(1991) 06 BOM CK 0008

In the Bombay High Court

Case No : IT APPEAL NO. 1861 (BOM.) OF 1987 AND CO NO. 128 (BOM.) OF 1987

INSPECTING ASSISTANT COMMISSIONER — APPELLANT

Vs

HINDUSTAN LEVER LTD. — RESPONDENT

Date of Decision : 21-06-1991

Acts Referred:
Income Tax Act, 1961 — Section 271B

Citation : (1991) 39 ITD 147

Hon'ble Judges : M. A. Ajinkya, A.M.

Bench : Division Bench

Judgement

Per M. A. Ajinkya (Accountant Member) - This appeal by the department and the cross objection by the assessee relate to the assessment year 1985-86. Both these were heard together and are disposed of by this consolidated order.

2. The short ground in the departments appeal is that the CIT (A) erred in cancelling the penalty of Rs. 1,00,000 levied by the IAC u/s 271B of the Income Tax Act, 1961.

3. The relevant facts are that the assessee is a limited company. The IAC imposed a penalty of Rs. 1,00,000 because the company had not fulfilled the requirements of section 44AB. It would appear that the company by its application in Form No. 6 dated 30-9-1985 sought extension of time for filing the return up to 31-10-1985. In the application form 6, the reason given for seeking extension was as follows :

"Companies books of account are under audit for the purposes of Tax Audit Report to be filed along with the return of income as provided for u/s 44AB of the Act inserted by the Finance Act, 1984, w.e.f., 1-4-1983. Consequently, various information required from various units of the Company for the purpose of computation of taxable income has been delayed."

It filed another Form No. 6 on 31-10-1985 seeking extension of time up to 22nd

November, 1985, and the reason given was as follows :

"The Tax Auditors, A. F. Ferguson & Co., have for the purpose of finalizing the tax audit report in prescribed form 3-CA with particulars in 3-CD called for various clarification and information from various units of the company which are under compilation. Pending that, the draft audit report is being discussed with the Auditors and the final report is expected to be ready by 15-11-1985. The computation of taxable income for the purpose of tax return will be made considering the various points raised in the final tax audit report to maintain uniformity between the audit report and the return. We hope to complete this by 22nd November 1985. As stated in our application of 30-9-1985, we have effected the self assessment tax payment of Rs. 1 crore on an estimate basis for the current year."

4. As the tax audit report had not been obtained by the assessee before the specified date, proceedings u/s 271B were initiated and notice u/s 271B read with section 274 of the Act was issued to the assessee. In response to the said notice, the company submitted its reply in their letters dated 6-11-1985 and 19-11-1985. The case of the company before the IAC was that this was their first year in which the tax audit report had to be obtained before filing the return and, further, that Bombay Unit of the company was having labour trouble and, therefore, there was a delay. While dealing with this explanation, the IAC observed that the term specified date mentioned in section 44AB had been defined in the section itself and for the assessee-company, the specified date was the 30th June, 1985; that the Board in the terms of notification dated 19-6-1985 had extended the specified date up to 30-9-1985 but the assessee had not got its accounts audited before that date. The IAC also observed that, initially, the company, in its application dated 30-6-1985, sought extension up to 30th July, 1985, on the ground that the Companies books of accounts were under audit. On 29th July, 1985, it sought extension up to 31st October, 1985, on the ground that the tax audit had just been completed and was being analysed. On 31st October, 1985, it sought extension up to 22nd November on the ground that the auditors, for the purpose of finalising the tax audit, had called for information from various units which was under compilation. According to the IAC, there were contradictions in the reasons stated in the various applications in Form No. 6 filed by the assessee for extension of time, from time to time. The IAC observed that the Board had extended the date for getting the tax audit completed to 30th September, 1985 and, by and large, all the companies had managed to get the tax audit report completed by that date and that the reasons given by the company were an after-thought. The company had never raised a plea that the main unit was facing labour problems and, therefore, they should be allowed time. Finally, the IAC observed that the tax audit report did not call for any information which was not required for the purposes of proper assessment earlier. It merely called upon the assessee to make available that information well in advance in order to avoid infructuous work of carrying out routine verification at the time of assessment. In this view of the matter, the IAC

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was fully convinced that the company had not complied with the requirements of section 44AB and had not shown reasonable cause for their failure and, hence, he levied penalty of Rs. 1,00,000.

5. When the matter went before the CIT (A), it was brought to his notice that as soon as the issue of delay in the tax audit report was raised, the assessee, in their letter dated 19th November, 1986, had prayed to the Commissioner (a copy of which was endorsed to the IAC) specifically mentioning the problems the company was facing with their labour unions. In that letter, the assessee had filed a copy of the letter from its auditors, M/s. Ferguson & Co., in which, inter alia, it was stated as follows :-

"The company has 18 accounting units spread all over India. The Head Office in Bombay had issued instructions to all the units laying down various guidelines for compilation of information for incorporation in the final report. However, this being the first year, numerous clarifications and reworking had to be obtained from virtually every unit or the information furnished by them for the tax audit.

The Bombay factory of the company, which accounts for almost 50% of the total turnover of the company, was having serious labour problems. As such, we are informed that the entire information was compiled by supervisory and management staff without clerical assistance. It has, therefore, taken longer than expected for compilation and audit of the information."

6. The CIT (A) accepted the explanation of the assessee. He observed that while applying for extension of time for filing the return, it was sufficient if the assessee could say that the tax audit report was delayed. The assessee had brought to the notice of the authorities concerned the problem that it was facing with its labour unions, at the earliest possible stage, and this was supported by a letter of its auditors, a copy of which has been quoted hereinabove. The CIT (A) noted that the company had moved the court in May 1985, and had addressed various letters to the Assistant Commissioner of Labour in respect of the continuous labour problems which it was facing from December 1984. The labour problem was ultimately settled on 22nd November, 1985, when an agreement was signed and the CIT (A) had also noted that the assessee had filed tax audit report around that date. The CIT (A) also took note of the fact that the assessees business was scattered in various units and when it said that the auditors completed the report at those places, it meant that the unit accounts were duly audited. The final stage of sending all the unit reports to the head office was still to be completed and it was at that stage that the company discovered that many things were missing and some more important information had to be collected from certain units. As there was labour problem, this information could not be collected and, therefore, there was some delay and that could be treated as a reasonable cause. The CIT (A), therefore, observed that this was not a case where a general provisions of this type could be involved and, therefore, he deleted the penalty. Hence, this appeal.

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7. The departmental representative, by and large, relied on the order of the IAC.

8. The learned counsel for the assessee, Shri S. E. Dastur, pointed out that there was no contradiction in the explanation given by the assessee in Form No. 6 filed from time to time. He argued that the self-assessment tax had been paid before the final return in September 1985, and then pointed out that the IAC had granted time for filing the return on every application made by the assessee, from time to time. Thus, on the application dated 20-6-1985, IAC, by his intimation dated 3-7-1985, had granted extension up to 30-7-1985 and on application dated 29-7-1985, the IAC, by his letter dated 1-8-1985, had granted extension of time up to 30-9-1985. Similarly, on the application dated 30th September, 1985, the IAC had granted time up to 31-10-1985 by his letter. But while granting such extension, he had called upon the assessee to ensure that self-assessment tax was paid due verification and that there was as likelihood of any discrepancy by the company between the self-assessment tax paid and thereafter the assessee made an application on 31-10-1985 requesting for time up to 22nd November, 1985 (for reasons which have already been reproduced hereinabove) on which, by his letter dated 31st October, 1985, it would appear that the company addressed a letter to the CIT, Bombay City-II, in which they specifically stated that they had commenced routine checking in respect of the tax audit by the company in June 1985 and that the tax audit could not be completed before the required date of 30th September 1985, because the company had 18 accounting units spread all over India and that the head office had issued instructions to all the units laying down various guidelines for compilation of information to be incorporated in the final report and since it was the first year, numerous clarifications had to be obtained from virtually all the units on the information to be furnished by them. Further, it was mentioned that the Bombay Factory had serious labour problems and that the entire information was completed by supervisory and management staff without clerical assistance and, thus, the factum of labour problem was brought to the notice of the CIT by the company in November 1985 itself. After mentioning these facts, the learned counsel for the assessee pointed out that there was no penalty levied by the IAC u/s 271(1) (a). He relied on a decision of the Calcutta High Court in the case of Calcutta Chromotype Pvt. Ltd. Vs. Income Tax Officer and Others, , and also the decision of the Allahabad High Court in the case of Commissioner of Income Tax (Central) Vs. Anchor Pressing (P.) Ltd., . The learned counsel also pointed out that the return was filed, ultimately, on 22nd November, 1985, and the IAC levied penalty u/s 271B on 6-1-1986, although he completed the assessment on 21-3-1988.

9. We have carefully considered the submissions made on either side. We have also gone through carefully the order of penalty and also the order of the CIT (A), besides other papers filed before us at the time of hearing. The most important thing that we notice is that the IAC was satisfied with the reasons given in the application for extension of time, filed from time to time, and had granted extension of time for filing the returns, under his various letters, to the

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assessee up to 22nd November, 1985. The IAC did not initiate any penalty proceedings for delay in the filing of the return, which was, in fact, filed on the day on which the last extension granted by the IAC had expired. It is, therefore, surprising that having entertained the various applications for grant of extension of time and having granted extensions of time, asked for from time to time by the assessee, on being satisfied that there was adequate reason for the assessee to seek time for filing the return, the IAC should now find contradictions in the various explanations given in the applications for extensions, filed from time to time. This apart, the fact is that there are, in fact, no contradictions to be seen from the various explanations given by the assessee. We are not convinced that the company had made any contradictory or incorrect statements in Form No. 6 filed on 30-9-1985 and 31-10-1985, in one of which the company had clearly stated that the tax auditors, M/s. Ferguson & Co., had just completed the audit and that they were in the process of analysing the report. The company had conveyed that by September 1985, the routine checking of books of accounts and other relevant documentary evidence by the tax auditors had been completed. There were points raised by the tax auditors which were being analysed by the company. Since 1984 was the first year of the tax audit and the tax auditors had to view several issues peculiar to the company, which required considerable discussion and deliberations in the Form No. 6 dated 31-10-1985, the company had clearly stated that the tax auditors had called for various clarifications and information from various units of the company which were under compilation. We, therefore, find no contradictions in the various explanations given by the company in Form No. 6, filed from time to time. As stated by the CIT (A), the company had 18 units spread all over the country and were confronted with requirements of tax audit for the first time. It is also not correct to state that the explanation about labour trouble was given as an after-thought. As stated earlier, the company had written to the CIT on November 18, 1985, explaining their difficulties in this behalf. A copy of the complaint filed by the company against its employees union and union office bearers in May 1985 has been filed and a copy of the order of the Industrial Court dated 30th May, 1985, has also been filed and they form part of the compilation. The correspondence with the Labour Commissioner relating to the labour situation in the company at the relevant time is also filed.

10. On the facts stated above, we are satisfied that the IAC was not at all justified in rushing to levy penalty of Rs. 1,00,000 in January 1986, particularly when it appears he took his time to complete the assessment only in March 1988. The mitigating factor, so far the assessee is concerned, is the payment of self-assessment tax in September 1985.

11. The next aspect to be considered is whether any prejudice to the revenue has been caused by such alleged delay. The section under which the assessee is penalized is section 271B and this section, as it stood at the relevant time, read as follows :-

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"If any person fails, without reasonable cause, to get his accounts audited in respect of any previous year or years relevant to an assessment year or obtain a report of such audit as required u/s 44AB, the ITO may direct that such person shall pay, by way of penalty, a sum equal to one- half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred thousand rupees, whichever is less."

12. It would be clear that failure to get the accounts audited and obtain a report of such audit u/s 44AB has relevance if such a report does not accompany the return of income to be filed u/s 139(1). In the present case, the return of income, though filed late, was filed after following the proper procedure of getting extensions of time for filing the return. Different applications under Form No. 6 were filed from time to time and the Assessing Officer had, after perusal of the reasons stated in such applications, granted time for filing the return, from time to time, up to 22nd November, 1985. The tax audit report was ultimately filed with the return of income which has to be considered as a return filed u/s 139(1). Therefore, on a strict interpretation of section 271B, we would hold that if the return of income was filed within the extended time and if the tax audit report was filed along with such return, there is no default punishable u/s 271B. Apart from this interpretation, that we have put on the provisions of section 271B, we find that the assessee has been consistently bringing to the notice of the IAC the difficulties that it faced in getting the tax audit completed. It had also brought to the notice of the CIT the labour problems that it was facing in various units. In these circumstances, we are surprised that in the face of such evidence and even after granting time to the assessee to file the return by 22nd November, 1985, the IAC should initiate steps for penalising the assessee to the extent of Rs. 1,00,000 for what can only be considered as a technical lapse, if at all it can be so called. We are fully satisfied that the levy of penalty was wholly misconceived and that the CIT (A) was, therefore, justified in deleting the same. There is absolutely no substance in the departments appeal which deserves to be and is hereby dismissed.

13. Coming to the cross objection of the assessee, the only ground taken is that the CIT (A) has not dealt with one ground which should be dealt with, in the event of the Tribunal reversing the order of the CIT (A).

14. Since we have confirmed the order of the CIT (A), we do not find it necessary to deal with the cross objection which is also hereby dismissed. 15. In the result -

(a) The appeal by the department is dismissed.

(b) The cross objection by the assessee is dismissed.

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