(2002) 08 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 11833 of 2002

Swaraj Engine Ltd. APPELLANT

Vs

Assistant Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 143(1), 147, 148, 80I

Citation : (2003) 185 CTR 584 : (2003) 260 ITR 202

Hon'ble Judges : Kiran Anand Lal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : P.C. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—In this petition, the petitioner has prayed for quashing notice annexure P 1 dated March 20, 2002, issued by the Assistant Commissioner of Income Tax, Circle 6(1), Chandigarh (respondent No. 1), u/s 148 of the Income Tax Act, 1961 (for short, "the Act"), proposing to revise its assessment for the assessment year 1997-98.

2. Shri P. C. Jain argued that the impugned notice should be quashed on the ground of being ultra vires Section 148 read with Section 147 of the Act. Learned counsel further argued that respondent No. 1 does not have the jurisdiction to reopen the assessment simply because he felt that the assessment has not been correctly made or that the benefit u/s 80I of the Act was wrongly given to the petitioner. He relied on the judgment of the Supreme Court in Commissioner of Income Tax Vs. Corporation Bank Ltd., and of the Full Bench of the Delhi High Court in CIT v. Kelvinator of India Ltd. [2002] 256 ITR 1 and argued that mere change of opinion is not a valid ground for reopening the assessment.

3. We have given serious thought to the arguments of learned counsel, but have not felt persuaded to agree with him that the impugned notice should be

quashed at the threshold.

4. A perusal of the record shows that the petitioner had filed a return for the assessment year 1997-98 on November 30, 1997, showing profit of Rs. 9,07,17,684, which included the income from long-term capital gains and on account of the sale of units of the Unit Trust of India to the extent of Rs. 22,93,000. It also claimed deduction u/s 80I of the Act to the extent of Rs. 2,62,28,899. The Assessing Officer made assessment u/s 143(1)(a) of the Act by giving the benefit of deduction u/s 80I of the Act. Simultaneously, he issued notice u/s 143(2) of the Act and decided the same vide order dated December 31, 1999. After about two years and three months, respondent No. 1 issued the impugned notice and called upon the petitioner to file a fresh return by observing that its income had escaped assessment within the meaning of Section 147 of the Act. The detailed reasons recorded by respondent No. 1 for issuing the impugned notice are as under :

"The assessment in this case was completed u/s 143(3) on December 31, 1999. Deduction u/s 80I amounting to Rs. 2,59,42,908 was allowed to the assessee. Subsequently, it has been noticed from the documents furnished by the assessee that it was not eligible for deduction u/s 80-I of the Income Tax Act. Therefore, deduction of Rs. 2,59,42,908 was wrongly allowed at the time of assessment u/s 143(3).

The annual report of the assessee-company, for the year 1988-89 relevant to the assessment year 1989-90 has brought out the following facts :

1. Commercial operation was started in the financial year 1988-89 before March 31, 1989.

2. During the three months of commercial productions (January, 1989 to March, 1989,), the company was able to produce and supply 345 engines to Punjab Tractors Ltd. for their tractors applications.

3. As per the profit and loss account for the year ended March 31, 1989, the assessee-company had shown sales and also claimed manufacturing and other expenses. Movement in stock of engines and work-in-progress is also reflected.

4. Note No. 11 in Schedule M gives the particulars in respect of goods manufactured. This note clearly states that 346 engines were produced before March 31, 1989. Para. 12 gives the particulars of sales which shows that 345 engines were sold.

Thus, it is clear that the manufacturing/production of articles or things (which are engines in this case) started in the period which is relevant for the assessment year 1989-90. Hence, the initial year for the purposes of deduction u/s 80I is the assessment year 1989-90. Therefore, the assessee was entitled to deduction u/s 80I from the assessment year 1989-90 and seven succeeding assessment years ending with the assessment year 1996-97. For the assessment year 1997-98, the assessee was not entitled to any deduction u/s 80I of the

Income Tax Act. Therefore, an amount of Rs. 2,59,42,908 has been wrongly allowed as deduction u/s 80I. Considering the above facts and circumstances of the case, I am of the opinion that income chargeable to tax, amounting to more than Rs. 1 lakh, has escaped assessment for the assessment year 1997-98. This income of the assessee needs to be reassessed."

5. The ambit and scope of Sections 147 and 148 of the Act was considered by the Supreme Court in M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, . After reviewing judicial precedents on the subject, their Lordships of the Supreme Court laid down the following proposition (page 477) :

"From a combined review of the judgments of this court, it follows that an Income Tax Officer acquires jurisdiction to reopen an assessment u/s 147(a) read with Section 148 of the Income Tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to Income Tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer, at the time of making the original assessment, could or could not have found by further enquiry or investigation, whether the transaction was genuine or not if, on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and, therefore, income chargeable to tax had escaped assessment. . . ,

One of the purposes of Section 147 appears to us to be to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say ''you accepted my lie, now your hands are tied and you can do nothing''. It would be a travesty of justice to allow the assessee that latitude."

6. In Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, , their Lordships of the Supreme Court rejected the challenge to the notice of reassessment by observing that at the stage of notice, the court can only consider whether there is a prima facie case for reassessment and reopening of proceedings cannot be quashed by going into the sufficiency or correctness of the material relied upon by the assessing authority.

7. The aforementioned judgments have been relied upon by this court in Bal Ram Jakhar Vs. Commissioner of Income Tax and Others, and Bhajan Lal Vs. Commissioner of Income Tax and Another, and the writ petitions filed for quashing the notices issued u/s 148 were dismissed as premature.

8. If the reasons assigned by respondent No. 1 for issuing the notice u/s 148 of the Act are considered in the light of the law laid down by the Supreme Court, it is not possible to hold that he did not have any material before him for entertaining a belief that the income of the petitioner had escaped assessment. The judgments relied upon by Shri Jain are clearly distinguishable. In those cases, the Supreme Court and the Delhi High Court had the occasion to examine the matter after passing of the final orders and not at the stage of notice. Therefore, the same cannot be made the basis for quashing the notice even before the submission of the reply by the petitioner.

9. For the reasons mentioned above, the writ petition is dismissed. It is, however, made clear that in its reply the petitioner shall be free to raise all objections including the one to the jurisdiction of respondent No. 1 to issue the impugned notice.

