(1994) 04 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 129 of 1986

Yousuf Fazlehusain Zaveri and another — APPELLANT

Vs

Ajay Singh and others — RESPONDENT

Date of Decision : 26-04-1994

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 147, 148

Citation : (1995) 124 CTR 61 : (1995) 213 ITR 712 : (1995) 80 TAXMAN 7

Hon'ble Judges : P.S. Patankar, J;M.L. Pendse, J

Bench : Division Bench

Advocate : P.J. Pardiwala, for the Appellant; J.P. Deodhar, for the Respondent

Judgement

M.L. Pendse, J.—Yousuf Fazlehusain Zaveri commenced the business of manufacture and sale of jewellery in the name and style of Yousuf Fazlehusain Zaveri in the year 1957. On July 28, 1976, Yousuf admitted his major son to the business as a partner and petitioner No. 1 partnership firm was registered under the Indian Partnership Act. The firm is also registered with the Income Tax authorities under the Income Tax Act, 1961. The previous year of the firm for the purpose of Income Tax is the Samvat year and the first assessment year was 1977-78. The firm filed its return of income for the assessment year 1978-79 on June 27, 1978, along with the relevant supporting documents including the profit and loss account and the balance-sheet. The firm clearly mentioned that the closing stock was value at cost or market price, whichever is less. During the course of the assessment proceedings, the Income Tax Officer examined the books of account and scrutinised the gold account. The gold account was required to be maintained in accordance with the provisions of the Gold (Control) Act, 1968. On October 4, 1979, the Income Tax Officer completed the assessment and the order recites the complete quantitative details were available in respect of the business of the firm. The order further recites that the business of the firm was subject to supervision of the Central Excise authorities and consequently its book results had therefore to be accepted.

2. The assessment orders u/s 143(3) of the Income Tax Act in respect of the assessment years 1978-79 to 1982-83 were completed and assessment orders were passed on October 2, 1979, January 21, 1980, January 12, 1983, June 14, 1983, and August 23, 1983 respectively. On December 2, 1985, the Fourth Income Tax Officer ''B'' Ward Bombay served notices u/s 148 of the Income Tax Act upon the petitioners claiming that the officer had reason to believe that the income chargeable to tax for the assessment years 1978-79 to 1982-83 had escaped assessment within the meaning of section 147 of the Income Tax Act. The petitioners sought an explanation as to the information on the basis of which the proceedings were initiated. Having failed to receive any response from the respondent the petitioner approached this court by filing the present petition under article 226 of the Constitution.

3. In answer to the petition, Harbhajan Singh, the Deputy Commissioner of Income Tax has field return sworn on April 20, 1994. To the return, an exhibit is annexed setting out the reasons furnished by the Income Tax Officer before exercising jurisdiction to serve notices upon the petitioners. A perusal of the annexure indicates that during assessment proceedings for the assessment year 1983-84, the officer noticed that the assessee had valued the closing stock of gold as on Diwali 1982, and the valuation was grossly undervalued. The Income Tax Officer called for an explanation and the assessee forwarded a letter dated August 22, 1985. The petitioners claimed that the closing stock of gold was valued at cost or market price whichever was lower. The Income Tax Officer felt that the method of valuation was totally incorrect and there has been a failure on the part of the petitioner to disclose fully and truly all material facts necessary for assessments in respect of the assessment years 1978-79 to 1982-83.

4. Learned counsel appearing on behalf of the petitioner submitted that a perusal of the explanation makes it clear that the notices were issued merely because of change of opinion and not because the petitioner had suppressed any material from the Income Tax authorities at the time of concluding the assessment for the relevant years. Learned counsel urged and, in our judgment, with considerable merit, that the assessment orders leave no manner of doubt that the Income Tax Officer was satisfied after scrutiny of the books of account and the gold account, that complete quantitative details were made available and the book results had to be accepted. The averments made by the petitioners in this respect in the petition are not even denied in the return and obviously so, because the orders of assessment for the relevant years clearly reflect that not only had the petitioners disclosed all the relevant information but the same was found after scrutiny to be acceptable by the Income Tax Officer. In the face of such record, it is impossible for the Income Tax Officer to exercise jurisdiction u/s 148 to issue the impugned notices on the ground that there has been failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment. The impugned notices are, therefore, required to be struck down.

5. Accordingly, the petition succeeds and rule is made absolute in terms of prayer

(a). In the circumstances of the case there will be no order as to costs.