
(1977) 05 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3322 of 1973

Elgin Mills Co. Ltd.

APPELLANT

Vs

Income Tax Officer, "A" Ward

RESPONDENT

Date of Decision : 17-05-1977

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1978) 111 ITR 287

Hon'ble Judges : D.M. Chandrashekhar, C.J.; R.M. Sahai, J

Bench : Division Bench

Advocate : S.D. Agarwal and J. Swarup, for the Appellant; Deokinandan, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, AIR 1979 SC 1960 : (1979) 12 CTR 190 : (1979) 119 ITR 996 : (1979) 4 SCC 248 : (1980) 1 SCR 442 : (1979) 2 TAXMAN 197 : (1980) 12 UJ 305

Chandrashekhar, C.J.—In this writ petition under Article 226 of the Constitution, the petitioner has challenged the notices dated March 22, 1972 (annexures Nos. 1 to 3 to the writ petition), issued by the Income Tax Officer u/s 147 of the Income Tax Act, 1961. These notices relate to the assessment years 1964-65, 1968-69, 1970-71 and 1971-72.

2. The learned standing counsel did not dispute that the notice relating to the assessment year 1970-71 has become infructuous. Hence, it is unnecessary to consider the validity of this notice.

3. The notice issued for the assessment year 1964-65 is under Clause (a) of Section 147 of the Income Tax Act, 1961, and the notices issued for the remaining years are under Clause (b) of that section.

4. We shall first examine the validity of the notice issued under Clause (a) of Section 147 of the Act. The learned standing counsel has produced before us the reasons recorded by the Income Tax Officer before issuing the notice. Therein he has stated that one M. L. Soni was an employee of the former managing agents, Begg Sutherland and Company, which was the managing agent of the assessor-company, that he was actually employed by the British India, Corporation Ltd., that he resigned from that company on September 30, 1963, and that throughout his services were loaned to the assessee. This information, according to the Income Tax Officer, would lead to the inference that the retirement benefit including gratuity paid to this officer should have come from the British India Corporation Ltd., or M/s. Begg Sutherland and Company and not from the assessor-company since M. L. Soni was never an employee of the assessee-company.

5. At this stage it is not necessary to go into the question whether the information on which the Income Tax Officer has relied would necessarily lead to the conclusion that the retiring benefit paid to the officer was not payable by the assessee-company. What is necessary to consider at this stage is whether this information had not been disclosed by the assessee at the time of the original assessment. The petitioner has not been able to satisfy us that this information had been disclosed to the Income Tax Officer at the stage of the original assessment and there is no reason to doubt the statement of the Income Tax Officer in the reasons recorded by him that this information had not been disclosed to him at the time of the original assessment.

6. Hence, the impugned notice issued to the assessee for the assessment year 1964-65 was in accordance with Section 147(a) of the Act.

7. In regard to the notices u/s 147(b) issued (or three other assessment years, the Income Tax Officer has stated in the reasons recorded by him that such notices were issued as a result of a letter written to him by the Inspecting Assistant Commissioner of . Income Tax conveying the latter's view on the basis of certain audit objections raised by the internal audit section of the department. Such audit objection was to the effect that the extra shift allowance which had been allowed by the Income Tax Officer in the original assessments for these three years was not in accordance with the Income Tax Rules regulating the depreciation. At this stage we are not concerned with the question whether such audit objection and the view taken on the basis thereof by the Inspecting Assistant Commissioner were correct or not. The only question that arises for determination at this stage is whether these three notices were based on any new information which came into the possession of the Income Tax Officer subsequent to the original assessments. In *Raj Kumar Shrawan Kumar Vs. Central Board of Direct Taxes and Another*, a Division Bench of this court (of which one of us was a member) held that an information coming from the audit department of the Ministry of Law would amount to "information" within the meaning of Section 147 of the Income Tax Act. In view of this ruling, we are

unable to accept the contention of Sri Jagdish Swarup, learned counsel for the petitioner, that the Income Tax Officer had no information on the basis of which he could form a belief that the income chargeable to tax has escaped assessment and that he proceeded merely on a change of his earlier opinion.

8. Thus, none of the impugned notices u/s 147 of the Act is shown to be illegal.

9. In the result, this petition fails and is dismissed. In the circumstances of the case, we direct the parties to bear their own costs.