
(1983) 12 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 321 of 1980

Siesta Steel Construction Pvt. Ltd.

APPELLANT

Vs

K.K. Shikare and others

RESPONDENT

Date of Decision : 20-12-1983

Acts Referred:

Income Tax Act, 1961 — Section 148

Citation : (1984) 39 CTR 144 : (1985) 154 ITR 547 : (1984) 17 TAXMAN 122

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

Pendse, J.—The petitioner is a private limited company registered under the Companies Act and was incorporated in the year 1965 with the object of carrying on business in fabrication of chemical equipments and structural engineering. THE Petitioner built its shed at Kalva and purchased various machineries, the total value of which was Rs. 2,05,482. As the factory was under construction, the petitioners used the machineries by taking contracts of structural work. The factory building was completed in December, 1971, and new machinery worth Rs. 1,99,842 was further installed and manufacturing activities were commenced on January 16, 1972. The petitioner is assessed as a company under the I.T. Act, 1961 (hereinafter referred to as "the Act"), and the previous year ends on March 31 of each year. The petitioner did not claim deductions under s. 80J of the Act for the assessment years 1972-73 and 1973-74, but however, claimed such deductions during the assessment years 1974-75, 1975-76 and 1976-77. The petitioner filed various statements and particulars for claiming deductions. During the course of the proceedings for the assessment year 1974-75, the ITO inquired about the entitlement of deduction under s. 80J and in response to which the petitioner submitted all the particulars.

2. The ITO passed the assessment order for the assessment year 1974-75 on June 27, 1975. The deductions under s. 80J were not granted on the ground that the liabilities far exceeded the assets. The petitioner carried an appeal before the

AAC, but the same ended in dismissal by order dated July 27, 1976. Further appeal to the Tribunal was allowed and the ITO was directed to grant relief under s. 80J on the capital computed without deducting the liabilities. Respondent No. 1, the ITO, thereupon rectified his assessment order and allowed deductions under s. 80J of the Act. For the assessment years 1975-76 and 1976-77 also, respondent No. 1 allowed the claim of the petitioner for deductions under s. 80J of the Act. The assessment for the assessment years 1975-76 and 1976-77 was completed by orders dated January 22, 1976, and February 26, 1977, respectively.

3. Respondent No. 1 issued notice dated March 16, 1979, for the assessment year 1976-77 and notices dated February 22, 1979, for the assessment year 1974-75 and 1975-76 under s. 148 of the Act for reopening the completed assessments. The notices, inter alia, stated that the petitioner's income chargeable to tax for the relevant assessment years had escaped assessment. The petitioner was called upon to deliver the returns of income within thirty days. The petitioner informed respondent No. 1 that he had no jurisdiction to issue the notice as the condition precedent for issue of such notice did not exist. Respondent No. 1 was also called upon disclose the reasons which led him to believe that the petitioner's income had escaped assessment, but respondent No. 1 did not sent any reply. The petitioner, without prejudice to the claim that the ITO had no jurisdiction to issue the notice, filed fresh returns for the relevant assessment years and thereafter approached this court by filing the present petition under article 226 of the Constitution of India on March 4, 1980.

4. Shri Khatri, learned counsel appearing on behalf of the petitioner, submitted that in spite of several reminders from the petitioner, respondent No. 1 has not cared to furnish the reasons which prompted respondent No. 1 to issue notice under s. 148 of the Act. The learned counsel urged that in spite of pendency of the petition in this court for last about three years, respondent No. 1 has not cared to file any affidavit disclosing the reasons and, therefore, it should be concluded that the notices were issued without compliance with the condition precedent for issuance of such notices. The submission of learned counsel is correct and deserves acceptance . It is now well settled that the power to issue notice cannot be exercised unless the ITO is satisfied that by reason of omission or failure on the part of the assessee in failing to disclose fully and truly all material facts necessary for assessment, income chargeable to tax has escaped assessment. The provisions of s. 148 do not enable the ITO to have a fishing inquiry. As respondent No. 1 had failed to disclose the reasons to the petitioner and has also failed to file any a affidavit, the petitioner is entitled to succeed.

5. Shri Joshi, learned counsel appearing for the Revenue, produced before me the original file containing the order-sheets for the relevant assessment years, and a perusal of the same discloses that the ITO had decided to exercise powers under s. 148 of the Act after going through the records and finding that relief under s. 80J has been wrongly allowed on the basis of inaccurate particulars

furnished by the assessee. The perusal of the order indicates that the relevant particulars were furnished by the assessee and the ITO decided to issue notice under s. 148 of the Act merely because of a change of opinion. It is now well settled that mere change of opinion does not entitle the ITO to exercise powers under s. 148 of the Act. The initiation of proceedings by respondent No. 1, therefore was clearly without jurisdiction and are required to be quashed. Shri Joshi promised to put the copies of the relevant order-sheets on record during the course of the day.

6. Accordingly, the petition succeeds and the rule is made absolute in terms of prayer (a) of the petition. There will be no order as to costs.