

(1971) 07 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 4861 of 1969

Glen Leven Estates Ltd.

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 14-07-1971

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1973) 88 ITR 39

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : M.P.R. Nair and V.G. Pillai, for the Appellant; P.K. Krishnankutty Menon, for the Respondent

Judgement

Balakrishna Eradi, J.—The petitioner in this writ petition is a company engaged in the business of tea plantation. For the assessment year 1964-65 the petitioner-company was assessed to Income Tax. Exhibit P-1 dated November 30, 1964, is the assessment order passed against it for the year 1964-65. The Income Tax Officer had accepted the return filed by the company with some modifications and found that there was a net loss of Rs. 1,585. Subsequently, it came to the notice of the Income Tax Officer that in computing its business income from the manufacture of tea for the assessment year 1964-65 the company had claimed deduction in respect of a sum of Rs. 20,336 as representing provident fund contributions paid by it in respect of its employees whereas the legal liability to pay the said contributions had not in fact arisen during the relevant year of account but in earlier years. Based on this information the Income Tax Officer initiated proceedings u/s 147(b) of the Income Tax Act, 1961, for reopening the assessment. After considering the objections put forward by the petitioner the Income Tax Officer passed a fresh assessment order against the company for the aforesaid year as per exhibit P-2 dated July 10, 1967, disallowing the deduction in respect of the payment of the arrears of provident fund amounting to Rs. 20,336. The petitioner-company took up the matter in revision before the Commissioner of Income Tax, Kerala. Exhibit P-4 is the order passed by the

Commissioner rejecting the revision petition and confirming the reassessment made under exhibit P-2. This writ petition has been brought seeking to quash exhibits P-2 and P-4.

2. It is contended on behalf of the petitioner that the Income Tax Officer acted without jurisdiction in reopening the assessment made against the petitioner-company in purported exercise of his powers u/s 147(b) of the Income Tax Act. It is argued that no new materials which will constitute "information" within the meaning of the said expression as used in Section 147(b) of the Act has come to the possession of the Income Tax Officer so as to warrant initiation by him of proceedings against the petitioner under the said section. Elaborating this contention, the petitioner's counsel pointed out that even at the time of making the original assessment under exhibit P-1 the books of accounts of the company as well as the company's balance-sheet and profit and loss account for the relevant accounting period has been produced before the Income Tax Officer and it was with these materials in his possession that the Income Tax Officer had made, the assessment allowing the deduction of the amount of Rs. 20,336 paid by the company by way of arrears of provident fund contributions. The mere fact that there has been a subsequent change of mind on the part of the officer, counsel contends, would not justify his taking recourse to proceedings for reassessment on the ground that he had reason to believe in consequence of information in his possession that the income chargeable to tax has escaped assessment. The petitioner's counsel sought to derive support for the above contention from certain observations contained in the decision of the Supreme Court in Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, The dictum laid down by the Supreme Court in the decision cited above far from supporting the contention advanced by the petitioner is an authority for the contrary position as is evident from the following passage extracted from the judgment:

"That information, must, it is true, have come into the possession of the Income Tax Officer after the previous assessment, but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the Income Tax Officer is not affected."

3. Reference may also be made to Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others, where the Supreme Court had occasion to consider the scope of the expressions "information" and "escaped assessment" occurring in Section 11-A of the C.P. and Berar Sales Tax Act, 1947 (21 of 1947). It was held by their Lordships that the word "information" means knowledge and it need not necessarily be derived from outside sources but may be gathered by the assessing authority from his own records and cited with approval the decision of the Madras High Court in Salem Provident Fund Society Ltd. Vs. Commissioner of Income Tax, Madras, and the ruling of a Division Bench of this court in United

4. Tested in the light of the principles laid down in the decisions referred to above, there can be little doubt that in the present case the action taken by the 1st respondent for reopening the petitioner's assessment for the year 1964-65 was fully within the scope of the powers conferred on him u/s 147(b) of the Income Tax Act. At the time when the original assessment as per exhibit P-1 was made, in computing the assessee's business income from the manufacture of tea the Income Tax Officer had proceeded on an assumption that in respect of the entire amount covered by the assessee's claim for deduction in respect of provident fund contributions paid on behalf of its employees the legal liability for payment had accrued during the previous year itself. Subsequently, it came to the knowledge of the Income Tax Officer that out of the said amount, a sum of Rs. 20,336 represented payments made by the company towards arrears of provident -fund contributions relating to earlier years, the legal liability for which had arisen during those prior years and not during the relevant accounting period. This constituted " information " in the possession of the assessing authority, in consequence of which he had reason to believe that income chargeable to tax had escaped assessment for the year 1964-65 and, hence, the jurisdictional conditions for the exercise of the powers u/s 147(b) of the Act were fully satisfied.

5. It is not disputed by the petitioner that, as a matter of fact, the amount of Rs. 20,336 referred to in exhibit P-2 represents the payments made by the company during the accounting year towards arrears of provident fund contributions due for earlier periods, the legal liability for which had accrued during those prior years. It is, therefore, clear that the deduction allowed in respect of the said amount in exhibit P-1 was manifestly erroneous and that income chargeable to tax had escaped assessment.

6. The orders, exhibits P-2 and P-4, do not, therefore, call for any interference by this court under article 226 of the Constitution. The original petition fails and is dismissed, but in the circumstances I direct the parties to bear their respective costs.