

**(2003) 01 P&H CK 0036**

**In the Punjab And Haryana At Chandigarh**

**Case No :** C.W.P. No. 1055 of 1985 & Civil Writ Petition No. 1055 of 1985

Devgon Rice and General Mills

APPELLANT

Vs

Commissioner of Income Tax and Another

RESPONDENT

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**Date of Decision :** 22-01-2003

**Acts Referred:**

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

**Citation :** (2003) 184 CTR 575

**Hon'ble Judges :** G.S. Singhvi, J

**Bench :** Single Bench

**Advocate :** A.C. Jain, for the Appellant; N.L. Sharda, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

G.S. Singhvi, J.—This petition involves adjudication of the petitioner's challenge to notice Annexure P-1 dt. 27th Nov., 1984, issued by the ITO, Central Circle-II, Amritsar (respondent No. 2), u/s 148 of the Income Tax Act, 1961 (for short, "the Act"), proposing reassessment of its income.

2. The petitioner is a registered firm engaged in the business of rice shelling and manufacturing dal. A search was carried out at the business premises of the petitioner on 30th Nov., 1976. During the search operation, certain books of account and other documents are alleged to have been seized from its premises. The petitioner filed a return for the asst. yr. 1977-78 on 5th April, 1978, declaring a total income of Rs. 1,19,350. During the course of assessment, the petitioner was asked to file a certificate of the Central Bank of India, Majitha Mandi Branch, Amritsar (for short "the bank"), regarding stock pledged/hypothecated as on 30th Nov., 1976, and 31st March, 1977, for availing of overdraft facility. In reply, the petitioner gave out that the bank had not furnished the required certificate. Thereupon, respondent No. 2 sent a letter Annexure P-3 dt. 14th Dec., 1979, to the manager of the bank to furnish the following information in terms of Section 133(6) of the Act :

"(i) Amount due to the bank in overdraft account as on 30th Nov., 1976 and also as on 31st March, 1977.

(ii) Details of stocks pledged as on 30th Nov., 1976, and also as on 31st March, 1977, with quantity and value.

(iii) The details of stocks hypothecated as on 30th Nov., 1976, and also as on 31st March, 1977, showing the quantity of the goods as well as the value of the goods."

Finally, he made assessment by making addition of Rs. 1,75,000 representing the value of the excess stock of paddy and rice which, in his opinion, was not accounted for by the petitioner. The CIT(A), Amritsar Range, Amritsar, dismissed the appeal filed by the petitioner and upheld the order of assessment. However, the Income Tax Appellate Tribunal, Amritsar Bench (for short, "the Tribunal"), partly allowed the second appeal of the petitioner and deleted various additions made by respondent No. 2 including the addition of Rs. 1,75,000. Reference application filed by the Revenue u/s 256(1) of the Act was rejected by the Tribunal vide its order dt. 20th Sept., 1984, with the observation that the question sought to be raised by the application was not determination by the High Court. After two months respondent No. 2 issued notice u/s 148 of the Act with the approval of the CIT (Central), Ludhiana, for reassessment of the income of the petitioner.

3. The petitioner has challenged the impugned notice on the following grounds:

(a) Respondent No. 2 does not have the jurisdiction to initiate proceedings for reassessment because the conditions precedent enumerated in Sections 147(a) and 148 of the Act have not been satisfied.

(b) The petitioner had fully and truly disclosed all the material and primary facts relevant for the assessment of its income and no material was available before respondent No. 2 which could make him to believe that the income chargeable to tax had escaped assessment.

(c) Section 147(a) does not empower respondent No. 2 to make a fishing and roving enquiry with a view to find out that some income chargeable to tax had escaped assessment.

(d) The mere change of opinion by respondent No. 2 cannot justify initiation of proceedings u/s 147(a) particularly when the order of assessment had been partly set aside by the Tribunal.

4. In the written statement filed on behalf of the respondents, an objection has been taken to the maintainability of the writ petition on the ground that the petitioner has failed to avail the alternative remedy of showing cause to respondent No. 2 against the proposed reassessment. On the merits, it has been averred that the impugned notice has been issued in view of the information furnished by the branch manager of the bank vide letter Annexure R-2/2 dt.

22nd Nov., 1982. The respondents have defended the proposed reassessment of the income of the petitioner by asserting that respondent No. 2 had formed a bona fide opinion that, the income of the petitioner had escaped assessment.

5. Shri A.C. Jain, learned counsel for the petitioner argued that the proceedings for reassessment initiated by respondent No. 2 are without jurisdiction and the impugned notice is liable to be quashed because the conditions precedent enumerated in Sections 147(a) and 148 of the Act have not been satisfied. He laid emphasis on the fact that at the time of assessment, the petitioner had truthfully disclosed all the facts relevant to the assessment proceedings and argued that respondent No. 2 cannot reopen the assessment after the Tribunal had accepted the petitioner's plea regarding artificial stock position given to the bank for the purpose of securing higher credit. In support of his argument, Shri Jain relied on the decisions of the Supreme Court in *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, and *Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others*, .

6. Dr. N.L. Sharda, learned counsel for the respondents defended the impugned notice and argued that respondent No. 2 did not commit any illegality by initiating proceedings for reassessment after seeking approval from respondent No. 1. He further argued that the impugned notice cannot be declared without jurisdiction because respondent No. 2 had reason to believe that income of the petitioner had escaped assessment. Dr. Sharda pointed out that the letter Annexure R-2/2 sent by the bank was not available before respondent No. 2 till the decision of the second appeal of the petitioner by the Tribunal and submitted that he was entitled to issue notice u/s 147(a) in view of the information subsequently made available by the bank. Learned counsel argued that the petitioner had deliberately refrained from disclosing the true status of the stock hypothecated with the bank and, therefore, the conditions enumerated in Sections 147(a) and 148 are satisfied in the present case. Dr. Sharda relied on the judgment of a Division Bench of this Court in *Commissioner of Income Tax Vs. Ess Ess Kay Engineering Co. Pvt. Ltd.*, and of the Supreme Court in *Ess Ess Kay Engineering Co. (P) Ltd. v. CIT* (2001) 10 SCC 189.

7. I have given serious thought to the respective arguments. Sections 147(a) and 148 of the Act read as under :

"147. (a) If the AO has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the AO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax had escaped assessment for that year.

148(1). Before making the assessment, reassessment or recomputation u/s 147, the AO shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if

the notice were a notice issued under that sub-section.

(2) The AO shall, before issuing any notice under this section record his reasons for doing so."

A reading of the provisions quoted above shows that the ITO can reopen assessment if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reason to believe that on account of omission or failure on the part of the assessee to make a true and full disclosure of material facts necessary for his assessment, any part of his income, profits or gains chargeable to tax has escaped assessment. He can also start reassessment proceedings because some fresh facts have come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes to his possession which demonstrates the untruthfulness of those facts. However, before issuing notice u/s 148, the ITO is required to record reasons.

8. The ambit and scope of Sections 147 and 148 of the Act was considered by the Supreme Court in *M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another*, . After reviewing several judicial precedents on the subject, a two-Judges Bench of the Supreme Court held as under :

"From a combined review of the judgments of this Court, it follows that an ITO acquires jurisdiction to reopen an assessment u/s 147(a) r/w Section 148 of the IT Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to Income Tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situation, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the ITO, the sufficiency of reasons for forming the belief is not for the Court to Judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the ITO and examine whether there was any material available on the record from which the requisite belief could be formed by the ITO and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the ITO, at the time of making the original assessment, could or could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the ITO arrives at a conclusion, after satisfying the twin

conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore, income chargeable to tax had escaped assessment.

\*\*\* \*\*\*\* One of the purposes of Section 147 appears to us to be to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It would be a travesty of justice to allow the assessee that latitude." (Underlining, italicised in print, is mine)

9. In Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, their Lordships of the Supreme Court rejected the challenge to the notice issued for reassessment by observing that at that stage, the Court can only consider whether there is a prima facie case for reassessment and reopening proceedings cannot be struck down by going into the sufficiency or correctness of the material relied upon by the assessing authority for the purpose of reopening.

10. If the case in hand is examined in the light of the above analysis of the two sections and the law laid down by the Supreme Court, I do not find any difficulty in rejecting the petitioner's plea that respondent No. 2 did not have jurisdiction to initiate proceedings for reassessment. A careful scrutiny of the averments contained in the pleadings of the parties and the order of assessment passed by respondent No. 2, the appellate order passed by the CIT(A), Amritsar Range, Amritsar, order dt. 4th Sept., 1982, passed by the Tribunal, impugned notice Annexure P-1 and Armexures R2/1 and R2/2 shows that in the statement of closing stock filed with the return, the petitioner had disclosed the total value of different variety of paddy at Rs. 5,87,892. Respondent No. 2 issued notice dt. 20th April, 1979, to the petitioner u/s 143(3) requiring it to furnish a certificate regarding stock pledged/hypothecated to the bank as on 30th Nov., 1976, and 31st March, 1977, for securing overdraft facility. The petitioner did not furnish required information in this behalf. It did not even make a request to the bank till 1st Dec., 1979, for issuing the necessary certificate. The bank authorities too did not furnish the required information/certificate despite written request made by respondent No. 2 vide letter No. 2275 dt. 14th Dec., 1979, and the fact that the Inspector of Income Tax was deputed to personally collect the information. In response to the second letter dt. 16th Jan., 1980, sent to the branch manager of the bank he furnished the following information vide letter dt. 21st Jan., 1980 :

"Stock hypothecated as on 30-11-76 as per statement dt. 26-11-76

Stocks hypothecated as on 31-3-77 as per statement dt. 30-3-77

Grams

77,000

Paddy and rice, etc. 8,21,600

Paddy

22,34,200

Balance outstanding to the bank against the above stocks

21,11,200

Balance outstanding to the bank against the above value of stocks. 6,04,404

12,77,798

However, the quantity and quality-wise information of the stock was not furnished. Therefore, letter dt. 25th Aug., 1980, was written by respondent No. 2 to the bank to furnish the details of the stock pledged/hypothecated with the quantity of the goods and value thereof. In response to that letter, the bank sent communication dt. 3rd Sept., 1980, stating therein that old books are not yet traceable and the desired information would be furnished as soon as the record is traced out. In view of this, the assessment proceedings were finalised by taking into consideration certificate dt. 21st Jan., 1980, sent by the bank in which the value of stock hypothecated by the petitioner as on 30th March, 1977 was disclosed at Rs. 8,21,000. The cost price of the stock was worked out at Rs. 6,46,600 against the value of Rs. 5,87,892 disclosed by the petitioner and on that basis, addition of Rs. 1,75,000 was made. Respondent No. 2 gave detailed reasons for not accepting the plea of the petitioner. The CIT(A) agreed with him, but the Tribunal overturned their orders and accepted the plea of the petitioner that it had given an inflated position of the stocks for availing of higher overdraft facility. After the order of the Tribunal, the bank furnished details of the stocks vide letter dt. 22nd Nov., 1982 (Annexure R2/2). On receipt of that letter, respondent No. 2 again examined the matter and found that the income of Rs. 3,18,108 chargeable to tax had escaped assessment. He then referred the case to respondent No. 1 who accorded approval for initiation of proceedings for reassessment. The reasons recorded by respondent No. 2 for issuing the impugned notice, as contained in Annexure R2/1, read as under : "2. After the matter was finally disposed of by the Tribunal, Amritsar and the addition of Rs. 1,75,000 on account of valuation of unaccounted for stocks was deleted, the Department has succeeded in procuring from the bank the original statement of the stocks hypothecated with the bank as on 30th March, 1977. From a perusal of the bank statement not only the contention of the assessee with regard to the over-valuation of stocks has been found to be misleading, even there is a large variation in the quantity of stocks hypothecated with the bank vis-a-vis those disclosed to the Department. In the statement of closing stock as on 31st March, 1977, submitted by the assessee with the return, the valuation has been made as under:

Q.

Kg.

Gms

Rs.

Rs.

Rice IR-8

1430

40

700

140

2,00,257

Rice Paimal

196

96

000

200

39,212

Rice Basmati

300

06

000

300

90,018

Paddy IR-S

867

35

000

90

78,061

Paddy Basmati

1052

20

000

130

1,36,786

Rice Brani

571

16

000

50

28,558

Arhar a/c

75

00

000

200

15,000

587892

On the other hand, the details of stocks and the valuation thereof as disclosed to the bank by the assessee in its statement submitted on 30th March, 1977 are as under :

Paddy IR-8

Bag 2000 Qtls. 1400

Rs. 74

1,05,600

Paddy Basmati

Bag 4000 Qtls. 2800

Rs. 130

3,64,000

Rice IR - 8

Bag 1400 Qtls. 1400

Rs. 130

1,82,000

Rice Basmati

Bag 600 Qtls. 600

Rs. 240

1,44,000

Rice Parmal

Bag 200 Qtls. 200

Rs. 140

28,000

8,21,600

Not to speak of the over-valuation of stock hypothecated with the bank as claimed by the assessee, in respect of certain items of stocks the assessee has clearly made an undervaluation of the stocks and this is quite evident from the details as given above. The valuation of the closing stock as per the statement filed with the return is the admitted value of the closing stock as on 31st March, 1977, which the assessee can under no circumstances dispute now and if the valuation of the stocks hypothecated with the bank is made at the same rate the total valuation of stocks available with the assessee as on 31st March, 1977, would work out to Rs. 9,06,000 as under :

Paddy IR-8

Bag 2000 Oils 1400

Rs. 90

1,26,000

Paddy Basmati

Bag 4000 Qtls 2800

Rs. 130

3,64,000

Rice IR-8

Bag 1400 Qtls 1400

Rs. 140

1,96,000

Rice Basmati

Bag 600 Qtls 600

Rs. 300

1,80,000

Rice Parmal

Bag 200 Qtls 200

Rs. 200

40,000

9,06,000

The information from the bank with regard to the hypothecation of stocks in terms of quantitative details was gathered by the Department on 13th Jan., 1983, i.e., after the appeal for the assessment year under consideration was finally disposed of by the Tribunal. From the information now collected by the Department, it is evident that during the course of regular assessment proceedings, the assessee had suppressed the particulars of the closing stock both in terms of its quantity and valuation as on 31st March, 1977 and, therefore, income chargeable to tax amounting to Rs. 3,18,108 had escaped assessment at the time of original assessment.

In view of the foregoing, I have, therefore, reasons to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the asst. yr. 1977-78 income chargeable to tax amounting to Rs. 3,18,108 has escaped assessment. Approval u/s 151(2) of the IT Act, 1961 is, therefore, solicited to initiate proceedings u/s 148."

(Underlining, italicised in print, is mine)

11. In my opinion, the case set up by the assessee at the time of initiation of assessment that the value of the stocks was inflated for availing higher overdraft facility and there was deficiency in quantity of the stocks lying with it and disclosed in the return on the one hand and that furnished to the bank is prima facie proved to be false by the contents of the letter Annexure R2/2. Therefore, respondent No. 2 had sufficient reason to believe that the petitioner had not made full, complete and truthful disclosure of the material facts and its income had escaped assessment.

12. In view of the above conclusion, I do not find any valid ground to entertain the petitioner's prayer for quashing of the notice at the threshold. This view of mine is amply supported by the decision of the Division Bench in CIT v. Ess Ess Kay Engineering Co. (P) Ltd. (supra). In that case, the Court rejected the challenge to the notice issued u/s 147(a) and observed as under :

"It is well settled that though the assessee may have disclosed fully the facts at

the time of the original assessment, if they are found to be untrue on the basis of material discovered later on by the assessing authority, the assessment could be reopened u/s 147(a) because in such a case the assessee will be deemed to have failed to disclose truly all the material facts necessary for assessment and it would not be a case of mere change of opinion."

In that case, the assessee had claimed deduction of the commission paid to its sole selling agent firm in its original assessment. The assessee furnished details regarding the payment and the commission was allowed as a deduction. Subsequently, on the basis of fresh material, the ITO found that the assessee had not truly disclosed all the material particulars with regard to the services rendered by the sole selling agent and that the sole selling agent firm was nothing but a legal device to avoid tax. The Division Bench upheld the proceedings u/s 147(a) and quashed the order passed by the Tribunal.

The aforementioned judgment of the Division Bench was approved by the Supreme Court in *Ess Ess Kay Engineering Co. (P) Ltd. v. CIT* (supra) with the following observations :

"This is a case of reopening. We have perused the documents. We find there was material on the basis of which the ITO could proceed to reopen the case. It is not a case of mere chance of opinion. We are not inclined to interfere with the decision of the High Court merely because the case of the assessee was accepted as correct in the original assessment for this assessment year. It does not preclude the ITO from reopening the assessment of an earlier year on the basis of his findings of fact made on the basis of fresh materials in course of assessment of the next assessment year. The appeal is dismissed. No order as to costs."

13. In *Income Tax Officer, Jodhpur Vs. Purushottam Das Bangur and another*, their Lordships considered the validity of notice u/s 147(b). The facts of that case were that the ITO completed the assessment for the asst. yrs. 1969-70 and 1971-72 accepting the assessee's claim that they had suffered long-term capital loss on the sale of shares of Maharaja Shree Umaid Mills at the price quoted by the Calcutta Stock Exchange. Subsequently, the ITO received a letter from the Dy. Director, Directorate of Inspector (Investigation), Special Cell, New Delhi which, on the basis of the Bombay Stock Exchange Directory stated that the paid-up capital of the company was Rs. 72 lakhs divided into 72,000 shares of Rs. 100 each ; that the book value per equity share rose from Rs. 318.55 for the year ending 21st Dec., 1965 to Rs. 401 for the year ending 31st Dec., 1970, that the earning per share rose from Rs. 8.37 per share to Rs. 44 per share during that period and the dividend percentage also rose from two per cent to ten per cent, for the same period. But, in spite of all these facts, the quotation of the shares on the Calcutta Stock Exchange fell from Rs. 168 per share to Rs. 85 per share during the said period. The Dy. Director further expressed opinion that the quotations appearing in the Calcutta Stock Exchange were as a result of certain manipulated transactions between the group itself and could not be said to

reflect the fair market value of the shares of the company. Consequently, the ITO issued notice u/s 147(b) of the Act informing the assessee about the proposed reassessment of its income. The High Court quashed the notice. Allowing the Revenue's appeal, the Supreme Court held as under:

"On the basis of the information contained in the Dy. Director's letter and the documents annexed to the same, the ITO could have had reason to believe that the fair market value of the shares was far more than the sale price and the market quotations from Calcutta Stock Association shown by the assesses at the time of original assessment were manipulated ones and as a result income chargeable to tax had escaped assessment. It could not be said that the information that was contained in the said letter was not definite information and that the same could not be acted upon by the ITO for taking action u/s 147(b) of the Act.

Merely because the impugned notice was sent on the next day after receipt of the letter of the Dy. Director, it could not be inferred that the ITO did not apply his mind to the information contained in the said letter. On the basis of the said facts and information contained in the said letter, the ITO, without any further investigation, could have formed the opinion that there was reason to believe that the income of the assessee chargeable to tax had escaped assessment."

14. On the basis of the above discussion, I hold that the petitioner has failed to make out a case for interference by this Court with the proceedings initiated by respondent No. 2 for reassessment of its income for the asst. yr. 1977-78.

Hence, the writ petition is dismissed. It is expected that respondent No. 2 would finalise the proceedings of reassessment at the earliest because the same had remained in abeyance for the last 17 years on account of the stay order passed by this Court.