
(1992) 08 RAJ CK 0026
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1021 of 1980

Multimetals Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 263

Citation : (1993) 201 ITR 166

Hon'ble Judges : K.C. Agrawal, C.J

Bench : Single Bench

Advocate : N.M. Ranka, for the Appellant; G.S. Bapna, for the Respondent

Judgement

K.C. Agrawal, C.J.—This petition under Article 226 of the Constitution has been filed by M/s. Multimetals Ltd. for quashing the notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated March 21, 1980, in respect of the assessment year 1975-76.

2. The petitioner-company was being assessed to Income Tax from year to year. For the accounting year which ended on March 31, 1975, relevant for the assessment year 1975-76, the petitioner-company submitted its return of income to the Income Tax Officer, A-Ward, Kota, along with a letter dated July 30, 1975. The return was submitted along with a computation of total income, the balance-sheet and profit and loss account with schedules for the period ending on March 31, 1975. The total income was computed by the petitioner-company at Rs. 71,58,105. The return was accompanied by a statement of depreciation on fixed assets as on March 31, 1975, claiming normal depreciation at Rs. 7,26,513 and extra shift depreciation at Rs. 4,60,722 aggregating to Rs. 11,87,235. Development rebate was claimed on machinery of Rs. 4,84,132 at the rate of 25 per cent, amounting to Rs. 1,21,033. A list of commission paid on sales at Rs. 8,78,270.77 and on purchase at Rs. 2,08,924.84 was submitted. The list included payment of Rs. 4,77,890.68 plus Rs. 1,24,877.10 to M/s. Metal

Distributors Ltd., Bombay. A letter dated March 10, 1976, revising the return for the assessment year 1975-76 was submitted, a sum of Rs. 1,25,589 being the amount of provision for gratuity was included in the earlier return of income.

3. The Income Tax Officer, A-Ward, Kota, was not satisfied with the correctness and completeness of the return and the accompanying statements filed by the petitioner-company. He did not accept the return of income u/s 143(1) of the Act. He issued notices u/s 143(2) of the Act dated November 2, 1976, for November 17, 1976, dated February 3, 1977, for February 16, 1977, dated June 8, 1977, for June 24, 1977, dated September 8, 1977, for September 20, 1977, etc., requiring the petitioner-company to produce documents, accounts and other evidence on which the petitioner-company relied in support of the return of income filed by it.

4. The representative and the accountant of the petitioner-company appeared on various dates before the Income Tax Officer, A-Ward, Kota, and produced account books, relevant vouchers, documents, the printed balance-sheet, profit and loss account and annual report for the year ending on March 31, 1975.

5. The total income of the petitioner-company for the assessment year 1975-76 stood finally computed at Rs. 77,09,440. The income so computed became final and was binding on the assessee as well as on the Income Tax Department.

6. The jurisdiction of the petitioner-company was transferred to respondent No. 2 who sent a letter No. 1,087 dated August 16, 1979. The reply thereto was sent, vide letter dated September 21, 1979. He sent another letter No. 1538, dated October 6/9, 1979, for October 16, 1979. The reply to which was also submitted on October 15, 1979. The attendance register was produced. A statement showing the quantity and value of various products produced and sold by the petitioner-company was submitted.

7. It was submitted that depreciation at the rate of 15 per cent. was claimed on a few machines such as automatic and semi-automatic machines, tools, etc., which are covered under Article 8 of Part B under the head "III-Machinery and Plant" of the table of rates forming part of the Income Tax Rules. A note about the payment of selling agency commission to Metal Distributors and service charges to Oriental Management Service Private Limited was submitted.

8. To the utter surprise of the petitioner-company, it received a notice u/s 148 of the Act bearing No. 3086, dated March 21, 1980. On receipt of this notice, the petitioner-company sent a letter to the Income Tax Officer on April 10, 1980, requesting the Officer concerned to disclose the reasons, if any, which led him to believe that income had escaped assessment to tax on account of any omission or failure on the part of the petitioner-company, and the notice served u/s 148 was invalid. The Income Tax Officer, instead of intimating the reasons for reassessment sent a letter calling upon the petitioner-company to file return forthwith.

9. To the aforesaid letter, the petitioner-company sent its reply on May 30, 1980, to respondent No. 2 reading as under :

"In response to your letter No. IAC(A)/80-81/245, dated May 8, 1980, we wish to submit as under :

1. That it is an age old practice of the Department to accept a letter instead of insisting on furnishing of fresh return in compliance with the notice u/s 148 of the Act. However, as desired, under protest, without prejudice and without acceding to your jurisdiction, we are submitting herewith a fresh return declaring therein income originally assessed. All the details, statements and information placed on original assessment record may please be treated as part of the return.

2. That in view of the decisions reported in Kerorimull and Company Vs. Income Tax Officer, "A" Ward and Others, , Indra Co. Ltd. Vs. Income Tax Officer, and 118 ITR 577 (sic), we request you to please supply us a copy of the reasons, if any, recorded. We are prepared to pay the copying fees, if any. Without going through the reasons, it would not be possible for us to judge as to whether jurisdiction has been rightly exercised by you.

Before concluding, we again request you :

(i) to please furnish us with a copy of the reasons, if any, recorded and sanction, if any, accorded by the Commissioner of Income Tax, Jaipur ; and

(ii) to permit us to inspect the original assessment record."

10. Under protest, the petitioner-company submitted a return of its income on June 30, 1980, challenging the jurisdiction of the Income Tax Officer to take any reassessment proceeding. Being of the opinion that respondent No. 2 was not satisfied with the prerequisites for initiating reassessment proceedings, asserting that the said respondent had no reason to believe that income chargeable to tax for the assessment year 1975-76 has escaped assessment within the meaning of Section 147 of the Act and further that he had no reason to believe that income has escaped assessment by reason of the omission or failure of the petitioner-company to disclose fully and truly all material facts, the petitioner filed the present writ petition.

11. On a writ petition being filed, this court directed the Income Tax Officer to bring on record the reasons which had been recorded by him for reopening of the assessment. In the counter-affidavit, the Income Tax Officer" replied that the reassessment had been initiated because the petitioner-company had not given direct and complete details and had also obtained depreciation, development rebate and the commission wrongly paid to its agent. These items were the subject-matter for being examined in the escapement proceedings. The justification was pleaded in paragraph 19 of the counter-affidavit which is given below :

"(i) There is a failure on the part of the petitioner to disclose fully and truly all

materials which are necessary for the purpose of assessment and the jurisdiction u/s 147(a) of the Income Tax Act has rightly been exercised.

(ii) The respondents have reason to believe that the income has escaped assessment to tax and the proceedings have been initiated in accordance with the law.

(iii) The conditions as mentioned therein are fully satisfied.

(iv) The reasons have duly been recorded which the respondents crave leave to refer to at the time of hearing of the petition.

(v) All the materials on the basis of which the respondents intend to take action will be disclosed and the principles of natural justice and fair play are duly observed. The petitioner has no right with regard to the reasons recorded for initiating the "proceedings. . ."

12. In this and other connected writ petitions, the assessment years involved are from 1970-71 to 1976-77. The details for these years are given below :

Assessment years

1970-71 1971-72 1972-73 1973-74 1975-76 1976-77

1. Date of filing of original return and income 24-6-1970

Loss

69,44,859

28-6-1971

Loss

40,82,012

29-7-1972

24,03,458

3-8-1973

90,64,547

30-7-1975

71,58,105

31-7-1976

68,76,810

2. Notice u/s 143(2) issued. Appeared, produced books of account and sup-filed and examined and porting scrutinised and verified. records, replies

Yes Yes Yes Yes Yes Yes

3. Date of assessment order 24-4-1971 4-8-1972 24-3-1975 29-11-75
2-1-1978 7/20-2-1978

4. Notice u/s 148 24-3-1979 21-3-1980 20/27-1-1981 Undated received on
11-3-1982 21-3-1980 6-1-1981

13. The two conditions precedent required to be fulfilled by the Income Tax Officer before he could exercise jurisdiction under Clause (a) are :

(i) he must have reason to believe that income has escaped assessment ; and

(ii) he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to make a return or to disclose fully and truly all material facts necessary for his assessment for the relevant year.

14. In the absence of these conditions, the Assessing Officer would be acting without jurisdiction, if the reason for his belief that the two conditions are satisfied does not exist. On the other hand, learned counsel for the Department argued that the adequacy or sufficiency (as distinct from the existence or relevance) of the reason for the Assessing Officer's belief cannot be investigated by the court.

15. Submitting the reasons for reopening of the proceedings in respect of the assessment years involved in this case and other connected cases, learned counsel for the petitioner made the following submissions :

"Assessment years 1970-71, 1971-72, 1972-73, 1973-74 and 1975-76

Reasons Material facts on record in the original assessment proceedings.

Development rebate allowed at 35 per cent. against 25 per cent. on machinery of the value of Rs. 1,83,105 for the assessment year 1970-71

Development rebate allowed at 35 per cent. against 15 per cent. on machinery of the value of Rs. 33,371 for the assessment year 1971-72

Development rebate allowed at 25 per cent. against 15 per cent. on machinery of the value of Rs. 2,45,796 for the assessment year 1972-73

1. The petitioner-company installed plant and machinery for manufacture of seamless tubes (brass rods, tubes, copper rods, tubes, print rolls, etc.) (Fifth Schedule No. 21 and item No. 24). The production commenced on the 1st day of November, 1966. The petitioner-company being a priority industry was allowed development rebate at 35 per cent. u/s 33(I)(b)(B)(i)(a) of the Act after verification, scrutiny and satisfaction for the assessment year 1968-69. The development rebate amounting to Rs. 47,29,634 remained unabsorbed and was directed to be carried forward. Some addition was made in the assessment year 1969-70. The development rebate was allowed at Rs. 5,784 at 35 per cent. It remained unabsorbed and was directed to be allowed to be carried forward.

Development rebate allowed at 25 per cent, against 15 per cent. on machinery of the value of Rs. 1,82, 127 for the assessment year 1973-74

Development rebate allowed at 25 per cent, against 15 per cent. on machinery of the value of Rs. 4,84,132 for the assessment year 1975-76

2. The petitioner-company continued to be priority industry and for such industry new machinery was installed each year. Development rebate admissible on priority industry was allowed, after verification and satisfaction. The percentage of production of seamless tubes and other products during the assessment years 1969-70 to 1975-76 is as under :

Assessment year

Percentage of production of seamless tubes

Percentage of production and sections

1969-70

69

31

1970-71

81

19

1971-72

89

11

1972-73

84

16

1973-74

91

9

1974-75

87

13

1975-76

93

3. The machinery for production of tubes and rods are one and the same. "On the machinery on which seamless tubes are manufactured, rods are also manufactured.

4. It has been submitted by the petitioner-company that the petitioner-company is manufacturing apart from seamless tubes, rods and sections also. The Assessing Officers for the assessment years 1968-69 to 1975-76 were in the know of this fact and allowed development rebate as to a priority industry. No inaccurate particulars were furnished by the assessee-company. The reassessment on the same material and on change of opinion is impermissible.

5. The provisions are similar to section 80I of the Income Tax Act, 1961. The petitioner-company was allowed deduction u/s 80I during the assessment year 1972-73 when there was plus income (assessment order pages 30-31).

Depreciation allowed at 15 per cent, against admissible at 10 per cent, for the assessment years 1971-72, 1972-73, 1973-74 and 1975-76

1. The depreciation was allowed at 15 per cent, in the past years, i.e., up to the assessment year 1970-71 because certain machinery fell in sub-item No. 8 of item No. 13 under the head "Machinery & Plant" in Appendix I to the Income Tax Rules, 1962.

2. The nature of new machinery being same, depreciation was allowed at 15 per cent. on the written down value and additions during the assessment years 1971-72 to 1975-76.

3. The Commissioner of Income Tax, Jaipur, u/s 263 by order dated March 28, 1980 and October 6, 1980, for the assessment years 1977-78 and 1978-79, respectively, restored the issue to the Assessing Officer. The Assessing Officer allowed depreciation at 10 per cent. The Commissioner of Income Tax (Appeals), Rajasthan-I, Jaipur, by order dated February 3, 1983 (ground No. 4-page 2), allowed depreciation at 15 per cent. The Revenue being satisfied did not carry the matter before the Income Tax Appellate Tribunal. In all subsequent years, depreciation on such machinery is being allowed at 15 per cent. by the Assessing Officer.

Overriding sales agency commission of Rs. 2,93,226 for the assessment year 1972-73 ; Rs. 3,40,084 for the assessment year 1973-74 ; Rs. 4,77,891 for the assessment year 1975-76 to M/s. Metal Distributors Ltd. at Bombay at 1 per cent. not admissible

1. M/s. Metal Distributors Ltd. have been acting as sole selling agent of the petitioner-company since it came into production. They continued to act as sole selling agent of the company up to March 31, 1976. The Central Government has accorded approval of the sole selling agency commission agreement dated September 21, 1971. vide its letter No. 1/301/75, dated July 31, 1975. The

payment to M/s. Meta! Distributors Ltd. in each assessment year is in accordance with the agreement approved by the Central Government and on account of the services rendered by them. The final approval for the period from April 1, 1976, to October 31, 1976, was given by the Central Government, vide letter No. 12/315/75-C1. XI, dated March 31, 1976.

2. The sole selling agency commission to M/s. Metal Distributors Ltd. had been allowed in the past and had been allowed in the assessment years 1976-77, 1977-78 and 1978-79. The Commissioner of Income Tax, Jaipur, vide notice u/s 263 wanted to disallow such commission for the assessment year 1977-78. On verification and complete satisfaction, the learned Commissioner held sole selling agency commission as an admissible deduction (para 9 of the order dated March 28, 1980, for the assessment year 1977-78).

Commission to M/s. Metal Distributors, Bombay, at Rs. 1,24,870 and to M/s. G. K. Damani & Sons at Rs. 84,078 aggregating to Rs. 2,08,948 for the assessment year 1975-76

1. List of commission paid on purchases was submitted along with the return of income. A sum of Rs. 1,24,870 was paid by the petitioner-company to M/s. Metal Distributors Ltd., Bombay, towards commission for their having purchased, paid and stored with them (Metal Distributors Ltd.) the raw-materials for the petitioner-company. Thus M/s. Metal Distributors Ltd. apart from utilising their expertise in the purchase of raw materials have also invested their money and incurred storing charges for such raw materials. The petitioner-company took delivery of. raw materials in convenient lots it needed in the factory against payment from M/s. Metal Distributors Ltd. The commission paid to them was in consideration of their (i) having made the use of the purchase department, (ii) having invested funds in the purchase of raw-materials, and (iii) having incurred rent and labour charges for storing in their godown the raw materials of the petitioner-company. Similarly, a sum of Rs. 84,048 was paid to M/s. G. K. Damani and Sons for their having acted as purchasing agents of the petitioner-company for the procurement of all types of stores except raw materials. The commission paid to them was in consideration of their having incurred expenses on the maintenance of an efficient purchase department for making purchases for the petitioner-company. Since these payments were made for the pur-pose of and in the interest of the business of the petitioner-company, the same are fully allowable expenses.

2. The above facts were duly brought before the learned assessing authority at the time of the original assessment. After satisfying himself from the record produced before him, he allowed the above expenses.

3. There was no laxity or any wilful attempt on the part of the petitioner-company to conceal any of the above facts from the learned assessing authority. The learned assessing authority allowed these payments after application of mind and satisfaction that the payments made were the legitimate need of the

petitioner-company.

Service charges to M/s. Oriental Management Services (P.) Ltd., Calcutta, Rs. 1,20,000 and to M/s. Metal Distributors Ltd., Bombay, Rs. 44,548 for the assessment year 1975-76

1. The petitioner-company agreed to pay service charges to M/s. Oriental Management (P.) Ltd., Calcutta, for the services rendered by them. Such payment is being made from the assessment year 1971-72. An agreement dated February 1, 1972, was entered into between the assessee-company and M/s. Oriental Management (P.) Ltd., Calcutta, for payment of service charges at Rs. 10,000 per month. Such payment was allowed in the assessment year 1973-74 and onwards after verification and complete satisfaction.

2. The petitioner-company was originally incorporated in the State of West Bengal with its registered office at Calcutta. It continued to have its registered office in Calcutta during the year. However, the plant of the petitioner-company is located in Kota in the State of Rajasthan. During this year, it had all its banking arrangements at Calcutta. Shares of the petitioner-company were listed with the Calcutta Stock Exchange Association Ltd. Most of the shareholders are also from Calcutta and nearby areas. As the petitioner-company had financial as well as technical collaboration with M/s. Revere Copper & Brass Inc. of USA, a lot of day-to-day work was required to be handled through the Reserve Bank of India, Calcutta, who had the jurisdiction and control over the petitioner-company by virtue of its registered office being in the State of West Bengal at Calcutta. Having had the registered office at Calcutta, the jurisdiction over the petitioner-company in respect of Income Tax matters was also with the Commissioner of Income Tax, Calcutta. By virtue of the registered office of the petitioner-company being at Calcutta, it was imperative that an office be maintained there. However, the petitioner-company had no office of its own much less the staff needed to run such an office on considerations of cost. But at the same time, some agency was absolutely necessary to attend to the administrative and secretarial work in Calcutta. It was in this context that the services of M/s. Oriental Management Services (P.) Ltd., Calcutta, were hired at Rs. 10,000 per month, who undertook upon themselves to attend to all the work of the company at Calcutta, be it secretarial or administrative or of any other nature. Such an arrangement was quite economical too in view of the long-standing liability which the company might have created by maintaining its own office and staff in Calcutta. A copy of the agreement dated February 1, 1972, between the petitioner-company and M/s. Oriental Management Services (P) Ltd., Calcutta, was placed on the record.

3. During the course of the year, the petitioner-company had to import a lot of spare parts mostly from USA and other western countries to keep its plant in running condition without interruption. It had also to import some refractories to improve imports which were destined to Bombay Port as Bombay is the nearest and convenient port for factories located in the State of Rajasthan. As the petitioner-company had no office of its own in Bombay services of some outside

agency were felt necessary to attend to day-to-day work in connection with the above imports. M/s. Metal Distributors Ltd. who were the sole selling agents of the petitioner-company and who had expertise in handling imports for a very long time were retained .to look after the imports of the petitioner-company on payment of service charges.

4. The service charges of Rs. 44,548 were paid to them in consideration of their having attended to the import work, e.g., establishing L/Cs. amending L/Cs, appointing clearing agents, supervising rebooking of goods to Kota and doing everything else in the process. As these service charges were incurred for the business of the petitioner-company the same were allowed in full.

5.All the abovementioned facts were fully explained to the assessing authority at the time of the original assessment. The relevant files were duly produced before him. After verification from the record produced before him, he allowed the service charges paid to M/s. Oriental management services (P) Ltd., Bombay, by the petitioner-company. We may reiterate that nothing has gone unnoticed and there was no lapse on the part of the petitioner-company to fully and truly disclose all material facts in connection with the above service charges incurred by the petitioner-company.

6. The question of service charges paid to M/s. Oriental Management Services (P) Ltd. and M/s. Metal Distributors Ltd. was also considered by the learned Commissioner of Income Tax, Jaipur, while setting aside the assessment orders for the assessment years 1977-78 and 1978-79. The assessing authority while passing reassessment orders for both the above assessment years allowed only a part of the service charges after duly considering the heap of evidence filed by the petitioner-company. The petitioner-com-pany being aggrieved by the orders went appeal before the Commissioner of income tax (Appeals) who after reviewing the evidence already filed and the reassessment orders passed by the assessing authority allowed the service charges in full. The Department did not go in appeal against the order of the Commissioner of Income Tax (Appeals). As a result, the findings of the Commissioner of Income Tax (Appeals) have become final.

7. Similar charges laid in the assessment year 1979-80 and onwards stand allowed."

16. For availing of the benefit of development rebate of 35 per cent. u/s 33(1)(b) (B)(i)(a) of the Act, it is not necessary that the machinery should be used exclusively for the manufacture of one or more of the items mentioned in the Fifth Schedule to the Act. Learned counsel referred to a decision of the Madras High Court reported in Additional Commissioner of Income Tax Vs. Rambal (P.) Ltd., . He also relied on another decision of the Madras High Court reported in V. Ramakrishna and Sons Limited Vs. Commissioner of Income Tax, Tamil Nadu-I, Madras, and alleged that, with unjustified reasons, proceedings u/s 147(a) of the Act were started.

17. Undoubtedly, in a case covered by Clauses (a) and (b) of Section 147 of the Act, the Department is entitled to reopen the reassessment but the conditions precedent have got to be complied with. It is not a power to be arbitrarily exercised. The Income Tax Act does not confer unlimited power to make any and everything lawful. It is the clear right of every citizen to insist that no unlawful and unauthorised action shall be made upon him. If any such illegal encroachment is attempted, he can always invoke the aid of this court by resorting to Article 226 of the Constitution for his protection and prevent his money or other property.

18. In the instant case, it has been shown by the petitioner's counsel that, for many things, i.e., for development rebate, depreciation, overriding sales agency commission, commission to M/s. Metal Distributors, Bombay, and M/s. G. K. Damani & Sons had been paid in the past and the proceedings taken u/s 263 of the Act had also been decided in favour of the assessee, it would have been appropriate if the Income Tax Officer had taken reassessment proceedings after hearing the assessee and providing him with an opportunity. Normally, this is not required but, in the peculiar facts of the case, I consider it to be in the ends of justice to do so.

19. Counsel for the Department contended that Section 147 of the Act is discretionary. Assuming that to be so, it can be justified only when the conditions precedent existed.

20. If the Income Tax Officer, after providing the opportunity, is satisfied that the issuance of the notice was justified, he would be entitled to proceed to determine the amount due. In that event, initiation of the proceedings u/s 147(a) of the Act would be justified but if grounds are not found for initiating proceedings u/s 147(a) of the Act, then the proceeding would have to be dropped.

21. In the result, the writ petition succeeds and is allowed and n direction to the effect mentioned above is given. The petitioner will be entitled to costs of this petition which are fixed at Rs. 700.