
(1975) 12 CAL CK 0039
In the Calcutta High Court
Case No : Matter No. 455 of 1973

Metal Distributors Ltd.

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 05-12-1975

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1978) 115 ITR 608

Hon'ble Judges : S.C. Deb, J

Bench : Single Bench

Advocate : Pal, for the Appellant; Suhas Sen, for the Respondent

Judgement

S.C. Deb, J.—This rule under Article 226 of of the Constitution is directed against the notice dated March 24, 1973, issued u/s 148 of the I.T. Act, 1961, for the assessment year 1964-65.

2. The petitioner is a company. The assessment was made by the respondent No. 2 on March 1, 1965. Four years thereafter, another ITO suddenly issued a notice u/s 148 of the Act and accordingly the petitioner filed the return under protest. The said ITO passed an order imposing additional tax by holding that the petitioner was a company in which the public were not substantially interested, but his order was set aside by the Appellate Tribunal on July 22, 1972, on the ground that the ITO had no reason to believe that income chargeable to tax had escaped assessment and that the said proceeding either u/s 147(a) or Section 147(b) of the Act was illegal and without jurisdiction.

3. Thereafter, the respondent No. 1 read the said order of the Tribunal and submitted a report to the CIT for his permission to reopen the assessment u/s 147(a) of the Act which was granted by the Commissioner. This report has been produced before me and in it the respondent No. 1 has stated that the memorandum and articles of association of the petitioner was not filed by the petitioner before the respondent No. 2 at the time of the original assessment or

earlier. He has also stated that this document was filed only at the time of reassessment by the petitioner.

4. The respondent No. 1 then issued the impugned notice by purporting to act u/s 147(a) of the Act on the ground that he has reason to believe that by reason of the omission or failure on the part of the petitioner to disclose the memorandum and articles of association at the time of the original assessment the income chargeable to tax has escaped assessment.

5. Mr. Suhas Sen, the learned counsel for the respondents, by relying on the decisions of the Supreme Court in the cases of S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, , Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, and Madhya Pradesh Industries Ltd. Vs. The Income Tax Officer, Nagpur, , has argued that the above belief formed by respondent No. 1 cannot be questioned by the petitioner on whose behalf the decision of the Supreme Court in the case of Modi Spinning and Weaving Mills Co. Ltd. Vs. Income Tax Officer, Special Investigation Circle (B), Meerut, , was cited to refute the above submission of Mr. Sen.

6. I do not propose to discuss the cases cited by Mr. Sen, for their Lordships of the Supreme Court have followed in these cases their own decision in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , cited by Dr. Pal appearing for the petitioner. In this case it has been held that to confer jurisdiction u/s 34 of the Indian I.T. Act, 1922, the ITO must have reason to believe that the income, profits or gains chargeable to Income Tax had been under-assessed and that he must have also reason to believe that such "underassessment" has occurred by reason of either, (i) omission or failure on the part of an assessee to make a return of his income u/s 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. There is no dispute between the learned counsel that the above law laid down by the Supreme Court also applies to Section 147(a) of the I.T. Act, 1961.

7. Now, Mr. A. K. Maitra, a director of another company, was the assistant accountant of the petitioner-company at the time the original assessment was made by respondent No. 2. Mr. Maitra has affirmed the petition by saying that the memorandum and articles of association of the petitioner was produced by him before respondent No. 2 at the time the original assessment was made by respondent No. 2 who was satisfied that the petitioner was a company in which the public were substantially interested and, accordingly, he had determined the tax at the rate applicable to the petitioner. The respondent No. 1 has denied this fact, but he has no personal knowledge about it.

8. The respondent No. 2, who has not filed any affidavit, has recorded in the assessment order as follows :

"In response to notice u/s 143(2), Sri A. K. Maitra, Asstt. Accountant, attended and was heard. On examination of evidence produced by the assessee in support

of the return and as are called for by me, assessment is made as follows....."

9. The respondent No. 1 has stated in the aforesaid report that the memorandum and articles of association was filed by the petitioner only at the time of reassessment, but the letters annexed to his affidavit conclusively show that this document was not filed at the time of reassessment. Therefore, it has been rightly contended by Dr. Pal that the respondent No. 1 has untruly stated in this report that this document was filed at the time of reassessment.

10. Dr. Pal has also argued that the respondent No. 1 had no reasons to believe that this document was not produced by the petitioner at the time of original assessment before the respondent No. 2. In support of his contention he has relied on the assessment order in which respondent No. 2 has recorded that the documents were produced before him by the petitioner at the time of assessment. He has also relied on the affidavit of Mr. Maitra in this behalf. It is his submission that no reliance should be placed on the affidavit of respondent No. 1 and that the condition precedent for invoking the jurisdiction u/s 147(a) of the Act has not been fulfilled in this case.

11. Mr. Sen, on the other hand, has argued that it was not necessary for respondent No. 2 to file any affidavit in this proceeding because, a wording to him, it is the belief of respondent No. 1 with which we are concerned, but I am not impressed by it in view of the decision of the Supreme Court in the case of Modi Spinning and Weaving Mills Co. Ltd. Vs. Income Tax Officer, Special Investigation Circle (B), Meerut, .

12. I accept the contentions of Dr. Pal and by following the judgment dated 8th September, 1975, in the case of Smt. Minoti Halder Vs. Income Tax Officer, "G" Ward and Others, under Article 226 of the Constitution, and as no affidavit has been filed by respondent No. 2 denying the case of the petitioner, namely, that the said document was produced before him by the petitioner at the time of original assessment I hold that there was no failure or omission on the part of the petitioner to disclose fully and truly all relevant facts for the purpose of assessment and that the condition precedent for issuing the impugned notice has not been fulfilled in this case.

13. In the premises, the impugned notice dated March 24, 1973, is hereby quashed and the respondents are restrained from giving effect to the said notice. If, in the meantime, any assessment has already been made in pursuance of the said impugned notice the same is also quashed and is hereby set aside. The rule is made absolute without any order as to costs. The operation of this order will remain stayed for eight weeks from to-day as prayed for by the respondents.