
(1989) 03 CAL CK 0026

In the Calcutta High Court

Case No : Income-tax Reference No. 306 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Calcutta Steel Co. Ltd.

RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 256, 273

Citation : (1989) 78 CTR 118 : (1991) 191 ITR 691 : (1990) 49 TAXMAN 209

Hon'ble Judges : Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : R.N. Bajoria, J.P. Khaitan and A.K. Dey, for the Appellant; B.K. Bagchi and S.K. Chakraborty, for the Respondent

Judgement

Suhas Chandra Sen, J.—The Tribunal has referred the following two questions of law to this court u/s 256(1) of the Income Tax Act, 1961 :

"(1) Whether, on the facts and in the circumstances of the case, and having regard to the facts that the assessee had by August 31, 1960, already earned substantial income, the Tribunal had relied on insufficient evidence and irrelevant materials to come to the finding that the estimate of advance tax payable furnished by the assessee on September 15, 1969, u/s 212 of the Income Tax Act, 1961, was not an estimate which the assessee knew or had reason to believe to be untrue ?

(2) Whether, on the facts and in the circumstances of the case and having regard to the finding of the Tribunal that the assessee had already come to know about the upward revision of the price of the products and in view of the fact that the assessee itself made a sale on March 12, 1970, of its products at the revised higher price, the Tribunal had no evidence or had relied on irrelevant materials to hold that the revised estimate of advance tax payable furnished by the assessee u/s 212 of the Income Tax Act, 1961, on March 12, 1970, was not an estimate which the assessee knew or had reason to believe to be untrue and/or whether such finding of the Tribunal was otherwise unreasonable or perverse ?"

2. The assessment year involved is 1970-71. The assessee runs a steel re-rolling mill and is a member of the Steel Re-rolling Mills Association. The Income Tax Officer had issued a demand notice for payment of advance tax to the tune of Rs. 12,77,605. The notice was served upon the assessee on May 13, 1969. The assessee submitted an estimate of nil income on September 15, 1969. Subsequently, on March 12, 1970, the assessee submitted a revised estimate showing an income of Rs. 2,00,000 and a taxable income of Rs. 1,20,000. The assessment was ultimately completed on Rs. 9,74,341. This was brought down to Rs. 9,61,220 on appeal.

3. The Income Tax Officer initiated penalty proceedings u/s 273. The assessee's plea was that after the preparation of the revised estimate, the assessee received a circular from the association under which the sale price was increased by Rs. 100 per metric ton with effect from March 1, 1970.

4. As the assessee had a stock of 6,263 metric tonnes as on March 1, 1970, the profit of the assessee went up to Rs. 6,26,300 as a result of the revision of the sale price and this windfall could not be taken into consideration in preparing the estimate.

5. The Income Tax Officer, on enquiry, found that an officer of the assessee represented the assessee in the meeting of the association on February 28, 1970, in which the rise in price was decided. The Income Tax Officer did not accept the explanation of the assessee as, according to him, the rise in price was known to the assessee through its officer who attended the meeting on February 28, 1970, of the association. The assessee later on took another plea that the assessee was to receive a large subsidy from the Government but the Government refused to accept the liability and that had the effect of nullifying the excess profits received by the assessee by the rise in price and that this fact was also taken into consideration in preparing the final estimate of advance tax. The Income Tax Officer was of the view that this explanation was an afterthought. He held that the assessee submitted the estimate of advance tax knowing or having reason to believe that it was untrue and rendered itself liable to penalty u/s 273. He, therefore, imposed a penalty of Rs. 4,20,598.

6. The Appellate Assistant Commissioner, on appeal, upheld the order of the Income Tax Officer.

7. The assessee preferred a further appeal to the Tribunal. The Tribunal, after considering the arguments advanced by the appellant as well as the respondent, came to the conclusion that the assessee's officer represented it in the meeting of the association on February 28, 1970, at which the rise in price was decided. The assessee received the circular from the association later but the rise in price was to be effective from March 1, 1970, and the assessee was aware of it. The assessee no doubt dealt in a scarce commodity but the rise in the price fixed by the association was only a unilateral act of a group of sellers". It could not be said that the price fixed by the association became the market or the ruling

price, as the market price would depend on the response of the purchaser and also the sellers themselves. The Income Tax Officer had found that some of the manufacturers had increased the price even before April, 1970. The assessee had no sales from March 1, 1970, to March 11, 1970, and it was only on March 12, 1970, that it made the first sale at the higher rate. Efforts on the part of the purchasers to resist the rise in price could not be ruled out. An assessee was required to make an honest estimate having regard to the conditions and circumstances as on the date of the estimate. On the facts of this case, the estimate made by the assessee could not be said to be untrue to the knowledge or belief of the assessee. The penalty order was not sustainable and was, accordingly, cancelled.

8. Whether the estimate made by the assessee was bona fide or "true to his knowledge or not is a question of fact. The Tribunal has referred to all the facts that were brought on record. The decision of the Tribunal cannot be held to be perverse. The Tribunal has considered all the facts brought to its notice by the Department as well as the assessee.

9. Under these circumstances, both the questions are answered in the negative and in favour of the assessee.

10. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

11. I agree.