

(2008) 02 MAD CK 0142
In the Madras High Court
Case No : W.A. No. 3036 of 2003

P.G. Foils Limited

APPELLANT

Vs

Income Tax Settlement Commission, Additional Bench and
Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (2008) 215 CTR 537 : (2008) 302 ITR 331

Hon'ble Judges : R. Regupathi, J; P.D. Dinakaran, J

Bench : Division Bench

Advocate : N. Muthukumar, for the Appellant; J. Narayanaswami, Jr. Standing Counsel, for the Respondent

Judgement

P.D. Dinakaran, J.—The unsuccessful writ petitioner/assessee is the appellant in this appeal, which is directed against the order dated 1.9.2003 made in W.P. No. 12598 of 2003, where the appellant/writ petitioner/assessee had chosen to challenge the order of the first respondent/Settlement Commission dated 28.10.2002, based on which notices dated 21.3.2003 u/s 148 of the Income Tax Act, 1961 (in short, "the Act"), were issued to the appellant/writ petitioner/assessee, stating the reason for re-opening the assessment with respect to assessment years 1995-96 and 1996-97, as contemplated u/s 147 of the Act.

2.1. The facts, in nutshell, are as follows:

The first respondent/Settlement Commission has passed an order dated 28.10.2002 with respect to one M/s. Mohan Aluminium (P) Ltd., Bangalore (hereinafter will be referred to as "MAL"), for the assessment year 1995-96. Before the Settlement Commissioner, one V.Jagadisan, Chartered Accountant, who appeared on behalf of MAL admitted that the duty free imported materials were sold in the open market and undisclosed profits were earned by it. It was further submitted that MAL was experiencing severe liquidity problem at the relevant time and in order to tide over this difficulty, it had indulged in

unauthorised sale of the imported items and unable to mobilise funds for such imports, MAL came to an understanding with M/s. P.G. Foils Ltd., the appellant/writ petitioner/assessee herein, for its business. As per the said understanding, the appellant/writ petitioner/assessee would finance the entire operation and import the aluminium items for MAL and they also undertook to sell these items in the open market. It was further stated that the profits from such imports and sales were agreed to be shared equally between MAL and the appellant/writ petitioner/assessee and that for convenience of operation, MAL opened a bank account in the State Bank of Bikaner and Jaipur at Mumbai in its own name and authorised the appellant/writ petitioner/assessee to operate the same.

2.2. Consequent to the above said statement, it was noticed that even though a sum of Rs. 2,43,57,295/- and Rs. 83,18,591/- had been shown as profits in the accounts of MAL for assessment years 1995-96 and 1996-97 respectively, yet the appellant/writ petitioner/assessee did not disclose such profits of their share in the Profit & Loss A/c. It was under such circumstances, notices dated 21.3.2003 were issued by the Assessing Officer stating that he had reason to believe that due to the lapse on the part of the appellant/writ petitioner/assessee, a sum of Rs. 2,43,57,295/ and Rs. 83,18,591/- had escaped assessment for the assessment years 1995-96 and 1996-97 respectively and accordingly, the assessment was reopened.

2.3. Aggrieved by the above said notices dated 21.3.2003, the appellant/assessee had chosen to challenge the order of the Settlement Commission dated 28.10.2002 by filing the above writ petition. The learned single Judge, in his order dated 1.9.2003, rightly observed that the appellant/writ petitioner/assessee cannot be allowed to challenge the proceedings of the Settlement Commission dated 28.10.2002 made in the case of MAL, to which the appellant/writ petitioner/assessee is not a party at all. Moreover, the assessing authority has only placed reliance on the proceedings of the Settlement Commission dated 28.10.2002 made in the case of MAL and issued the notices dated 21.3.2003. Therefore, the learned single Judge has made it clear that if the appellant/writ petitioner/assessee is really aggrieved against the said reason for reopening the assessment, they are at liberty to submit their explanation or objections to the notices issued u/s 148 of the Act within thirty days and accordingly, dismissed the writ petition.

3.1. However, the writ petitioner/assessee had chosen to prefer the above appeal against the said order reiterating the contentions made before the learned single Judge, viz., the reason for reopening the assessment invoking Section 148 of the Act is not sustainable in law, inasmuch as the observations made in the proceedings of the Settlement Commission dated 28.10.2002 cannot be acted upon against the writ petitioner/assessee, as the same is not binding on the appellant/writ petitioner/assessee, on the ground that it violates the principles of natural justice.

3.2. Per contra, Mr. J. Narayanaswami, learned standing Counsel appearing for

the respondent/assessing authority, submits that the observations of the Settlement Commission dated 28.10.2002 with reference to the appellant/writ petitioner/assessee would become a conclusive proof against them, only after giving them an opportunity to submit their objections to the notices issued u/s 148 of the Act stating reasons for reopening the assessment, if they so desire. Since the appellant/writ petitioner/assessee is not aggrieved by the said reason for reopening, much less, the notice issued u/s 148 of the Act, there is no need to quash the observations made by the Settlement Commissioner in his proceedings dated 28.10.2002, to which the appellant/writ petitioner/assessee is not even a party.

4. We have given our careful consideration to the submissions made on both sides.

5.1. It is trite law that the subsequent information, based on which the reassessment was proposed, should be definite, specific, relevant and reliable and then only such material would constitute to satisfy the test of reason to believe, because such reason to believe should not be construed as a reason to suspect. In other words, what is relevant is whether the material has got any rational connection or live link for the purpose of reason to believe. To put otherwise, if the information which forms the basis for the reason to believe for the department to reopen the assessment are materials which lacks specific, relevant and reliable criterions, such materials are liable to be rejected only on the ground that they may be reason to suspect, but not reason to believe, vide M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, .

5.2. The above proposition was subsequently followed by a Division Bench of this Court in Commissioner of Income Tax Vs. Smt. Sulochana Legal rep. of Late P. Sadasiva Mudaliar, , to which one of us was a party (P.D. Dinakaran, J.), wherein it was held that before such action of reopening the assessment is taken, requirement of law such as the live link or close nexus between the material coming to the notice of the income tax officer and the formation of his belief that there has been escapement of the income of the assessee should be satisfied. Otherwise, the power conferred u/s 147 of the Income Tax Act would amount to arbitrary and unreasonable exercise. Hence, while making it clear that the authorities do have the power to reopen the assessment u/s 147, the materials relied for such purpose should not be vague but it should be definite, specific, relevant and reliable.

6. In the instant case, as rightly pointed out by the learned Counsel for the appellant, the proceedings of the Settlement Commission dated 28.10.2002 is binding only on M/s. Mohan Aluminium (P) Ltd. (MAL) and not on the appellant. While disposing the case of MAL, the Settlement Commissioner, based on the statement obtained from one V. Jagadisan, Chartered Accountant who appeared on behalf of MAL and other materials placed before him, was constrained to make certain observations with reference to the transactions between MAL and the appellant/writ petitioner/assessee. Those materials, in our considered

opinion, can definitely be a reason for reopening the assessment in respect of the appellant/writ petitioner/assessee. But the said reason by itself cannot be a conclusive proof for reopening the assessment in the absence of any explanation or objections by the appellant/ writ petitioner/assessee.

7. Therefore, suffice it to give liberty to the appellant/writ petitioner/assessee to submit his objections to the notices issued u/s 148 of the Act, reopening the assessment for the assessment years 1995-96 and 1996-97 and to the observations made against the appellant/writ petitioner/assessee in the proceedings of the Settlement Commissioner dated 28.10.2002 in the matter of MAL, as the said observations would not automatically bind on the appellant/writ petitioner/assessee. On receipt of such objections, the assessing authority is directed to consider the same and dispose of the matter on merits, without being influenced by any of the observations made by the Settlement Commissioner in the proceedings dated 28.10.2002 in the case of MAL.

With the above observations and direction, the writ appeal is disposed of. No costs. Consequently, W.A.M.P. No. 4808 of 2003 is closed.