
(1984) 01 BOM CK 0026

In the Bombay High Court

Case No : Miscellaneous Petition No's. 1885, 1886 and 1887 of 1979

Gwalior Rayon Silk Manufacturing Co. Ltd.

APPELLANT

Vs

V. Raghavan, IAC of I.T., Range-III, Bombay and others

RESPONDENT

Date of Decision : 16-01-1984

Acts Referred:

Income Tax Act, 1961 — Section 139, 147, 148, 148(2)

Citation : (1985) 44 CTR 325 : (1984) 150 ITR 12

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

Bharucha, J.—These three petitions impugn orders (notices for) reopening (of) assessments of Income Tax of the petitioner passed (issued) under s. 148(147(a)) of the I.T. Act, 1961. The relevant assessment years are 1970-71, 1971-72 and 1972-73. The notices reopening the assessments are dated February 4/6, 1976, February 4/6, 1976, and August 26/28, 1976 respectively. The notices do not state the reasons why the reassessments were sought to be reopened. On March 7, 1976, and October 18, 1976, the petitioner wrote to the ITO concerned and asked for the reasons. No reasons were forthcoming. Ultimately the petitioner filed, as required, returns and filed these petitions.

2. There is an affidavit in reply. If is not made by the ITO concerned. In paragraph 7 thereof the deponent states that the petitioner had filed a paper book running into 170 pages. Therein were contained statements. The statement which gave details of "purchases and incidental expenses" was only a monetary break-up under the heads styled "grey cloth", "yarn purchase" and "cloth samples". There was no indication in it that the yarn purchased was imported polyester filament yarn or that it was either yarn purchased for over Rs. 25,000 during the year. It gave the aggregate value of the yarn purchased from various parties but did not indicate that the yarn purchased was wholly or partly imported polyester filament yarn or that it was grey or dyed or twisted or sized. A statement called "details of yarn account" gave details in respect of nylon

filament, polyester filament white, polyester filament dyed, spun yarn, viscose filament, viscose spun and worsted spun under the heads deniers, opening stock purchases, total sales and returns, closing stock and consumption but did not show that the yarn purchases were of imported polyester filament yarn. There was a statement of details of "yarn waste percentage to cloth production" which gave the details relating to the opening stock purchases, sales, returns, etc., closing stock of yarn, grey cloth purchased, total raw material consumption, cloth production, percentage of cloth production, waste received and percentage of yarn waste, but it did not show that any part of the yarn in question was imported polyester filament yarn or that it was either grey or dyed or twisted or sized. The last statement referred to in the affidavit is of "tallies of gross profit" which was devoted to an analysis in monetary terms of the difference between the gross profit for the year in question and that of the previous year. The deponent of the affidavit states in p paragraph 12 that the ITO "had reopened the assessment only because he had reason to believe that, by reason of the petitioner's failure and omission to furnish fully and truly the material facts, income assessable in his hands had escaped assessment". In paragraph 14, the deponent states that, "It had come to the notice of the Income Tax Officer, subsequent to the original assessment, that the transactions relating to the purchase of imported yarn were not genuine. I say that these facts were clearly within the knowledge of the petitioner and it was the duty of the petitioners to disclose fully and truly all material facts necessary for its assessment which the petitioner failed to do".

3. The Department was given an opportunity to file a further affidavit in reply to the petition, but has failed to do so.

4. Mr Mehta on behalf of the petitioners contented that the requirements of s. 147(a) of the I.T. Act, 1961, for a valid reopening of an assessment had not been complied with and that, therefore, the impugned notices must be struck down. He drew my attention to two judgments of the Supreme Court and two judgments of a learned single judge of the Supreme Court and two judgments of a learned single of this court. It will suffice if I refer only to the Supreme Court judgment in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, The court has said there that two conditions have to be satisfied before an ITO acquired jurisdiction to issue notice under s. 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, namely, (i) the ITO must have reason to believe that income chargeable to tax has escaped assessment, and (ii) he must have reason to believe that such income has escaped assessment by reason of the omission or failure on the part of the assessee (a) to make a return under s. 139 for the assessment year to the ITO, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must co-exist to confer jurisdiction on the ITO. It is also imperative for the ITO to record his reasons before initiating proceedings as required by s. 148(2). Another requirement is that before notice is issued after the expiry of four years from the

end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the ITO that it is a fit case for the issue of such notice. The duty which is cast upon the assessee is to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the ITO of the account books or other evidence from which material evidence could with due diligence have been discovered by the ITO will not necessarily amount to disclosure contemplated by law, The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that, his duty ends. It is for the ITO to draw the correct inference from the primary facts. It is not the responsibility of the assessee to advise the ITO with regard to the inference which he should draw from the primary facts. If an ITO draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not satisfy initiation of action for reopening an assessment. The grounds or reasons which lead to the formation of the belief contemplated by s. 147(a) must assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the ITO to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not the matter for the court to investigate. The sufficiency of grounds which induce the ITO is, therefore, not a justiciable issue. It is, of course, open had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of reasons for the the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the ITO. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section.

5. Learned counsel for the Department relied upon the judgment of a Division Bench of the Calcutta High Court in H.A. Nanji and Co. Vs. Income Tax Officer, "A" Ward and Others, The assessee therein had claimed deduction of income on account of interest paid on a number of hundi loans which were accepted genuine in the original assessment. Subsequently, the ITO received a circular from the Special Investigation Department which gave a list of bogus hundi creditors which included the alleged creditors of the assessee. The ITO initiated reassessment proceedings. In his recorded reasons, the ITO referred to the list of bogus creditors and he stated that he had reason to believe that the hundi loans shown by the assessee were fictitious and that income had escaped assessment. The Calcutta High Court upheld the notice and observed that the belief which the ITO entertained at the stage of the issuance of the notice was a tentative belief on the material before him. There had to be some grounds for the reasonable belief that there had been a non-disclosure or omission to file a true or correct return by the assessee resulting in escarpment of assessment or in under-assessment. Such belief had to be held in good faith, and should not be a mere

pretense or a change of opinion on inferential facts or facts extraneous or irrelevant to the issue, and the material on which the belief was based had to have a rational connection or live link or relevant bearing on the formation of the belief.

6. In the instant case, it is clear upon the affidavit made on behalf of the Department itself that all primary facts necessary for the making of the assessment had been truly and fully disclosed. The only complaint made in the affidavit is that the petitioners did not disclose that the yarn purchased was imported polyester filament yarn or that it was grey or dyed or twisted or sized. It does not appear that these are primary facts relevant to the assessments, or that non-disclosure thereof is tantamount to a disclosure not full or true. The deponent of the affidavit says that, subsequent to the original assessments, it had come to the notice of the ITO that the transaction relating to the purchase of imported yarn was not genuine. We are not vouchsafed even in the affidavit in reply what had come to the ITO's notice or when. It would appear that the fact that the yarn was imported was not disclosed has been seized upon a true belief that by reason thereof any income escaped assessment. There was no satisfaction of the requirements of s. 147(a) of the I.T. Act, 1961, before the assessments were sought to be reopened. This is not a case where, as in the Calcutta case, information had been received that creditors to whom interest was said to have been paid were bogus and the ITO, having recorded this as his reason, reopened the assessments.

7. In the result, the petitions are allowed and the notices dated February 4/6, 1976, February 4/6, 1976 and August 26/28, 1976, under s. 148 of the I.T. Act, 1961 are quashed and set aside. The respondents shall pay to the petitioners costs of the petitions.

8. Rules accordingly.