

(2002) 12 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1149 to 1158 of 2002

Udaipur Mineral Development Syndicate (P) Ltd.

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 148, 151

Citation : (2004) 188 CTR 461

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : N.M. Ranka and S.K. Singhal, for the Appellant; J.K. Singhi, for the Respondent

Judgement

K.S. RATHORE, J

1. Learned counsel for both the parties agree that these 10 writ petitions may be heard together and finally disposed of at this stage.

2. On behalf of respondents, Mr. J.K. Singhi raised preliminary objections regarding the maintainability of these petitions and the arguments heard on the preliminary objections regarding the maintainability of the writ petitions.

3. Since these 10 writ petitions are directed against the show-cause notices issued on various dates by the Asstt. CIT, Circle 1, Jaipur, pertain to the petitioner's company, therefore, they are being decided by this common order.

4. As a leading case, the facts of Writ Petn. No. 1149 of 2002 (Udaipur Mineral Development Syndicate (P) Ltd. v. Asstt. CIT) are being taken for disposal of these 10 writ petitions.

Petitioner is a private limited company and engaged in production/manufacture and sale of soapstone powder for the last several years. Soapstone is a massive, soft, greenish talcose rock, with a high percentage of tale mixed with various

other magnesium minerals like chlorite, serpentine, magnesite, antigorite and enstatite, and sometimes quartz, magnetite or pyrite.

The Golecha group of industries is a pioneer in production of soapstone powder and its export outside India. On account of the industrial units set up by the Golecha group of industries, livelihood is provided to a large number of wage earners employees, staff and precious foreign exchange is earned to the country, and is also registered under the Rajasthan Sales-tax Act, 1954 as well as 1994.

To promote industries in the backward areas and to give incentive to the assessee to put up industries in backward areas, Section 80HH was inserted in the IT Act, 1961, and in view of the provisions the company being entitled to such deduction during different years and such deduction was duly allowed after scrutiny, verification, examination and satisfaction by the Dy. CIT.

Similarly, for the asst. yr. 1995-96, the petitioner-company claimed deduction u/s 80HH in respect of profits of industrial undertaking at village Ghewaria (backward area) at Rs. 37,48,876 vide computation of total income filed along with the return of income submitted to the Dy. CIT (Asst.), Special Range II, Jaipur, on 30th Nov., 1995, and deduction was allowed during all the years up to asst. yr. 1995-96.

The Asstt. CIT, Circle I, Jaipur, issued a notice u/s 148 of the IT Act, 1961, dt. 8th Jan., 2002, to the petitioner requiring the petitioner to furnish a return within 20 days from the date of service, so as to assess the income, escaped assessment within the meaning of Section 147 of the IT Act, 1961. The notice also contains a note that this notice is being issued after obtaining the necessary satisfaction of the Addl. CIT, Range I, Jaipur.

This notice u/s 148 of the Act (Annex. 1), has been assailed by learned counsel for the petitioner by way of this writ petition as it being without jurisdiction, illegal, inoperative, invalid or ineffective in law and issued without or in excess of/ in absence of jurisdiction, authority and competence, and is to be declared as null and void.

Notice dt. 8th Jan., 2002, is also challenged on the ground that the notice is bad on account of non-sanction as required u/s 151 of the Act and also in contravention of Article 265 of the Constitution of India.

5. Learned counsel for the petitioner, Mr. N.M. Ranka, submitted that since the notice itself is contrary to the provisions of law and also in contravention of the provisions of Section 151 and in contravention of the Article 265, and without providing the copy of the sanction order, the petitioner has refused to submit its cause before the competent authority. Copy of the sanction order must be served.

Learned counsel for the petitioner further submits that as per the provisions of Section 151 of the IT Act, 1961, in a case where an assessment under Sub-section (3) of Section 143 or Section 147 has been made for the relevant assessment year, no notice shall be issued u/s 148 by an AO, who is below the

rank of Asstt. CIT or Dy. CIT, unless, the Jt. CIT is satisfied on the reasons recorded by such AO that it is a fit case for the issue of such notice.

Here, in the instant case, the sanction has been accorded by the Addl. CIT, who is not authorised to grant sanction, therefore, on this ground also the notice is illegal, bad and also contrary to the provisions of law.

In support of the contention, learned counsel for the petitioner placed reliance on the judgments in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, *Commissioner of Income Tax, Gujarat Vs. A. Raman and Company*, *Jayanti Lal Patel and Dr. Balvir Singh Tomar Vs. Assistant Commissioner of Income Tax and Others*, *Commissioner of Income Tax Vs. Instrumentation Ltd.*, *Dr. Hamendra Surana v. State of Rajasthan* (1993) 90 STC 251 (Raj) , *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, , and referred the ratio decided by Hon'ble Supreme Court as well as by this High Court whereby the Supreme Court and High Court have held that petitioner can challenge the show-cause notices if it is found that the notice which has been issued is per se illegal and contrary to the provisions of law and without following due process of law.

He also referred aforesaid judgments to show that the petitioner is entitled to invoke jurisdiction under Article 226 even in the case the assessment order has been passed challenging the validity of the notice as well as the assessment order. He particularly referred the case in *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, and *Instrumentation Ltd.*'s case (supra), wherein the Supreme Court has held that the reasons must be supplied to the petitioner and it is submitted that the reasons for the reassessment passed by the Addl. CIT have not been supplied to the petitioner.

6. Learned counsel for respondent, Mr. J.K. Singhi, has challenged this writ petition on the ground of preliminary objections as it is not maintainable because of the reason that in response of the notice dt. 8th Jan., 2002, the petitioner has made a representation dt. 13th Jan., 2002, and the same is pending before the AO. Learned counsel for the respondent further challenged on the ground that the petitioner has got a statutory remedy against the reassessment proceeding initiated against it. First, he has already made the representation and filed objections against the reopening notice u/s 148 of the IT Act. The representation is still pending for consideration. After any order is passed on the representation the petitioner has got other alternative remedy of appeal before the CIT(A). The decision of the CIT(A) can be challenged before the Tribunal and thereafter, before this Hon'ble Court if he feels aggrieved against any of the judgment and order under Sections 250, 252 and 260A, respectively, of the IT Act. Since petitioner has not availed these statutory remedies, this writ petition does not survive.

Learned counsel for the respondent, Mr. J.K. Singhi, further submits that before passing the reassessment order the reasons have been assigned by the Addl. CIT

and he also disputed the arguments advanced on behalf of learned counsel for the petitioner that u/s 151 only the Jt. CIT is entitled to issue the sanction. He submits that the higher officer than the Jt. CIT has granted the sanction and after obtaining the sanction, the notice u/s 148 has been issued.

Mr. Singhi relied upon the judgment in VIMAL CHANDRA GOLECHA Vs. Income Tax OFFICER, CENTRAL CIRCLE-I, AND OTHERS., and Rajan Products v. Union of India (2001) 24 Tax World 422 (Raj). He has given much emphasis on the judgment rendered by this Court in the case of Rajan Products (supra).

He also referred to a judgment in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, just to show that the sanction order is not required to be made available to the petitioner prior to issuance of the notice u/s 148 of the IT Act.

7. Learned counsel for the petitioner, Mr. N.M. Ranka, has controverted all the objections raised by learned counsel for the respondent, Mr. J.K. Singhi, and he referred the judgment of Vimal Chandra Golecha's case (supra) and submitted that the judgment which has been referred by respondent's counsel rather favours the contentions raised on behalf of petitioner instead of the respondent.

With regard to the judgment of Rajan Products (supra) is concerned, learned counsel for the petitioner submits that this judgment is not applicable to the facts and circumstances of the present case.

8. Heard rival submissions of learned counsel for the respective parties on the preliminary objections and going through the material available on the record. I have also gone through the notice issued by the respondent and objections submitted by the petitioner in response to the notice dt. 8th Jan., 2002, u/s 148 of the IT Act.

I have also carefully examined the relevant provisions of the Sections 148, 147 and 151 of the IT Act.

9. By bare perusal of provisions of Section 147 it reveals that if the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned. Section 147 only provides a power for reassessment for the income which has been chargeable and has escaped assessment for any assessment year.

10. Whereas Section 148 lays down the procedure before making the assessment, reassessment or recomputation u/s 147, the AO shall serve on the assessee a notice requiring him to furnish within such period. This is a notice requiring him to furnish such information.

11. As evident by the instant case, the notice u/s 148 of the Act, 1961, has been issued to the petitioner and that could only be possible in case the sanction for issue of notice is accorded u/s 151. As in the instant case the assessment u/s 147 has been made for the relevant assessment year, the sanction is required to be issued by a competent authority and in this section the Jt. CIT is authorised to issue sanction being satisfied on the reason recorded by the AO that it is a fit case for issue of such notice. It is categorically mentioned in this section that no notice can be issued u/s 148 by an AO without obtaining sanction accorded by Jt. CIT.

12. After careful examination of the relevant provisions of law and in view of the facts of the instant case, it reveals that before issuance of the notice u/s 148 the sanction has been accorded by Addl. CIT and that has been placed by learned counsel for the respondent for perusal of this Court. Since this aspect has been challenged by learned counsel for the petitioner that only Jt. CIT, can issue the sanction whereas in the instant case, Addl. CIT has issued the sanction who is not authorised u/s 151, in the light of this objection I like to discuss the Section 151.

13. After careful examination of the provisions of Section 151 it reveals that an AO, who is below the rank of Asstt. CIT or Dy. CIT, is only empowered to issue the sanction and not below the rank of Jt. CIT. It does not bar the Addl. CIT, to accord the sanction as the Addl. CIT is higher officer than the Jt. CIT and this section does not disqualify the higher officer who has issued the sanction. This provision is only made to ensure that the sanction should not be accorded by the officer below than the Jt. CIT.

On that aspect I am not convinced with the argument advanced on behalf of the petitioner and sanction accorded by Addl. CIT is in accordance with the Section 151 and it is not contrary to the provisions of Section 151.

14. With regard to supply of the copy of the sanction order is concerned, it reveals by bare perusal of Section 151 that no notice can be issued u/s 148 without obtaining a sanction and sanction can only be accorded after being satisfied on the reason recorded by such AO that it is a fit case for issue of such notice.

Here, in the instant case also the AO has given the reasons and these reasons have been examined by the Addl. CIT and after discussing the reasons as given by the assessing authority accorded the sanction to issue the notice u/s 148. The assessing authority can record the reason for reassessment and submit for sanction and can only issue the notice after obtaining the sanction u/s 151.

In the instant case the assessing authority has submitted his report to the sanctioning authority and sanction has been accorded u/s 151, and thereafter, the notice u/s 148 has been issued.

15. The judgment of Rajan Products" case (supra) is squarely covered with the

present controversy wherein the Hon"ble Division Bench of this Court has held that writ petition was filed requesting to quash the notices issued u/s 148 of the Act and this writ petition stood dismissed by the Single Bench on the ground that there is an alternative remedy available for the assessee for approaching the authorities under the IT Act against which the writ petitioners have filed this appeal which has been dismissed observing that the writ is not maintainable against a notice issued u/s 148 since the assessee has an alternative remedy of filing appropriate appeal before the appropriate authority provided under the IT Act.

Division Bench of this Court further held that the assessee has no legal right to ask for reasons for issue of notice u/s 148.

16. The reasons under which the petitioners want to challenge the notices u/s 148 are not such where this Court requires any interference while exercising the jurisdiction under Article 226. I have carefully examined the ratio decided by the Hon"ble Supreme Court and the High Court and the judgments referred by learned counsel for the petitioner. Writ jurisdiction under Article 226 can only be exercised under the exceptional circumstances and in, case there is a gross violation in issuance of notice u/s 148 only. In the instant case I do not find any gross violation committed by the respondents while issuing the notice u/s 148 of the IT Act.

17. In view of the aforesaid discussions, I do not want to interfere in the notices issued by the respondents. However, petitioners are at liberty to raise all legal as well as factual objections before the competent authority and before the ITO and ITO is expected to decide the objections filed by the petitioners legally and factually and then pass the final order in accordance with the provisions of the law regarding reassessment proceedings after affording the opportunity of hearing to the petitioners within the period of two months from the date of this order.

18. With these observations, these 10 writ petitions are being disposed of.