(1989) 07 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 741 of 1983

Morarjee Goculdas Spg and Wvg. Co. Ltd. APPELLANT

Vs

M.M. Das, Inspecting Assistant Commissioner RESPONDENT

Date of Decision : 17-07-1989

Acts Referred:

Income Tax Act, 1961 — Section 144, 147(b), 148

Citation : (1989) 07 BOM CK 0038

Hon'ble Judges : Bharucha, J

Bench : Single Bench

Advocate : S.E. Dastoor and Irani, for the Appellant; V. Balsubramanian, for the Respondent

Judgement

Bharucha, J.—This writ petition challenges a notice u/s 148 of the income tax Act'', 1961 (''the Act''), proposing to reassess the petitioners to income tax for the assessment year 1977-78, the previous year where of ended on 30-6-1976. The petitioners were assessed to income tax for the said assessment year by an assessment order dated 8-12-1977. Thereunder the ITO allowed a deduction for ''liability due to excise duty'' in the sum of Rs. 70,44,000. The deduction in this behalf had been claimed thus:

Rs.

"Additional excise duty in terms of show-cause-cum-demand notice from Excise Department dated 7-2-1976 for the period 16-3-1972 to 15-9-1975

51,20,018

Excise duty liability calculated by the 1st petitioner itself on the basis of notice for the earlier period for the period 16-9-1975 to 30-6-1976

19,23,995

70,44,013"

2. The notice u/s 148 was issued on 30-3-1982. It stated that the IAC had reason to believe that the petitioners'' income chargeable to tax for the said assessment year had escaped assessment and he, therefore, proposed to reassess it. On 16-2-1983 the petitioners wrote to the then IAC stating that immediately after receipt of the notice u/s 148 their representative had met the IAC who had issued it and, in pursuance of the discussion, the petitioners had not filed a revised return of income. On 23-2-1983 the IAC wrote to the petitioners stating that their failure to file the revised return would entail completion of the reassessment proceedings u/s 144 of the Act. In the course of the letter, the IAC referred to the deduction in respect of excise duty given to the petitioners. He referred to the Supreme Court decision in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , and the Madras High Court decision in Commissioner of Income Tax Vs. V. Krishnan, , and stated that, having regard to these decisions, the deduction for excise duty ought not to have been allowed. He also referred to certain claims for depreciation which had been made. He called upon the petitioners to attend before him on 10-3-1983.

3. Upon receipt of this letter this petition was filed. It was admitted and further proceedings in pursuance of the notice u/s 148 were stayed.

4. The notice u/s 148 does not set out the grounds upon which the IAC sought to reopen the assessment proceedings. There is no affidavit in reply. The Court is, therefore, totally in the dark as to the grounds that moved the IAC. A learned single Judge of this Court has, in identical circumstances, very rightly held that if the revenue failed to disclose the reasons for seeking to reopen an assessment and failed to file an affidavit in reply the petitioner was entitled to succeed. Siesta Steel Construction Pvt. Ltd. Vs. K.K. Shikare and others, .

5. Dr. Balsubramanian, the learned counsel for the revenue, submitted, however, that an ITO would not be in error if he accepted what the assessee claimed but if, later, he found, upon information, that the assessee had wrongly claimed a deduction, he could reopen the assessment. The submission is acceptable provided due stress is laid upon the words ''upon information''. Whether an assessment has been validly reopened u/s 147(b) of the Act depends upon the information that the assessing authority is given. Upon such information he must form the belief that income has escaped tax. Where the grounds or reasons for the reopening are not set out either in the notice in that behalf or in subsequent correspondence or even in an affidavit in reply, there is no means by which the Court can ascertain that the reassessment is in fact based upon information, or that upon such information such belief can follow.

6. Dr. Balsubramanian submitted that the reasons for reopening the assessment here were, contained in the letter dated 23-2-1983 and this letter showed that the information in the IAC''s possession was the judgment of the Madras High Court in V. Krishnan''s case (supra).

7. A Division Bench of this Court, in S.P. Divekar and A.P. Divekar (Legal Representatives of P.K. Divekar) Vs. Commissioner of Income Tax (Central), , noted that there was not upon the record before the Tribunal in that case so much as a statement of the ITO indicating the reasons for and the materials upon which he formed the belief that the assessee''s income had escaped assessment. In the absence thereof the Court did not know for what reasons and upon what materials the ITO had formed the belief that the assessee''s income had escaped assessment and it was, therefore, unable to decide whether the ITO could have reasonably entertained such belief. The Court said that the Tribunal ought to have addressed itself first to the question as to what was the material upon which the ITO came to form the belief that the assessee''s income had escaped assessment. Only after having ascertained what that material was could the Tribunal have gone on to consider whether, upon that material, the ITO could reasonably have entertained such belief.

8. The letter upon which Dr. Balsubramanian relied is written almost 11 months after the notice u/s 148 was issued. It is written not by the IAC who issued the notice but by his successor-in-office. The letter states what the writer saw upon the record. It does not state what the information given to the previous IAC was or the reasons which moved him to issue the notice. It refers to the judgment of the Madras High Court in V. Krishnan''s case (supra), but it does not say that the notice u/s 148 was issued by reason of the information that that judgment conveyed. It is not possible, therefore, to rely upon the letter dated 23-2-1983 as furnishing the reasons for the issuance of the notice u/s 148.

9. Though it is not necessary having regard to what is stated above, I may add that it does not appear to me that the judgment in V. Krishnan''s case (supra) can be said to furnish such information as entitled the IAC to reopen the assessment. The particulars of the petitioners'' claim for deduction of the sum of Rs. 77,44,013 were known to the ITO. He allowed that claim. V. Krishnan''s case (supra) does not make any difference to the validity of such allowance given presumably having regard to the judgment of the Supreme Court in Kedarnath Jute Mfg. Co.''s case (supra). In the result, the notice (Exhs. E & P) dated 30-3-1982 u/s 148 and the IAC''s consequential letter (Exh. J.) dated 23-2-1983 are quashed and set aside.

No order as to the costs.

