
(2017) 02 DEL CK 0199

In the Delhi High Court

Case No : ITA Nos. 725, 726 and 727 of 2016

Principal Commissioner of Income-Tax

APPELLANT

Vs

M/s Paramount Communication Pvt. Ltd.

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Income Tax Act, 1961 — Section 147, Section 148

Citation : (2017) 392 ITR 444

Hon'ble Judges : S. Ravindra Bhat and Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Sh. Sanjay Kumar, Sr. Standing Counsel, for the Appellant; Sh. Arvind Sharma and Ms. Devina Sharma, Advocates, for the Respondent in Item Nos. 10 to 12

Final Decision : Disposed Off

Judgement

The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) in these three appeals and contends that the ITAT fell into error in holding that the reassessment orders for AYs 2003-04, 2004-05 and 2005-06 were unwarranted. The assessee's returns were framed in all the three assessment years on scrutiny basis under Section 143(3) of the Income Tax Act, 1961 [hereafter "the Act"]. While so, on the basis of the information said to have been received, the Assessing Officer sought to reopen these completed assessments and issued notices under Sections 147/148 of the Act. The relevant reasons furnished in respect of each AY read as follows:

"Assessment Year 2003-04

Return declaring loss of Rs. 1,99,75,520/- was filed by assessee on 22.11.2003. Assessment u/s 143(3) was completed on 24.03.2006 at a total loss of Rs. 1,24,75,520/-.

Information was received from DRI. Regional Unit Jaipur and passed on this office that Central Excise Commissioner, Jaipur 1 detected bogus purchase made

by assessee company from M/s. Kashish Impex Put. Ltd. and the information received for the period 17.9.02 to 20.05.05 and the amount of purchases (bogus) for the period under consideration amounted to Rs. 1.64 Crores.

In view of the above, I have reason to believe that income to the tune of Rs. 1.64 Crores has escaped taxation.

Assessment Year 2004-05

Return declaring loss of Rs. 1,39,50,580/- was filed by assessee on 29.10.2004. Assessment u/s 143(3) was completed on 22.12.2006 at a Total loss of Rs.34,02,989/-. Information was received from DRI. Regional Unit Jaipur and passed on this office that Central Excise Commissioner, Jaipur 1 detected bogus purchase made by assessee company from M/s. Kashish Impex P Ltd and the information received for the period 17.9.02 to 20.05.05 and the amount of purchases (bogus) for the period under consideration amounted to Rs. 6.20 Crores.

In view of the above, I have reason to believe that income to the tune of Rs. 6.20 Crores has escaped taxation. Put up for approval and sanction for issue of notice under section 148 of Income Tax Act, 1961.

Assessment Year 2005-06

Return declaring Nil Income was filed by assessee on 08.10.2005. Assessment under section 143(3) was completed on 22.12.2006 at a total loss of Rs. 1,81,99,014/-.

Information was received from DRI. Regional Unit Jaipur and passed on this office that Central Excise Commissioner, Jaipur 1 detected bogus purchase made by assessee company from M/s. Kashish Impex Put. Ltd. and the information received for the period 17.9.02 to 20.05.05 and the amount of purchases (bogus) for the period under consideration amounted to Rs.74.08 lakh.

In view of the above, I have reason to believe that income to the tune of Rs. 74.08 lakh has escaped taxation."

2. The CIT(A) granted relief to the assessee in the appeals preferred by it. The Revenue approached the ITAT which was of the opinion that having regard to the "reasons to believe" that the Revenue relied upon, valid reassessments could not be completed. In other words, it was stated that the reasons recorded were insufficient for a legal and valid reassessment proceedings. In this, the ITAT relied upon Haryana Acrylic Manufacturing Co. v. CIT (Delhi) 2009 (308) ITR 38 and Wel Intertrade Pvt. Ltd. & Anr. v. ITO 2009 (308) ITR 22.

3. At the outset, it is brought to our notice that the impugned order has been issued wrongly inasmuch as the reassessment notice for AYs 2004-05 and 2005-06 were not issued under proviso to Section 147(1). These assessments were completed under Section 143(3), and hence there was no material on the record to suggest that an appropriate authorisation has been received. In this

regard, the order dated 05.01.2017 was relied upon by the assessee.

4. It is contended by the Revenue that given the restricted mandate under Sections 147/148, all that the AO was to specify was the existence of tangible material in the form of documents or other channels of information which could reasonably or potentially lead to any inference of escapement of income. It was pointed out that for AY 2003-04, the reasons recorded, i.e. the information received through the Commissioner of Central Excise with regard to the bogus purchases made from a company which did not have any manufacturing facility, amounted to "tangible material" pointing to suppression of material facts. It was also submitted that for the other years as well, the conclusions of the ITAT that there was no authorisation is unwarranted.

5. In this regard, it is stated that the material was put up before the concerned authority, who took into account and authorised issuance of notice under Sections 147/148. Learned counsel for the respondent/assessee relied upon the judgment in *Chhugamal Rajpal v. S.P. Chaliha* 1971 (79) ITR 603 (SC) and contended that the mere incantation of the reasons to believe is inadequate for a valid notice. It is also submitted that the according of permission in a mechanised manner vitiates/defeats the purpose of conditions mandated under Section 151(1).

6. Elaborating on this, learned counsel submitted that in scrutiny assessments, the authorisation is seen as a safeguard to protect the assessee from arbitrary exercise of powers by the AO.

7. In the present case, no application of mind by the higher authority while granting permission resulted in an invalid notice under Section 147. Though the ITAT granted relief, it did not record any reasons for it. In these circumstances, the order was rectified and the reasons recorded on 05.01.2017. It is submitted that in all cases, especially for AY 2003-04, the materials relied upon, i.e. the information with respect to the alleged bogus transaction was one. Learned counsel points out that the details of the Commissioner of Central Excise, the date of the report and some rudimentary material contained in it are not even subject matter of the "reasons to believe" issued by the AO in the present case.

8. As far as AY 2004-05 is concerned, this Court is of the opinion that in the reference to the bogus purchase made by the assessee from M/s. Kashish Impex Pvt. Ltd. and the information received for the period 17.09.2002 to 20.05.2005 and the amount of bogus purchase for the period under consideration amounted to Rs. 1.64 crores was entirely based upon the information received from the Directorate of Revenue Intelligence (DRI) Regional Unit at Jaipur. This in turn was based upon information given by the Central Excise Department. While it is true that the court is conscious that the reassessment notice should not have been routinely issued, at the same time, the nature of power is wide enough that when there an escapement of income and the Revenue has information ruling that this escapement is also relatable to suppression of material facts (which

could include false claims), the power to reopen concluded assessment can validly be exercised. The consideration which ought to weigh with the Revenue and are considered valid are the existence of tangible material or information - in the light of the judgment in CIT v. Kelvinator of India, (2010) 320 ITR 561 (SC).

9. Having regard to the contents of the notice for AY 2003-04, the court is unable to agree with the findings of the ITAT. It constitutes reference to tangible material "outside" the record, i.e. information based upon the investigation of the Commissioner of Central Excise with respect to the purchases made by the assessee. However, as far as the second issue is concerned, the Court is of the opinion that even the rectified order does not address the issues squarely. Thus, arguendo such arguments could be validly raised. At the same time, the court notices that for both AYs 2004-05 and 2005-06, the note discloses the source of the information, i.e. DRI Local Unit at Jaipur, sending information based upon the Commissioner of Central Excise's investigations. To require the Revenue to disclose further details regarding the nature of documents or contents thereof would be virtually rewriting the conditions in section 147. After all, Section 147 merely authorises the issuance of notice to reopen with conditions. If the Court were to dictate the manner and contents of what is to be written, the statutory conditions would be added as it were. In this context, it needs to be emphasized that the court would interpret the statute as they stand in their own terms, but at the same time being conscious of the rights of the citizens. So viewed, Kelvinator (supra) strikes just balance. To add further conditions to the nature of discussion/reasons that the officer authorising the notice would have to discuss in the note or decision would be beyond the purview of the Courts and would not be justified. For the above reasons, this Court is of the opinion that the impugned order - and the consequential order of 05.01.17 cannot be sustained. They are accordingly set aside. The question of law urged by the Revenue is answered in its favour. The parties are directed to be present before the ITAT on 06.03.2017. The ITAT shall proceed to hear the Revenue's appeals on its merits and render decision in accordance with law. All rights and contentions of the parties with respect to the merits are reserved.