

(1998) 12 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 217 of 1988

Krishan Chand Ganesh Dass Girdari Lal and Co.	APPELLANT
Vs	
Inspecting Assistant Commissioner of Income Tax and Others	RESPONDENT

Date of Decision : 11-12-1998

Acts Referred:

Income Tax Act, 1961 — Section 143, 143(1), 143(2), 147, 148

Citation : (2001) 167 CTR 415 : (2001) 248 ITR 196 : (1999) 103 TAXMAN 88

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : G.C. Sharma, for the Appellant; B.B. Bakshi, for the Respondent

Judgement

T.S. Doabia, J.—The circumstances under which this petition has come to be filed be noticed.

2. The petitioner is an assessee under the Income Tax Act, 1961. It submitted its return for the assessment year 1985-86. The assessment was

made on November 29, 1985. The income as indicated by the assessee was accepted. While making this assessment, the Assessing Officer took

note of the past practice. This was followed. The total turnover, the taxable income was determined by applying a fixed percentage of 11 per cent.

3. The further fact is that on January 15, 1987, a letter was addressed to the assessee. In this, it was pointed out that a search and seizure was

conducted at the premises of the assessee. Some stock registers were seized. These registers indicated some facts and figures regarding closing

stocks. The stock which was in transit was also said to have been indicated.

4. On the basis of the information so acquired, the Inspecting Assistant Commissioner of Income Tax, Jammu, who is also the Assessing Officer

came to the conclusion that if facts and figures, which have become available from the records so seized from February 1, 1972, to January 31, 1985, are taken into consideration, then the total gross profits would be to the tune of Rs. 1,31,97,500.61. It was pointed out that for these years, the assessee has given the information that the profits were to the extent of Rs. 65,92,506.66 only. It is indicated that there is suppression in the gross profit to the tune of Rs. 66,84,993.95. This was in the period from February 1, 1972, to January 31, 1985. The assessee was called upon to explain the position.

5. It be seen that the above letter does not indicate that this has been issued under any particular statutory provision.

6. The assessee gave a reply. It was indicated that the facts and figures as are being projected by the Inspecting Assistant Commissioner of Income Tax did not take notice of various factors. One such factor was that the loss in transit and the items which were in transit and are wasted, could not be mentioned in the accounts which are said to have been seized by the respondent-Department. It was further stated that the facts and figures as given in the return which return was accepted was correct and there was no justification to take a fresh look into the matter. This reply was given on January 26, 1987.

7. It appears that respondent No. 1 was not satisfied with the reply so given. Accordingly, a notice was issued. A copy of this has been placed on record as annexure ""A"". This notice reads as under :

There are certain points in connection with the return of income submitted by you for the assessment year 1985-86 in regard to which I should

like some further information. You are hereby required to attend my office at 10 A.M. on February 5, 1988, either in person or by a representative

duly authorised in writing in this behalf, or there produce or cause there to be produced at the said time any documents, accounts and other

evidence on which you may rely in support of the return filed by you.

income tax Officer,

Circle/District.

8. Accompanying this notice was a detailed information on the basis of which action was sought to be taken. It was pointed out that the action is

sought to be taken in terms of Section 143(2)(b) of the Income Tax Act, 1961. This led the petitioner to approach this court.

9. Learned counsel for the petitioner submits that the officer who has issued the notice has no jurisdiction to issue the same. Primary reliance is

being placed on what is stated in paragraph 5(a) and (b) of the writ petition. It is submitted that once an assessment has been completed in terms

of Section 143(1) of the Act and when this assessment is made after due scrutiny, it cannot be reopened in terms of Section 143(2)(b) of the Act.

The assessing authority cannot start the proceeding afresh. It is stated that only when the original assessment made is incorrect, inadequate or

incomplete in material respect, i.e., the total amount of income assessed under that Section is lower than the amount of total income on which the

petitioner is liable to pay the tax, only then, resort can be had to Section 143(2)(b). It is further stated that as another course is also available to

the Income Tax authorities (this is under sections 147, 148 and 263 of the Act) these provisions having been not adopted and the respondent

authorities having relied on a provision which was not available to them on account of bar of limitation, they have resorted to the provisions of

Section 143(2)(h). This, according to learned counsel, is a method which is not available to the respondent authorities. The other argument which

has been put across is that the information which has been gathered by the respondents when the letter dated January 15, 1987, was issued, the

facts and figures are with regard to the period from February 1, 1972, to January 31, 1985. It is urged that the respondent authorities cannot look

into this material because the finality stands attached to the assessments which are beyond a period of eight years. If that material is taken into

consideration, then the scrutiny would be for periods beyond the period of limitation. This as per the petitioner cannot be done.

10. Another argument which has been raised is that the assessment proceedings could be opened with regard to that period which is within the

limitation prescribed in this behalf. This is eight years in case there is failure on the part of the assessee to disclose the income and in case there is

some remissness on the part of the Department, then the assessment can be opened for a period beyond four years. This is so provided in Section

149. It is on the above premises, a challenge is made to the jurisdiction of the assessing authority to proceed into the matter.

11. After having heard learned counsel for the parties I am of the opinion that the notice which has been issued and which is the subject-matter of challenge in this petition appears to have been issued without due application of mind. The assessment year is 1985-86. The amount which is said to be not accounted for and regarding which there is suppression is to the tune of Rs. 66,84,993.95. This suppression is for a period beginning from February 1, 1972, to January 31, 1985. As to how for a period of 13 years the assessee can be asked to explain qua a single assessment year 1985-86 is not apparent. The authority issuing the notice should have been specific vis-a-vis the amount which was suppressed in the assessment year 1985-86. It is only qua that amount the assessee can be called upon to explain. The clubbing together of an amount with effect from February 1, 1972, to January 31, 1985, and creating liability in one year would not be in accordance with law.

12. As respondent No. 1 has not applied his mind to the above aspect and has included material which is extraneous thus notice is liable to be quashed.

13. This petition is allowed leaving the respondents to take such steps as they may deem proper. Proceedings would not be taken in pursuance of the notice noticed above.