

(1999) 03 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 7816 of 1991

Swaminarayan Rice and Pulse Mills

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 08-03-1999

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 147, 148, 151, 43(1)

Citation : (1999) 03 GUJ CK 0035

Hon'ble Judges : J.N. Bhatt, J;Anil R. Dave, J

Bench : Division Bench

Advocate : K.A. Puj, for the Appellant;

Judgement

J.N. Bhatt, J.—By this petition under Art. 226 of the Constitution of India, the petitioner has questioned the legality and validity of show-

cause notice issued by the respondent authority under s. 148 of the IT Act, 1961 (IT Act, for short), inter alia, contending that it is illegal and

contrary to the provisions of the law.

2. The respondent authority has not filed affidavit in reply. At the stage of final hearing, learned counsel for the petitioner drew our attention to a

decision of the Hon'ble apex Court in Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., in support of his submissions.

3. A few relevant material facts, in order to appreciate the merits of this petition, may be narrated, at this stage.

4. The petitioner was a partnership-firm carrying on its business at Vithal Vidhyanagar. The petitioner-firm had filed its return for Income Tax for

the asst. yr. 1984-85 on 17th September, 1984, declaring the total income at Rs. 46,035. In the balance-sheet the petitioner had shown on the

liability side an amount of Rs. 48,467 against subsidy account. The assessment order was passed under s. 143(1) of the IT Act on 7th August, 1985, accepting the return filed by the petitioner.

5. Respondent No. 1 six years after the assessment order came to be passed, issued notice under s. 148 of the IT Act on 25th July, 1991,

contending that he has reason to believe that income for the year 1984-85 has escaped assessment, within the meaning of s. 147 of the IT Act,

which is, precisely and directly, in challenge before us in this petition.

6. One of the contentions raised by the petitioner is that reassessment of the assessment sought to be made is beyond the period of limitation as the

show-cause notice is not issued within the statutory period of 4 years under s. 148 of the IT Act. It is also contended that the sanction for issuance

of notice as envisaged by s. 151 of the IT Act was not given and notice on this count is also required to be quashed.

7. Our attention was also drawn to the correspondence exchanged between the audit department and the respondent authority, whereby, it was

proposed to satisfy that even the respondent authority had taken a stand before the audit department, that the amount of subsidy is not a revenue

receipt. It is clear from the notice produced at Annexure "G" dt. 23rd May, 1990, that the assessee during the financial year relevant to asst. yr.

1987-88 had also shown a liability in balance sheet on account of subsidy of Rs. 48,463. The audit party raised objection that subsidy is not a

refundable amount and so it cannot be a liability and, therefore, the entry on the liability side was not correct. It was also pointed out by the audit

that the amount of subsidy should be treated as a revenue receipt and since it was not done so under the assessment to the extent of Rs. 48,463

with short levy of tax in relation to the asst. yr. 1987-88, the respondent authority was advised to take note and further action, pursuant to which

the impugned show-cause notice came to be issued, after detailed correspondence between the audit and the respondent authority.

8. In CIT vs. P. J. Chemicals Ltd. (supra), it has been, clearly, held that where the Government subsidy is intended as an incentive to promote the

industries and to encourage entrepreneurs to move to backward areas for the establishment of industries, fixed percentage of capital or financing

cost which is the basis for determining the subsidy being only a measure adopted

under the scheme to quantify the financial entitlement could not be tantamount to payment directly or indirectly to satisfy the expression ""actual cost"". It was, therefore, held that the expression ""actual cost"" occurring in s. 43(1) of the IT Act should be interpreted liberally so as to advance the true spirit and scheme of subsidy and the resultant financial aid to the entrepreneur cannot partake the colour of actual cost and, therefore, it cannot be termed as revenue receipt. It was further held that the amount of subsidy, therefore, could not be deducted from the actual cost under s. 43(1) in relation to the calculation of the depreciation. The subsidy is nothing but an amount or money given to the party by way of grant by the Government for promotion of the industries which are considered beneficial for the larger public interest. This Court in Commissioner of Income Tax Vs. Grace Paper Industries Pvt. Ltd., Whitco Ltd., Amit Stampings and Narendra M. Lakhadia, had taken the same view which is, obviously, found approved and confirmed by the Hon"ble apex Court in CIT vs. P.J. Chemicals Ltd.

9. In view of the aforesaid decisions, both the points which are raised in the show-cause notice which is challenged before us are evidently answered. Therefore, the view taken by the respondent authority based upon the objections of the audit department which entailed the issuance of the impugned show-cause notice under s. 148 of the IT Act is not sustainable. With the result, the impugned show-cause notice at Annexure C deserves to be quashed. Accordingly, the petition is allowed. Rule is made absolute to the aforesaid extent. However, the parties are left to bear their own costs.