
(1989) 03 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 741 of 1983

Morarjee Goculdas Spining and Weaving Co. Ltd.	APPELLANT
Vs	
M.M. Das, Inspecting Assistant Commissioner and another	RESPONDENT

Date of Decision : 17-03-1989

Acts Referred:

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

Citation : (1989) 78 CTR 133 : (1991) 189 ITR 406

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

S.P. Bharucha, J.—This writ petition challenges a notice u/s 148 of the Income Tax Act, 1961, proposing to reassess the petitioners to Income Tax for the assessment year 1977-78, the previous year whereof ended on June 30, 1976.

2. The petitioners were assessed to Income Tax for the said assessment year by an assessment order dated December 8, 1977. Thereunder the Income Tax Officer 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 February 7, 1976, for the period March 16, 1972 to September 15, 1975 51,20,018 Excise duty liability calculated by the 1st petitioner itself on the basis of notice for the earlier period for period September 16, 1975 to June 30, 1976 19,23,995 ----- 70,44,013" -----

3. The notice u/s 148 of the Income Tax Act was issued on March 30, 1982. It stated that the Inspecting Assistant Commissioner of Income Tax 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 February 16, 1983, the petitioners wrote to the then Inspecting Assistant Commissioner stating that immediately after receipt of the notice u/s 148, their representative had met the Inspecting Assistant Commissioner who had issued it

and, in pursuance of the discussion, the petitioners had not filed a revised return of income. On February 23, 1983, the Inspecting Assistant Commissioner wrote to the petitioners stating that their failure to file the revised return would entail completion of the reassessment proceedings u/s 144. In the course of the letter, the Inspecting Assistant Commissioner 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 *CIT v. V. Krishnan* [1981] 121 ITR 859 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 March 10, 1983.

4. 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.

5. The notice u/s 148 does not set out the grounds upon which the Inspecting Assistant Commissioner 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 Inspecting Assistant Commissioner. 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. v. K. K. Shikare* [1985] 154 ITR.

6. Dr. Balasubramanian, learned counsel for the Revenue, submitted, however, that an Income Tax Officer 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) 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.

7. Dr. Balasubramanian submitted that the reasons for reopening the assessment here were contained in the letter dated February 23, 1983, and this letter showed that the information in the Inspecting Assistant Commissioner's possession was the judgment of the Madras High Court in *Krishnan's* case [1981] 121 ITR 859.

8. 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 Income Tax Appellate

Tribunal in that case so much as a statement of the Income Tax Officer 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 Income Tax Officer had formed the belief that the assessee's income had escaped assessment and it was, therefore, unable to decide whether the Income Tax Officer could have reasonably entertained such belief. The court said that the Tribunal ought to have addressed itself first to the question-what was the material upon which the Income Tax Officer 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 on to consider whether, upon that material, the Income Tax Office could reasonably have entertained such belief.

9. The letter upon which Dr. Balasubramanian has relied is written almost eleven months after the notice u/s 148 was issued. It is written not by the Inspecting Assistant Commissioner 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 Inspecting Assistant Commissioner was or the reasons which moved him to issue the notice. It refers to the judgment of the Madras High Court in Commissioner of Income Tax Vs. V. Krishnan, but it does not say that the notice u/s 148 was issued by reason of the information that the judgment conveyed. It is not possible, therefore, to rely upon the letter dated February 23, 1983, as furnishing the reasons for the issuance of the notice u/s 148.

10. 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 Commissioner of Income Tax Vs. V. Krishnan, can be said to furnish such information as entitled the Inspecting Assistant Commissioner to reopen the assessment. The particulars of the petitioners' claim for deduction of the sum of Rs. 77,44,013 were known to the Income Tax Officer. He allowed that claim. Krishnan's case does not make any difference to the validity of such allowance, given presumably having regard to the judgment of the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, .

11. In the result, the notice (exhibits E and F) dated March 30, 1982, u/s 148 and the Inspecting Assistant Commissioner's consequential letter, exhibit J, dated February 23, 1983, are quashed and set aside.

12. No order as to costs.