
(1990) 11 CAL CK 0049

In the Calcutta High Court

Case No : Income-tax Reference No. 290 of 1987

Hope (India) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-11-1990

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 153

Citation : (1993) 203 ITR 118 : (1993) 71 TAXMAN 387

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Roy, for the Appellant; Sunil Mitra, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, for the assessment year 1963-64, the following questions of law have been referred to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the action of the Income Tax Officer in initiating proceedings u/s 147(a) of the Income Tax Act, 1961, for the assessment year 1963-64 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in sustaining the addition of the sum of Rs. 77,786 made by the Income Tax Officer as income of the assessee under the head "Other sources" for the assessment year 1963-64 ?"

Shortly stated, the facts are that the assessee-company started construction of a building in the accounting year 1960-61 and the construction was completed in the accounting year ending on March 31, 1966. The total cost incurred by the assessee on the construction of the building was considered during the assessment year 1966-67 and the Income Tax Officer was of the opinion that the cost disclosed by the assessee was lower than the cost actually incurred. Accordingly, the Income Tax Officer made an addition of Rs. 6,03,962 and the

same was confirmed in appeal by the Commissioner of Income Tax (Appeals).

2. Against the aforesaid order of the Commissioner of Income Tax (Appeals) for the assessment year 1966-67, the assessee came up in appeal before the Tribunal and made two submissions. The first submission was that the cost shown by the assessee-company was reasonable. The second argument of the assessee was that the total addition could not be made in the assessment year 1966-67 and that the addition should be spread over the years during which the construction took place. The first objection of the assessee was negated by the Tribunal. However, the Tribunal accepted the second argument and maintained an addition of Rs. 70,231 for the assessment year 1966-67. The Tribunal also directed that proportionate addition should be made in respect of other years.

3. The Tribunal recorded as follows :

"The next question that has been raised on behalf of the assessee is that the construction was spread over a number of years and in this year only a sum of Rs. 2,63,200 in all had been spent. The remaining amount had been spent in the assessment years 1961-62, 1962-63, 1963-64, 1964-65 and 1965-66. That being the position, the entire amount which, according to the authorities below, came to Rs. 6,03,962 and according to our order above would now amount to Rs. 6,03,962 cannot be added in this one year because it certainly was not an investment made in this year. This is a very pertinent question raised on behalf of the assessee and the only answer given by the Departmental representative was that this question had not been raised either before the Income Tax Officer or before the Appellate Assistant Commissioner or before the Tribunal by a specific ground of appeal, That, indeed, appears to be true but the fact being on record we cannot close our eyes to the errors committed by the authorities below in assessing the entire amount in one year although it had to be assessed in all the years on a pro rata basis. The statement on page 1 of the paper book submitted by the assessee showed that there were only preliminary expenses of a minor nature in 1961-62 and 1967-68. The construction started in full swing in 1963-64 when an investment of Rs. 2,91,551 was made. In the assessment year 1964-65, the investment was Rs. 12,03,428 and in 1965-66, it was Rs. 4,86,414. The year before us, that is, 1963-64, was the first year of the construction although minor works went on up to 1975 but we are not concerned with those years. In the assessment year before us, there was only an expenditure of about Rs. 75,000 on construction and the remaining expenditure was on electric installation, transformer and tubewells. The total expenditure in this assessment year was a sum of Rs. 2,65,200 only. The expenditure under all these years according to the books of account of the assessee came to Rs. 27,63,702 which has been estimated by us to be Rs. 28,67,664. The investment in this year being only Rs. 2,63,200, the unexplained investment in this year can only be on a pro rata basis, i.e., a sum of Rs. 70,231. By no logic can the Department add the entire amount invested by the assessee-company for a period of five previous years, in the last year when only a minor part of the

investment was made. For the remaining unexplained investment, the Department will have to seek its remedy in the earlier years if it is available to it but so far as the year before us is concerned, we cannot uphold the entire unexplained investment in this year. We, accordingly, accept the assessee's contention and reduce the addition to Rs. 70,231 only. The assessee shall get the remaining relief."

The Income Tax Officer, in the light of the above direction, took action u/s 147(a) of the Act and issued a notice to the assessee u/s 148. The return filed by the assessee showed an income of Rs. 51,450. The Income Tax Officer, after discussing the facts in the assessment year 1966-67 and the order of the Tribunal for that year, came to the conclusion that the assessee did not disclose fully and truly all material facts in the assessment year 1963-64 and resting upon the finding of the Tribunal, made an addition of Rs. 77,786 as income from other sources, for the cost of construction.

4. The assessee appealed to the Commissioner of Income Tax (Appeals) who upheld the order of the Income Tax Officer.

5. Against the order of the Commissioner of Income Tax (Appeals), the assessee came up in second appeal before the Tribunal.

6. The Tribunal dismissed the appeal by making the following observations :

"The addition of Rs. 77,786 has been made by the Income Tax Officer u/s 147(a) of the Act for non-disclosure of the correct cost of construction of the building. The construction of the building was started in the accounting year 1960-61 and was completed in the accounting year ended on March 31, 1966. The matter came up before the Tribunal in the assessment year 1966-67 and the finding of the Tribunal has been recorded at paragraph 13 which has been reproduced above. The assessee made two submissions before the Tribunal. The first one was that the addition was unjustified. The second submission was that the entire addition should not be made in the assessment year 1966-67. The second submission of the assessee was accepted by the Tribunal and the addition was proportionately reduced. The Tribunal also directed the Income Tax Officer to make proportionate additions in the years during which the construction continued. Accordingly, the Income Tax Officer, in compliance with the directions of the Tribunal, took action u/s 147(a). It is correct that the assessee did not disclose fully all material facts necessary for the assessment relating to the cost of construction of the building. The assessee's counsel, in the course of arguments, referred to the order of the Income Tax Officer and pointed out that, at the original assessment stage, the assessee produced the books of account. It is settled law that mere production of books of account is not sufficient to prove that all material facts necessary for the completion of the assessment were fully and truly disclosed. The cost of construction of the building was considered only in the assessment year 1966-67, when the building was complete. The matter was referred to the Departmental valuer and, accordingly, the Income Tax Officer

made the addition. On these facts, after considering the arguments of the parties, the case law and the order of the Tribunal for the year 1966-67, the finding recorded by the Income Tax Officer is maintained. Even on merits, the addition is maintained. The addition has already been considered by the Tribunal in the assessment year 1966-67 and the addition has been made only by accepting the second argument of the assessee."

At the hearing, Mr. Roy has submitted that the Tribunal fell into an error in holding that the Income Tax Officer had jurisdiction to initiate the proceeding. The initiation was made on the basis of the direction of the Tribunal for the assessment year 1966-67, which the Tribunal in law could not have made. It is also his contention that the Tribunal exceeded its jurisdiction in giving a direction for proportionate addition of the unexplained investments in the several years.

7. On the other hand, Mr. Mitra, appearing for the Revenue, has reiterated the contentions made before the Tribunal. As would appear from the narration of facts in the assessment year 1966-67, the Income Tax Officer made an addition of Rs. 6,03,962 being the investment unaccounted for as the construction of the building was completed during the previous year relevant to the said assessment year. When the matter went to the Tribunal, on the basis of the submissions made by the assessee, the addition was not made for the assessment year 1966-67 in its entirety inasmuch as the construction started in the year 1960-61 and was completed in 1966. Accordingly, the assessee was given the benefit of spread over.

8. It is on the basis of the submissions of the assessee that the Tribunal decided the issue in favour of the assessee and issued a direction that the Income Tax Officer should make proportionate addition for the period during which construction continued. The assessee cannot approbate and reprobate at the same time. It was on the basis of the contention of the assessee which was accepted by the Tribunal that the Tribunal gave the aforesaid direction. In our view, the direction which was given by the Tribunal in connection with the assessment for the assessment year 1966-67 was necessary for the disposal of the appeal on the basis of the submission made by the assessee. The assessee having taken the benefit cannot now ask for overturning the said decision. That apart, the Explanation to Section 153 clearly provides that, in any case where income is excluded in appeal, reference or revision, or in any other legal proceeding, from the assessment for any year, an assessment of such income for another assessment year shall be deemed to be one made in consequence of, or to give effect to, any finding or direction by the authority hearing the case. This fiction of law removes the bar of limitation, irrespective of the question whether the authority has in fact given or can in law give a finding or direction that the income should be taxed in a specified assessment year other than the year for which the authority hears the case. Thus, if any income is deleted from an assessment by a higher forum on the ground that it is not the income of that year, the Income Tax Officer has jurisdiction to initiate proceedings u/s 147 to

assess it as the income of another year without any limitation applying to the issue of the notice u/s 148 or to the completion of the assessment or reassessment.

9. In any event, the question whether the assessee disclosed fully and truly all material facts necessary for its assessment is essentially a question of fact. None of the findings or primary facts found by the Tribunal have been disputed by the assessee by any appropriate question. The perversity, if any, of the finding has not been challenged. On the contrary, in this case, the assessee obtained a benefit and, after obtaining the benefit, has contended that the said proceedings are not valid. We agree with the reasoning and conclusions of the Tribunal and, accordingly, answer both the questions in this reference in the affirmative and in favour of the Revenue.

10. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

11. I agree.