain on correct interpretation of the taxing enactment, the proper tax leviable. In the said case, there was subsequent information to show that the material facts disclosed by the assessee at the time of original assessment were not incorrect and true [see also *Malegaon Electricity Co. P. Ltd. Vs. Commissioner of Income Tax, Bombay*, ; *The Commissioner of Income Tax, Calcutta Vs. Gillanders Arbuthnot and Co.*,].

10. In the present case, there is no indication that the assessee had failed or omitted to disclose the material or primary facts. These were available on record. The assessing officer, it is stated, had failed to draw correct legal inferences at the time of original assessment from the said primary facts. This is not an error or omission on the part of the respondent-assessee. It is not alleged that the assessee had suppressed, misrepresented or falsified the record/facts. It is not alleged that there was any subsequent factual information on the basis of which it was found that the assessee had not fully disclosed the primary facts or had falsified or disclosed incorrect primary facts.

11. Recently in *Atma Ram Properties Pvt. Ltd. Vs. DCIT bearing ITA No.87/2010* decided on 11.11.2011 and it has been observed as under :

15. The reasons recorded above do state that the appellant assessee had failed to fully and truly disclose the facts but do not indicate why and how the assessee had failed to make full and true disclosure of the material facts. Mere repetition or quoting the language of the proviso is not sufficient. The basis of the averment/statement should be either stated or should be apparent/ lucid/ explained from the record.

16. In the present appeal, Explanation (1) to Section 147 also does not help or assist the Revenue. All material facts were available on record and no material facts had to be inferred or discovered by the assessing officer. The assessing officer in spite of being aware of the facts, failed to apply or, at best failed to consider whether Section 2(22)(e) of the Act was attracted. Failure to apply law or a section to admitted facts on record is not covered by Explanation (1). Explanation (1) applies when the assessing officer on the basis of account books or other evidence fails to discover or infer material facts which with due diligence could have been discovered. Explanation (1) deals with failure of the assessing officer to discover or infer all material facts on the basis of books of accounts or other evidence produced by the assessee. Difference between facts and law is

well recognized and understood. Explanation (1) reflects the said difference.

12. We are satisfied that the tribunal has correctly understood the facts and rightly appreciated the law and applied the same to the factual matrix of the present case. We do not see any reason to entertain the present appeal on substantial question of law and the same is dismissed.