(1990) 11 CAL CK 0060

In the Calcutta High Court

Case No : C.R. No. 10152 (W) of 1979

S.P. Jaiswal Estate (P.) Ltd. — APPELLANT

Vs

Income Tax Officer and Others — RESPONDENT

Date of Decision : 26-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148

Citation : (1991) 192 ITR 687

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Sanjay Bhattacharjee, for the Appellant; R.C. Prasad, for the Respondent

Judgement

1. Having heard the learned lawyers for both the sides and upon perusal of the materials on record, it appears that the petitioner is a private limited company having its office at No. 235/1, Acharjya Jagadish Chandra Bose Road, Calcutta, and it is an assessee under the Income Tax Act, 1961. The petitioner is the owner of a hotel known and styled as "Hotel Hindusthan International" which had commenced business during the assessment year 1970-71. The petitioner-company prays for a writ of mandamus challenging the notices dated August 16, 1979, issued u/s 148 of the Income Tax Act for the assessment years 1971-72 and 1972-73 by respondent No. 1, Income Tax Officer, Central Circle-IV, Calcutta, and to restrain them from taking and/or initiating any proceedings in pursuance thereof on the ground that there has been no failure or omission on the part of the petitioner to make a return of his income for the said assessment years 1971-72, 1972-73 and/or to disclose fully and truly all the primary facts necessary for the said years in the course of the said original assessment proceedings under the Income Tax Act. It is asserted that there were and/or could be no reasonable grounds for respondent No. 1 to believe that there had been underassessment of any income of the petitioner and/or that there had been any non-disclosure of primary facts which could have a material bearing on

the question of underassessment. It is placed on record that respondent No. 1 did not form the alleged belief in good faith but the alleged belief is merely a pretence to the making of a roving and fishing investigation. The purported notices are alleged to have been issued and/or purported proceedings have been initiated on a mere change of opinion and to reconsider and/or revise matters which have already been decided and have become final. It is emphasised that there was absolutely no material before respondent No. 1 on which he has had reasons to believe that income had escaped assessment and that the said assessment of income was on account of any omission or failure on the part of the petitioner to disclose fully and truly all material facts necessary for the said assessments for the relevant years and as such the conditions precedent for the exercise of jurisdiction by the Income Tax Officer under Sections 147 and 148 of the said Act had not been satisfied.

2. The writ petition is contested by the respondents by filing an affidavit-in-opposition. A copy of the recorded reason for issuance of the impugned notices has also been annexed, Detailed reasons have been recorded. It is found that Messrs. S. P. Jaiswal Estate (P.) Limited is a private limited company formed in October, 1964, by Sri S. P. Jaiswal and 3 (three) sons as shareholders and the share capital of the company was Rs. 25,000. The company was granted a commencement certificate on October 5, 1964. The accounting year elected by the company ended on Diwali. From the information available in the files of Sri S.P. Jaiswal (individual) and his Hindu undivided family (S. P. Jaiswal and others), it has been found that Sri S.P. Jaiswal wanted to put up a posh hotel on the property at No. 235, Lower Circular Road, Calcutta, and with this view, the tenants occupying the original building in those premises were vacated by Diwali, 1962. To achieve this, it is observed that the company, S. P. Jaiswal Estate Private Limited, was already floated in October, 1964, but with no activity till an agreement was entered into between the company and the Hindu undivided family, on May 12, 1967. After discussing the materials as divulged as to the expenses on the building and the cost of construction and labour charges debited and proportionate costs as understated, it was seen that the investment on the construction of the Hotel Hindusthan International building as debited in the accounts of Messrs. S. P. Jaiswal Estate Private Limited after May 12, 1967, are not adequate. The assessee''s explanation that the expenditure on the cost of construction as debited in the accounts is adequate, has already been rejected in the assessment for 1970-71 by the addition of Rs. 2 lakhs as an estimate of the understatement of the cost of construction in that year and the assessee''s acceptance of the same. Invoking the provisions of Section 69B of the Act, the value of the investment thus understated as relevant for the assessment year 1969-70 which comes to Rs. 5,12,448 will, therefore, be held as the undisclosed income of the assessment year 1969-70. It is recorded that the Income Tax Officer has reason to believe that, by reason of the assessee''s suppression of material facts, income had escaped assessment and there is necessity to reopen the assessment to assess income in accordance with the law.

3. Having heard Mr. Sanjay Bhattacharjee for the assessee and Mr. R.C. Prasad for the Income Tax authorities and on a perusal of the materials on record, this court is of the view that the writ court is certainly not sitting in appeal upon the decision of the statutory authority. The writ court has to examine the decision-making process as found by the Hon''ble Supreme Court in its decision in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, Unless there are no recorded reasons to initiate the proceedings under Sections 147 and 148 of the Income Tax Act or the reasons are prima facie perverse necessitating interference by the writ court, this court is not inclined to interfere with the matter. Besides the issuance of the impugned notice, there will be no conclusive finding. The assessment is open as there is bona fide belief that there is suppression or omission on the part of the assessee and that there is escapement of true assessment. This court is convinced. There are sufficient materials on record to enable the respondent authorities to proceed according to law by issuing the impugned notices.

4. For the foregoing reasons, this court does not find any merit in the writ petition. The rule is discharged. All interim orders are vacated. There will be no order as to costs.