

(2013) 03 AHC CK 0311
In the Allahabad High Court
Case No : Writ Petition No. 2392 of 2013

M/s. Avadh Transformers Private Limited	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Citation : (2013) 5 ALJ 514 : (2013) 215 TAXMAN 432

Hon'ble Judges : Rajiv Sharma, J;Devendra Kumar Arora, J

Bench : Division Bench

Advocate : Prashant Kumar, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the petitioner, Sri. Prashant Kumar, learned Counsel for the respondent Nos. 2 and 3. Through the instant writ petition under Article 226 of the Constitution of India, the petitioner, who is engaged in the business of undertaking renovation and modernization of existing network of transmission or distribution lines, challenges the notice dated 13.1.2012 issued u/s 148 of the income tax Act, 1961 by the Deputy Commissioner of Income Tax, Circle Sultanpur (respondent No. 2) contained in Annexure No. 2 to the writ petition, whereby the petitioner was informed that the Deputy Commissioner of Income Tax (respondent No. 2) has reasons to believe that certain income of the petitioner for Assessment Year 2006-2007 has escaped assessment.

2. Shorn off unnecessary details the facts of the case are that the petitioner's Company had filed return of income for Assessment Year 2005-2006 in terms of Section 139(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). The case of the petitioner was selected for scrutiny assessment and statutory notice was also issued u/s 143(2) of the Act. During the course of assessment proceedings, the claim of deduction u/s 80-IA of the Act was examined by the respondent No. 2 and on examination, it was allowed. Consequently, the assessment of Assessment Year 2005-2006 was concluded

vide order dated 21.3.2007 u/s 143(3) of the Act.

3. After completion of the assessment for the Assessment Year 2005-2006, impugned notice dated 13.1.2012 was issued by the respondent No. 2 u/s 148 of the Act, to which the petitioner, vide its letter dated 30.1.2012, while complying with the notice dated 13.1.2012, filed the return of income for Assessment Year 2005-2006 and also while placing reliance upon the judgment of the Apex Court in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, , requested the respondent No. 2 to provide the copy of reasons recorded by him which formed the basis for issuance of notice dated 13.1.2012 u/s 148 of the Act. In response to the letter dated 30.1.2012 of the petitioner, respondent No. 2 supplied the copy of reasons recorded by him which formed the basis for issuance of Notice dated 13.1.2012 u/s 148 of the Act on 3.2.2012.

4. According to the petitioner, the only reason stated in the reasons recorded by the respondent No. 2 is that an Explanation has been introduced to Section 80-IA of the Act vide Finance (No. 2) Act, 2009 with retrospective effect i.e. from April 01, 2000. Thus, it is evident that merely on the basis of the said retrospective amendment, the respondent No. 2 issued the notice dated 13.1.2012 i.e. after the expiry of four years from the end of relevant Assessment Year and has further invoked the extended period of limitation contained in First Proviso to Section 147 of the Act.

5. Hence the instant writ petition.

6. Learned Counsel for the petitioner has vehemently assailed the impugned notices on various grounds. However, considering the view that the court is inclined to take in the matter, it is not necessary to refer to all the contentions raised by the learned advocate for the petitioner. In the present petition, the main ground for assailing the impugned notice is that in absence of any allegation that the petitioner has failed to furnish fully and truly all material facts necessary for its assessment for the relevant assessment years, the impugned notice which are issued beyond a period of four years from the end of the relevant assessment years are invalid in the light of the first proviso to section 147 of the Act and as such the very initiation of proceedings u/s 147 of the Act is bad.

7. On the other hand, Sri. Prashant Kumar, learned Counsel for the respondent Nos. 2 and 3 did not dispute that there was any failure on the part of the petitioner in disclosing fully and truly all material facts relevant for its assessment but he invited our attention to the reasons recorded for reopening the assessments u/s 147 of the Act i.e. in the light of the amendment of section 80-IA vide Finance (No. 2) Act, 2009 with retrospective effect from 01.04.2000 and as such, it is deemed that the assessee had not submitted the true facts at the relevant point of time, thus, the provisions of section 147 are clearly attracted.

8. In the facts of the present case, relevant Assessment Years is 2005-2006. The

notice u/s 148 of the Act relating to Assessment Year 2005-2006 has been issued on 13.1.2012. Computing the period between the end of the relevant Assessment Years and the date of issuance of the notice u/s 148, it is evident that notice has been issued beyond a period of four years from the end of the relevant Assessment Year. The first proviso to Section 147 of the Act, lays down that where an assessment under sub-section (3) of section 143 of the said section has been made for the relevant assessment year, no action shall be taken under the section after expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to make a return u/s 139 or in response to notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment.

9. Thus, for the purpose of invoking section 147 after the expiry of four years from the end of the relevant assessment year, the income chargeable to tax should have escaped assessment by reason of failure on the part of the assessee either

(i) to make a return u/s 139 or in response to a notice issued under sub-section (1) of section 142 or section 148, or;

(ii) to disclose fully and truly all material facts necessary for his assessment.

10. In the facts of the present case, it is an undisputed position that there is no failure on the part of the assessee insofar as the first condition is concerned. Insofar as the second condition, viz. failure on the part of the assessee to disclose fully and truly all material facts necessary, for his assessment is concerned, on a plain reading of the reasons recorded, it is apparent that the same are totally silent as regards any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the relevant assessment years.

11. From the reasons recorded, it is apparent the assessment is sought to be reopened only on the ground that as per the explanation given below sub-section (13) of section 80-IA of the Act, which has been substituted by the Finance Act No. 2 of 2009 with retrospective effect from 1.4.2000, deduction u/s 80-IA would not be admissible to an assessee who carries on business which is in the nature of works contract and as such, the petitioner/assessee being engaged in the business of works contract is not eligible for deduction u/s 80-IA but the same has been claimed by the assessee, hence, there was reason to believe that income chargeable to tax has escaped assessment for the assessment years under consideration. The record of the case does not in any manner indicate that proceedings u/s 147 are sought to be reopened by reason of failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for assessment years under consideration.

12. The respondents have not disputed the fact that there is no failure on the part of the petitioner to disclose fully and truly all material facts. Only by way of

submission advanced before the Court it is contended that in the light of the amendment of section 80-IB, it is deemed that the petitioner has failed to disclose the correct facts. As to whether or not there is any failure on the part of the assessee in disclosing fully and truly all material facts necessary for his assessment, is a matter of fact and there can be no deemed failure as is sought to be contended on behalf of the respondents.

13. In the circumstances, in absence of any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the assessment years under consideration, the notice u/s 148 of the Act having been issued after the expiry of a period of four years from the end of the relevant assessment years, the very initiation of proceedings u/s 147 of the Act stands vitiated and as such cannot be sustained. In view of the above, the writ petition succeeds and is, accordingly, allowed. The impugned notice dated 13.1.2012 issued u/s 148 of the Income Tax Act, 1961, is hereby quashed.