
(1985) 05 CAL CK 0020

In the Calcutta High Court

Case No : Appeal No. Nil and Matter No. 456 of 1985

Sunrolling Mills P. Ltd.

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 16-05-1985

Acts Referred:

Income Tax Act, 1961 — Section 145, 147, 148, 148(2), 292B

Citation : (1986) 54 CTR 268 : (1986) 160 ITR 412 : (1986) 27 TAXMAN 594

Hon'ble Judges : Dipak Kumar Sen, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : Anil Kumar Roy Chowdhury, for the Appellant; M.L. Bhattacharjee, for the Respondent

Judgement

A.K. Sengupta, J.—This appeal is directed against the judgment and order dated April 2, 1985, passed by Padma Khastgir J. in an application made under Article 226 of the Constitution by the appellant challenging the notices u/s 148 of the Income Tax Act, 1961, for the assessment years 1978-79 to 1981-82. The impugned notices u/s 148 were issued on October 13, 1982. The assessment proceedings pursuant to the said notices had been completed. Before the demand notices and assessment orders pursuant to the said reassessments for the said assessment years could be served upon the assessee, the assessee moved an application under Article 226 of the Constitution. The learned judge dismissed the writ application on the ground that the writ petitioner has adequate alternative remedy under the Income Tax Act, 1961, and as such the petitioner should not be allowed to invoke the writ jurisdiction.

2. At the hearing before us, it has been contended by Mr. Anil Kumar Roy Chowdhury, learned counsel on behalf of the appellant that since the notices are without jurisdiction, the learned judge was not justified in dismissing the writ application in limine. The learned judge should have first considered whether the impugned notices u/s 148 were without jurisdiction or not. He had further submitted that no demand notice or assessment order has been served upon the

appellant and as such the appellant cannot prefer any appeal against such assessments.

3. Mr. M.L. Bhattacharjee, learned advocate on behalf of the respondents, has submitted that the reassessments had been completed after hearing the assessee on March 27, 1985. Thereafter, demand notices, challans and assessment orders were sent to the assessee on March 27, 1985, and the assessee moved this court on March 29, 1985. He had submitted that the appellant should prefer appeals against the assessments, if it is aggrieved and the appellate authority under the Income Tax Act is competent to go into the question relating to the jurisdiction of the Income Tax Officer to initiate the proceedings.

4. The learned advocates appearing for the parties have suggested that this matter can be disposed of finally by us after looking into the records. At the suggestion of the parties, the records have been produced and we have perused the records.

5. The assessments have been reopened in this case u/s 147(b). The reasons which have been recorded for the issuance of notice u/s 148 for each of the assessment years in question are in the following terms :

"October 13, 1982 : As the assessee has not accounted for properly for recovery out of waste materials, I have reasons to believe that income arising out of that has escaped assessment. Hence, proceedings u/s 147(b) are initiated. Issue notice u/s 148.

(Sd.) Illegible."

6. It is now well-settled that the Income Tax Officer can invoke jurisdiction u/s 147(b) if he has information in his possession to form the belief that income has escaped assessment. Section 147 postulates that information must have come to the possession of the Income Tax Officer after he had passed the original assessment order and it is only on such information that the Income Tax Officer is entitled to act. If the information was already with him and he did not act on the basis of such information before the assessment was completed, then Section 147(b) would not permit him to apply his mind to the same assessment with a view to correct his own mistake. The Income Tax Officer cannot act on the basis of a change of opinion. The Income Tax Officer must have knowledge of any fact or law coming to his possession subsequent to the completion of the original assessment. The recorded reasons have been reproduced hereinabove. It has not been stated what is the source of information.

7. In the original assessment order for the assessment year 1978-79, the assessing Income Tax Officer has recorded the following fact:

"It is also found on verification of quantitative details that in consumption of 440.306 m.t. of cuttings and scrap, the shortage was 47.515 m.t. It was explained that the comparatively low G. P. was due to increase in the price of raw

materials and increase in the wages of labour and the shortage was at the normal rate. Such explanation is not at all satisfactory and considering the nature of manufacturing and materials used, I make an addition of Rs. 10,600 in trading and manufacturing account."

8. In the assessment order made pursuant to the notice u/s 148 for the said assessment year, the Income Tax Officer has recorded as follows :

"The fact of the case is that as per the Tribunal's order No. 1566 (Cal) 1981 dated March 10, 1982, the assessee had not accounted for properly for the recovery out of wastage account. And hence notice u/s 147(b) was issued. In view of Explanation 2 below Section 147 and Section 292B, the case falls u/s 147(a) and not Section 147(b). Thus conditions precedent for the assumption of jurisdiction had been satisfied and the requirement of law had been fulfilled in the facts and circumstances of the case."

9. Thereafter it is recorded that the assessee has not accounted for "properly for recovery out of wastage account".

10. It appears from the reassessment order that although the assessment was reopened u/s 147(b), the Income Tax Officer sought to justify the reopening u/s 147(a). On the materials disclosed before us, we are unable to sustain the impugned notices either u/s 147(a) or u/s 147(b). From the original assessment order, it will be evident that the assessee disclosed all material facts necessary for its assessment and the Income Tax Officer applied his mind to the facts and circumstances of the case in making the original assessment. The Income Tax Officer is now proceeding on a mere change of opinion. No new fact has been brought to our attention.

11. Where the Income Tax Officer himself proceeds on the basis of Section 147(b) and not on the basis of Section 147(a), it is not open to him to justify the proceedings at the time of reassessment as if they were taken u/s 147(a). u/s 147(b), the information subsequent to the making of the original assessment must lead to the belief of the Income Tax Officer that income has escaped assessment. Thus, the jurisdiction of the Income Tax Officer depends on the post-assessment information. But u/s 147(a), the Income Tax Officer must have reason to believe that escapement of income has occurred by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. In both the cases, the reasons are to be recorded by the Income Tax Officer u/s 148(2). Therefore, the reasons for initiating proceeding u/s 147(b) cannot be the reasons for initiating proceedings u/s 147(a). Although, in the instant case, the assessments are sought to be reopened within four years and even if the proceedings had been initiated u/s 147(a), no sanction of the Commissioner of Income Tax would have been necessary. But this cannot authorise the Income Tax Officer to convert a proceeding u/s 147(b) into a proceeding u/s 147(a) unless the facts and materials forming the basis of the reasons recorded u/s 148(2) satisfy the

conditions precedent for assumption of jurisdiction under Section 147(a) also. Similarly, where the reassessment proceeding is initiated u/s 147(a), the Income Tax Officer can very well justify his action u/s 147(b) subject to the period of limitation as prescribed therefore, provided that the conditions of Section 147(a) are satisfied.

12. In this case, the Income Tax Officer has sought to justify his action by taking recourse to Section 292B. This section is intended to ensure that on technical grounds the return of income, assessment, notice or summons or proceeding is not rendered invalid. This section does not empower the Income Tax Officer to treat a proceeding taken u/s 147(b) as a proceeding u/s 147(a). This is not a mere technicality. It is a question of jurisdiction. Unless the conditions precedent are fulfilled, no proceedings whether under Clause (a) or (b) of Section 147 can be initiated.

13. We have also perused the order of the Tribunal for the assessment year 1976-77 as referred to in the order of reassessment for the assessment year 1978-79. There, the Tribunal upheld the order of the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) rejected the trading account of the assessee for that year by invoking the provisions of Section 145 of the Income Tax Act, 1961. It does not, however, appear from the order of the Tribunal that any specific finding was given that the assessee had not accounted for properly the recovery made out of the wastage account. The finding, if any, is confined to the assessment year 1976-77. Assuming there is any finding justifying the reopening of the assessments but the proceedings in this case have not been initiated on the basis of any finding contained in the order of the Tribunal.

14. On the facts and circumstances of the case, we are of the view that the impugned notices are without jurisdiction and must be set aside and quashed.

15. In that view of the matter, the appeal succeeds. The impugned notices u/s 148 for the assessment years 1978-79 to 1981-82 are quashed and the assessment orders and demand notices issued in pursuance thereof are also quashed.

16. We may also note that the assessments were made by the Income Tax Officer u/s 143(3), although it has been recorded in each of the assessment orders that the assessee did not comply with the terms of notice issued u/s 142(1) of the Act., Another fact which also appears from the assessment order is that for all the assessment years involved in these proceedings, there were substantial losses carried forward from the earlier years. Therefore, in any event, there is no loss of Revenue even if the small income which has been added on reassessment is taken into consideration.

17. The undertaking is discharged. The filing of paper book is dispensed with. There will be no order as to costs.

Sen, J.

18. I agree.