(2000) 04 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 4938 of 2000 in W.M.P. No. 7527 of 2000

Precot Mills Ltd. APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 143(3), 147, 148, 37

Citation : (2005) 195 CTR 135 : (2005) 273 ITR 347

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : R. Mahalingam, for the Appellant; Chitra Venkataraman, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—The petitioner challenges the notice issued u/s 148 of the Income Tax Act, 1961.

2. The petitioner had filed the return of income for the assessment year 1993-94 on March 31, 1993. An assessment order u/s 143(3) of the

Income Tax Act, 1961, was issued. The claim towards expenses incurred on repairs/replacement was admitted in the said order. By the impugned

notice, the petitioner was informed by the Joint Commissioner that he has reason to believe that the income chargeable to tax for the assessment

year 1993-94 has escaped assessment within the meaning of Section 147 and that he proposed to reassess the income and recompute the loss.

The main submission of learned counsel for the petitioner is that the notice is barred by limitation and is one issued without jurisdiction.

3. Section 147 of the Income Tax Act provides for the reassessment of income escaping assessment. The proviso to Section 147 states that no

action shall be taken after the expiry of four years from the end of the relevant assessment year. However, Section 147 begins with the words that

the proceedings are initiated subject to the provisions of Section 148 to 153. Section 148 provides the procedure for reassessment u/s 147.

Section 149 deals with the time limit for the notice u/s 148. Section 149(1) states that no notice u/s 148 shall be issued if four years have elapsed

from the end of the relevant assessment year unless the case falls under Sub-clause (ii) or Sub-clause (iii). Sub-clause (ii) states that no notice shall

be issued u/s 147 if four years but not more than seven years have elapsed, unless the income chargeable to tax which has escaped assessment

amounts to Rs. 50,000 or more for that year. Therefore, the four years prescribed under the proviso to Section 147 have to be read with Section

149 where the four years have been extended to seven years if the income chargeable that has escaped assessment is more than Rs. 50,000. The

proviso to Section 147 does not refer to the amount of escaped assessment. The only difference is that the notice u/s 148, if issued within four

years does not require any authority''s sanction. But the Commissioner''s sanction is required for notice issued after four years. The notice states

that such sanction has been obtained. Therefore, the notice in reference to the petitioner''s case cannot be held to be beyond the period of

limitation.

4. On the merits, it could be seen that the income escaping the assessment as a result of failure to examine the account books produced by the

assessee would be sufficient justification in making the reassessment. Explanation 2 to Section 147 makes it clear that where assessment has been

made but income chargeable to tax has been under-assessed or such income has been made the subject of excessive relief or excessive loss or

depreciation allowance has been computed, it is deemed to be a case where income chargeable to tax has escaped assessment. Therefore, on the

merits, I am not inclined to go into the question whether the petitioner''s expenditure is a revenue or a capital expenditure or it has escaped

assessment chargeable to tax and it is under-assessed, etc., since the petitioner will have ample opportunity to question the reassessment on the

merits. I do not find any ground in the circumstances of the case to interfere with the impugned order.

5. The judgment referred to by learned counsel for the petitioner in Fenner (India) Ltd. Vs. Deputy Commissioner of Income Tax, , found that

there was no failure on the part of the assessee to disclose truly and fully in relation to the relevant account or the account of excess duty paid and

therefore there was a jurisdictional error. The learned judge did not go into Explanations 1 and 2 to Section 147 of the Act where it is seen that the

production of account books from which material evidence could with due diligence have been discovered by an Assessing Officer will not

necessarily amount to disclosure and that under Explanation 2 where an assessment has been made, but income chargeable to tax has been under-

assessed, it is deemed to be a case of income chargeable to tax as escaped assessment. This aspect of the matter has not been considered by the

learned judge.

6. Hence, the writ petition fails and it is accordingly dismissed. No costs. Consequently, W. M P. No. 7527 of 2000 is also dismissed.

