

(2001) 07 CAL CK 0013

In the Calcutta High Court

Case No : C.R. No. 3756 of 1978 3 July 2001 A.Y. 1969-70

HINDUSTAN ALUMINIUM CORPORATION LTD.

APPELLANT

Vs

ITO and Others

RESPONDENT

Date of Decision : 03-07-2001

Acts Referred:

Income Tax Act, 1961 — Section 148

Citation : (2002) 172 CTR 51

Hon'ble Judges : Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : J.P. Khaitan, for the Assessee R.C. Prosad and Md. Nizamuddin, for the revenue, for the Appellant;

Judgement

Pinaki Chandra Ghose, J.

The subject-matter of challenge in the writ petition is a notice dated 22-3-1978, issued by the Income Tax authorities for the assessment year 1969-70 u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act). According to the petitioner, the notice did not disclose the reasons for initiation of the proceedings.

It is also submitted that the assessment of the petitioner for the assessment year 1969-70 was made u/s 143(3) of the said Act, on 28-2-1972. The said assessment was set aside on appeal by the Appellate Assistant Commissioner by his order dated 20-6-1972, and the assessment was again made on 28-3-1973.

2. The controversy arose in the matter in respect of allowance of grinding charges for a sum of Rs. 5,34,349,55, paid by the petitioner to one M/s. Allied Industries & Commercial Corporation of Calcutta. According to the petitioner, the same were allowed in the assessment made on 28-2-1972, as well as in the subsequent assessment made on 28-3-1973. It is further pertinent to mention here that the appeals and other proceedings were not in respect of the said deduction, allowed in the assessment by the said authorities.

It is further contended that the notice u/s 148 of the said Act was issued on

22-3-1978, after the expiry of four years from the date of assessment made in the year 1969-70. It is further contended that the Income Tax Officer was required to satisfy two conditions :

(i) He must have reason to believe that there was omission or failure on the part of the petitioner, to disclose fully and truly all material facts necessary for its assessment;

(ii) He must have reason to believe, that by reason of such omission or failure, income, chargeable to tax escaped assessment.

3. Learned advocate appearing on behalf of the petitioner relied upon a judgment in M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, and contended that the, Hon''ble Supreme Court has held that the Income Tax Officer, acquires jurisdiction to reopen an assessment u/s 147(a) read with section 148 of the said Act only if on the basis of specific, reliable and relevant information, coming to his possession subsequently and he has reasons 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. In that case, he may start reassessment proceedings, either on the basis of some fresh facts had come to light which were not previously, disclosed or some information with regard to the facts, previously disclosed, come into his possession which tends to expose the untruthfulness of those facts. The Hon''ble Supreme Court has also held that it is open to an assessee to establish that, there in, fact existed on belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. He also contended that whether the material had any rational connection or a live-link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer, at the time of making 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 Income Tax Officer 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. In view of such observation by the Hon''ble Supreme Court as has been held in the said judgment, he contended that both the tests are not available to the Income Tax Officer to reassess the petitioner to serve such notice u/s 147(a) and further Income Tax Officer had no authority or jurisdiction to serve such notice on the petitioner, as the said fact was mentioned in the return of the petitioner and has been dealt with by the authorities and which were allowed in the assessment made on 28-2-1972, as well as subsequent assessment made on 28-3-1973. The facts do not attract section 147(a) of the said Act, in case of the petitioner.

4. He further contended that it is also well-settled that reason to believe is not

the same thing as reason to suspect and that belief cannot be based on suspicion. In support of such submission he relied upon a judgment Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others, .

He further contended that the case of the Income Tax Officer in the reasons recorded by him is as follows :

(i) In the assessment proceedings of the petitioner for the subsequent years it appeared that the petitioner never paid grinding charges save and except in the calendar year 1968 relevant to the assessment year 1969-70.

(ii) At the time of tour at Renukoot during February/March 1978, he wanted to see the original bills of M/s. Allied Industries & Commercial Corporation but was told that the original bills were not traceable. Transporters bills, however, were produced but no evidence could be produced that the goods were unloaded at Calcutta or any grinding operation was done at Calcutta or that the goods were again loaded at Calcutta after grinding. The truck which loaded C.P. coke from Gauhati reached Renukoot with the same C.P. coke. No document or paper was produced in support of payment of grinding charges.

(iii) Local enquiries were made but M/s. Allied Industries & Commercial Corporation could not be traced though bank accounts of the said concerned were located as also the person who introduced it to the bank accepted having made the introduction. The bank accounts were opened only in order to encash the cheques received from the petitioner and the amounts, credited, were subsequently withdrawn in cash.

On the basis of the above, the Income Tax Officer sought to form the belief that the grinding charges claimed by the petitioner was fictitious claim and that the allowance thereof resulted in escapement of income which he attributed to omission or failure on the part of the petitioner to disclose fully and truly all material facts.

5. He further drew my attention to the affidavit-in-reply and contended that the Income Tax Officer, in the reasons, recorded has not averted to certain vital facts.

6. He also contended that the grinding charges were paid only in the year 1968 and in no other year which was specifically made known to the Income Tax Officer, pursuant to the query made by him. He further contended that the point taken by the Income Tax Officer, regarding non-production of documents in support of payment of grinding charges is absolutely wrong, in fact the bills could not be traced and as a result, whereof the challans were produced and that does not give a right to the Income Tax Officer to form any belief that the expenditure was fictitious particularly when the bills were produced in 1971 and other point that M/s. Allied Industries & Commercial Corporation could not be traced after ten years that cannot give any right to reach that the transaction was a fictitious one, in view of the fact, the Income Tax Officer did accept that the said concern had bank accounts and in fact payments were made by cheques and the cheques

were encashed by them. Therefore, there is no material to form any belief that the expenditure claimed by the petitioner was fictitious.

He further contended that the most significant fact is that the Income Tax Officer had not specified in the reasons recorded as to what material fact was not fully or truly disclosed by the petitioner in the original assessment proceedings. The Income Tax Officer sought to act on mere suspicion but, as has been held by the Hon"ble Supreme Court, belief cannot be based on suspicion. The recorded reasons do not show that any fresh facts came to light which were not previously disclosed or some information with regard to the facts previously disclosed came into the possession of the Income Tax Officer which affected the veracity of such facts.

7. Learned advocate, appearing on behalf of the respondent authorities, has submitted before this court that the Income Tax Officer has recorded its reasons which are disclosed in the affidavit-in-opposition and he also drew my attention to para of the affidavit-in-opposition to show such reasons.

He further submitted that whether the grounds are adequate or not, is not a matter for the court to investigate. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the, belief. Moreover, the satisfaction of the Income Tax Officer must not be passed subjective but the same should be objective one. In support of such contention he relied upon the judgments S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, , Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, , Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, and he submitted that action on the part of the Income Tax Officer is bona fide since he has already obtained the prior sanction from the Commissioner.

8. Mr J.P. Khaitan, appearing on behalf of the petitioner, contended that Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, has no application in the present case. He also contended that Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, deals with section 147(a) and has also no application in the present case. In respect of Shyam Jewellers and Another Vs. Chief Commissioner (Administration) and Others, also has no application as the decision deals with search, seizure and survey under sections 132 and 133A and has no application of the facts of the present case. In respect of CIT v. Agarwalla Bros. (1990) 189 ITR 786 he also contended that the Hon"ble High Court was pleased to hold that the reassessment proceedings were not valid since there was no failure to disclose the primary facts on the part of the assessee and he submitted that in the present case, all the primary facts were disclosed and the reassessment proceedings are invalid and he submitted that the said decision supports the case of the petitioner. In respect of Niranjana & Co. (P) Ltd. v. CIT & Ors. (1987) 159 ITR 153 has no application in the facts and circumstances of this case. In view of the fact that the said case deals with the provisions of section 147(b). In respect

trustees of Trustees of Seth Hemant Bhagubhai Trust Vs. Commissioner of Wealth-tax, , Forbes Forbes Campbell and Co. Ltd. Vs. Commissioner of Income Tax, have no application in view of the fact that the said judgment was with reference to the provisions of section 35B and in case of A.L.A. Firm Vs. Commissioner of Income Tax, Madras, has no application in the present case arising u/s 147(b). In reply, he submitted that on the facts of this case, the rule should be made absolute.

9. After considering the facts of this case, the only question to be decided that whether the notice was issued by the Income Tax Officer after recording the reasons therefore. I have considered the judgments cited before me and it appears from the judgment cited before me which is reported as Phool Chand Bajrang Lal & Anr. v. ITO & Anr. (supra) where the Hon''ble Supreme Court has come to the conclusion that one of the purposes of section 147 is 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. It is a fact that the petitioner was given an allowance, in respect of the grinding charges, which has been claimed by the petitioner in the original return filed by them for the assessment year 1969-70. After taking into account the facts cited before me it appears that the Income Tax Officer subsequently found, that the income chargeable to tax had escaped assessment and the assessee had not made full and true disclosure of the material facts. Accordingly, he issued the notice on such belief u/s 148 in the instant case. It is also a fact that the Income Tax Officer acquires jurisdiction to reopen an assessment u/s 147(a) when he has reasons to believe that by reason or omission or failure on the part of the assessee to make full and true disclosure necessary for its assessment during the concluded assessment proceedings, any part of his income, profits or gains, chargeable to Income Tax, has escaped assessment. He may start assessment, proceedings either on the basis of some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed, come into his possession which tends to expose the untruthfulness of those facts. Therefore, as has been held by the Hon''ble Supreme Court in Phool Chand Bajrang Lal v. ITO (supra) that in such situations, it is not a case of a mere change of opinion or the drawing of a different inference from the same facts as were earlier available but one of acting on fresh information. It further appears that in a subsequent judgment reported in Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, the Hon''ble Supreme Court has held that in determining whether the commencement of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage by the court.

Accordingly, I do not have any hesitation to hold that the Income Tax Officer did give reasons for the notice issued by him in the matter and I am of the view that the court cannot strike down the reopening of the case in the facts of this case. However, I make it clear that it will be open to the assessee to prove that the assumption of the facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income Tax Officer after completion of the assessment proceedings. I am not expressing any opinion on the merits of the case which are kept open to be investigated and also to be decided by the assessing authority.

On these grounds this application must fail and is hereby dismissed. Rule is discharged.