
(1990) 06 BOM CK 0006

In the Bombay High Court

Case No : Writ Petitions No"s. 1787 and 1788 of 1985

Technocraft Industries and others

APPELLANT

Vs

J.C. Shan, Second Income Tax Officer and others

RESPONDENT

Date of Decision : 21-06-1990

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(3), 147, 147(A), 148

Citation : (1990) 86 CTR 273 : (1990) 186 ITR 514 : (1990) 52 TAXMAN 91

Hon'ble Judges : T.D. Sugla, J

Bench : Single Bench

Advocate : R.H. Toprani, for the Appellant; G.S. Jetley, for the Respondent

Judgement

T.D. Sugla J.

1. By these two petitions under article 226 of the Constitution of India, the petitioners have challenged the jurisdiction of the Income Tax Officer to issue notices dated July 24, 1982, and February 18, 1984, u/s 148 read with Section 147(a) of the Income Tax Act, 1961, for the assessment years 1979-80 and 1980-81. Petitioner No. 1 is a partnership firm. It filed its returns of income for the two years on July 21, 1979, and July 25, 1980, respectively. The assessment for the assessment year 1979-80 was completed u/s 143(1) on March 1, 1982, while for the assessment year 1980-81 was completed u/s 143(3) on January 11, 1983.

2. The Income Tax Officer issued notice u/s 148 read with Section 147(a) for the assessment year 1979-80 on July 24, 1982. From the reasons recorded by him for reopening the assessment (copies of which were furnished to the court and the petitioners' advocate at the time of hearing), the material on the basis of which he formed the belief that the income of the petitioners for the year had escaped assessment by reason of failure to disclose fully and truly all material facts necessary for assessment appears to be :

(i) The claim for export markets development allowance u/s 35B was allowed but

the assessee was not entitled to it in view of the Section as it stood operative for the assessment year 1979-80; and

(ii) The claim for depreciation on plant and machinery was allowed on the basis of triple shift working but there was no material placed by the assessee to substantiate the claim.

3. For the assessment year 1980-81, the material appears to be a letter/circular dated November 19, 1983, from the D.D.I. (Inv.) to the Commissioners of Income Tax regarding some appraisal reports on the basis of which the Income Tax Officer recorded :

"I have reason to believe that, on account of the assessee's failure to disclose fully and truly all necessary facts necessary for assessment, income chargeable to tax for the assessment year 1980-81 has escaped assessment."

4. The petitioners, it may be stated, made certain averments about the said two years in their petitions under article 226 of the Constitution of India. The respondent-department, for reasons best known to it, has chosen not to file affidavits-in-reply. Thus, the relevant facts have to be taken as the returns of income were filed along with the statement of total income, with details of all items appearing in the balance-sheet and profit and loss account. The accounts were audited by M. L. Bhuwania and Co., chartered accountants. The analysis of the claim for depreciation and export markets development allowance was furnished. In the case of the assessment year 1979-80, the Income Tax officer was satisfied with the correctness of the return on the basis of material placed by the assessee on record and completed the assessment u/s 143(1) without requiring the presence of the assessee. For the assessment year 1980-81, the assessment was finalised after enquiry u/s 143(3) computing the total income at Rs. 64,099 as against the disclosed income of Rs. 7,918.

5. There is no dispute that the settled law is that sufficiency of material for formation of belief that income had escaped assessment is not justiciable. However, whether any material at all existed for the formation of such a belief can certainly be examined by the court. But, any and every material, however vague and indefinite, remote and far-fetched, does not warrant the formation of the belief that income chargeable to tax had escaped assessment.

6. The Income Tax Officer having referred to some material while recording reasons for reopening the assessment, the first pertinent question is whether that material constitutes any material" at all and, if so, whether that material has a direct nexus or a live link with the formation of such a belief. Since the assessments are reopened u/s 147(a), the next pertinent question would be whether, assuming that the formation of such a belief is warranted, the escapement of income had resulted by reason of failure of the assessee to disclose fully and truly all material facts necessary for the assessment.

7. As per the uncontroverted averments in the petitions, for the assessment year

1979-80, the petitioners claimed depreciation on plant and machinery on the basis of triple shift working. The computation of the claim was given. Analysis and details of the claim for export markets development allowance was also given. As against this, the Income Tax Officer has stated that the petitioners had not placed any material in respect of the claim for depreciation. Firstly, it is not understood what other material the petitioners were expected to place in support of the claim. In case the Income Tax Officer wanted them to prove the claim, the petitioners might have produced records to show that the plant and machinery had in fact worked triple shift. But the Income Tax Officer chose to complete the assessment u/s 143(1) being satisfied on the basis of the return and the material furnished along with it by the assessee. Moreover, in the absence of material, assuming that the Income Tax Officer was justified, the Income Tax Officer might have been justified in forming the belief that he could not be certain whether the plant and machinery had worked triple shift as claimed. It is certainly not possible to justify the formation of belief that depreciation was allowed in excess so that income could be said to have escaped assessment. As regards export markets development allowance, the Income Tax Officer's observation is that, u/s 35B as it stood operative for the assessment year 1979-80, the assessee was not entitled to such an allowance. Assuming it was so, why then did the Income Tax Officer allow the claim. The petitioners cannot certainly be blamed for not disclosing material facts necessary for the assessment. It is trite law that the obligation of the assessee is to disclose primary facts. Once primary facts are disclosed, there is no further obligation on the assessee to tell the Income Tax Officer as to what view he should take in the matter. Considering the case from any point of view, it is difficult to uphold the validity of the Income Tax Officer's assumption of jurisdiction u/s 148 read with Section 147(a) for the assessment year 1979-80.

8. The Department's case for the assessment year 1980-81 is much worse. The assessment for that year was completed originally u/s 143(3) on an income of Rs. 64,099 as against Rs. 7,087. Except for referring to the D.D.I.'s letter to the Commissioners of Income Tax, there is no indication of any material whatsoever in the reasons recorded. The fact that the D. D.I.'s letter was addressed not to the particular Income Tax Officer or the Commissioner but was addressed to all the Commissioners of Income Tax indicates that it was a sort of a circular. It is not shown to the court as to what that letter contained what that letter contained. In the circumstances, it has to be held that there was no material whatsoever for the formation of belief that income had escaped assessment for the assessment year 1980-81.

9. In the above view of the matter, the notices issued u/s 148 are struck down. Rule is made absolute in terms of prayer (a).

10. No order as to costs.