Markanda Vanaspati Mills Ltd. Vs Commissioner of Income Tax

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 1, 2004

Acts Referred: Income Tax Act, 1961 â€" Section 139, 147, 148, 149, 150

Citation: (2005) 195 CTR 619 : (2006) 280 ITR 503

Hon'ble Judges: G.S. Singhvi, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: P.C. Jain, for the Appellant; Rajesh Bindal, for the Respondent

Judgement

Ajay Kumar Mittal, J.
At the instance of the assessee, the Income Tax Appellate Tribunal, Delhi Bench "B", New Delhi (for short, ""the

Tribunal""), in exercise of the power vested in it u/s 256(1) of the IT Act, 1961 (for short, ""Act""), has referred the following question of law for the

opinion of this Court:

Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the proceedings for reassessment were validly

initiated by the AO u/s 147 of IT Act, 1961 for both the years under consideration and whether the Tribunal was further right in law in holding that

the"" excess amount of sales-tax collected by the assessee without there being corresponding liability, was the income liable to tax in the hands of

the assessee in the years in which the excess amount was so collected by the assessee.

2. The reference relates to the asst. yrs. 1978-79 and 1979-80. For the sake of convenience, we have taken the facts in relation to the asst. yr.

1978-79. The assessee filed return of income for that year on 21st June, 1978 declaring profit of Rs. 10,22,788. Subsequently, he filed revised

return on 28th Jan., 1981 claiming deductions on account of additional liability of sales-tax out of the profit. The assessment was completed on 8th

June, 1981. After some time, the AO reopened the assessment and issued notice u/s 148 of the Act. He observed that the assessee had collected

the sales-tax and Central sales-tax on sale price of the Vanaspati including the amount of excise duty chargeable on Vanaspati, but had not paid

the same to the State Government and, therefore, the same was liable to be included in the income of the assessee. After considering the reply of

the assessee, the AO, vide his order dt. 30th Sept., 1988, revised the assessment and made an addition of Rs. 1,08,580 representing the amount

of sales-tax in the income of the assessee. The relevant extract of the order passed by the AO, reads as under:

Therefore, it is held that the excess sales-tax collected is to be treated as income of the assessee-company for the assessment year under

reference. It would be relevant to note that the taxable turnover as returned by the assessee to the Sales-tax Department is the same as assessed

by them. Therefore, the assessee-company was fully aware at the time of filing of the returns with the Sales-tax Department that it has collected

excess sales-tax. Accordingly, a sum of Rs. 1,05,243 as excess sales-tax collected and Rs. 3,337 as excess cost collected is to be treated as

income. The income which has escaped assessment, therefore, comes to Rs. 1,08,580.

3. The appeal carried by the assessee was dismissed by the CIT(A). On further appeal to the Tribunal, the AM came to the conclusion that

proceeding u/s 147 of the Act for both the years were not validly initiated. The JM, however, did not agree with the view expressed by the learned

AM. He was of the opinion that proceeding for reassessment had been validly initiated. On a reference u/s 255(4) of the Act, the Third Member

agreed with the conclusion drawn by the JM and held that the reopening of the assessment u/s 147(a) of the Act for both the years was valid and

justified because of non-disclosure of true facts in regard to sales-tax liability payable for the years under consideration. The learned Tribunal

considering the merits of the appeal held that the amount collected by the assessee by way of excess sales-tax constituted the income of the

assessee for the year in which it was collected and accordingly it dismissed the appeals of the assessee.

4. Shri P.C. Jain, learned counsel appearing for the assessee raised two-fold submissions to persuade this Court to answer the question of law

referred by the Tribunal, in favour of the assessee. Firstly, he contended that action of the AO in initiating proceedings u/s 147 of the Act was

without jurisdiction as there was no material on the basis of which it could be suggested that the assessee had "not make full and true disclosure of

the facts. Secondly, by adverting to the merits of the case, Shri Jain submitted that the assessee had been following the mercantile system of

accounting and the Tribunal was in error in holding that there was excess amount of sales-tax collected by the assessee without there being

corresponding liability and, therefore, it was the income liable to tax. The counsel further submitted that the Department has already taken action

u/s 263 of the Act for the asst. yr. 1981-82 for which year this has been treated to be the income of the assessee and, therefore, it cannot be said

to be the income for the years in question, i.e., the asst. yrs. 1978-79 and 1979-80. In support of his arguments, Shri Jain placed reliance on The

Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, ; Chowringhee Sales Bureau P. Ltd. Vs. Commissioner

of Income Tax, ; Sirsa Industries Vs. Commissioner of Income Tax and Another, and Commissioner of Income Tax Vs. Leader Engineering

Works, .

5. Shri Rajesh Bindal, learned counsel appearing for the Revenue replying to the arguments of learned counsel for the assessee, submitted that

proceedings for reassessment were validly initiated u/s 147 of the Act. He placed reliance on M/s. Phool Chand Bajrang Lal and another Vs.

Income Tax Officer and another, and Citibank N.A. Vs. S.K. Ojha and Others, and submitted that the disclosure made by the assessee was not

true and full disclosure and, therefore, recourse to provisions of Section 147(a) of the Act by the AO was justified. On merits, Shri Bindal argued

that the assessee had collected sales-tax by including excise duty in the price of the goods and as such, the same was liable to be treated as trading

receipt and subject to tax because the liability in that regard had not been disputed by the assessee before the sales-tax authorities. 6. We have

given serious thought to the arguments of the learned counsel. Section 147 of the Act, which provides for the income escaping assessment, reads

as under :

Income escaping assessment.--If--

(a) the ITO has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment

year to the ITO or to disclose fully and truly all material facts necessary for his assessment or that income chargeable to tax has escaped

assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the ITO has in consequence

of information in his possession reason to believe that 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 or recompute the loss or the depreciation allowance, as the case may be,

for the assessment year concerned (hereinafter in Sections 148 to 153 referred to as the relevant assessment year).

Explanation 1 : For the purpose of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped

assessment, namely :

(a) where income chargeable to tax has been underassessed; or

(b) where such income has been assessed at too low a rate; or

(c) where such income has been made the subject of excessive relief under this Act or under the Indian IT Act, 1922 (11 of 1922); or

(d) where excessive loss or depreciation allowance has been computed.

Explanation 2 : Production before the ITO of account books or other evidence from which material evidence could with due diligence have been

discovered by the ITO will not necessarily amount to disclosure within the meaning of this section.

7. An analysis of the above reproduced provisions shows that an ITO can take recourse to these provisions if the income chargeable to tax has

escaped assessment on account of omission or failure on the part of the assessee to disclose truly and fully all material facts necessary for his

assessment. Thus, for invoking Section 147(a), two ingredients are required to be satisfied. Firstly, income chargeable to tax which has escaped

assessment should be there and secondly, it should be as a result of omission or failure on the part of the assessee to disclose truly and fully all

material facts necessary for his assessment. The Supreme Court in the case of Phool Chand Barjrang Lal and Anr. v. ITO and Anr. (supra), while

defining the scope of Section 147(a) of the Act, has held as under;

From a combined review of the judgments of this Court, it follows that an ITO acquires jurisdiction to reopen an assessment u/s 147(a) r/w

Section 148 of the IT 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

untruthfullness 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 ITO, the sufficiency of reasons for forming the belief is

not for the Court to judge by. 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

ITO and examine whether there was any material available on the record from which the requisite belief could be formed by the ITO 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 ITO, 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 ITO 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.....

The Bombay High Court in Citibank N.A. v. S.K. Ojha and Ors. (supra), while discussing the jurisdiction of the ITO to initiate proceedings u/s

147 of the Act, noticed that mere production of evidence before the ITO is not enough. There may be omission or failure to make a true and full

disclosure. If some material for the assessment lay embedded in the evidence which the Revenue could have uncovered but did not, then it is the

duty of the assessee to bring it to the notice of the assessing authority. If there are some primary facts from which a reasonable belief could be

formed that there was some non-disclosure or failure to disclose fully and truly all material facts, the ITO has jurisdiction to reopen the assessment.

8. If the abovenoted principles are applied to the facts of the present case, it is not possible to agree with Shri Jain that the assessee had disclosed

truly and fully all material facts necessary for the assessment at the time of original assessment. In this context, we may refer to the observations

made by the third member. The same are as under:

.... In this context, it is found that vide specific query raised marked as No. 70(c) and 70(e), the AO required the assessee to furnish the following

information :

70(c) copies of Central excise, sales-tax accounts and when the amount outstanding in these accounts were actually paid to the Department

concerned."

70(e) Particulars of amount(s) paid/payable as sales-tax, excise duty, customs duty, etc. which is disputed and the present stage of litigation in that

regard."

From the above it is clear that specific information was sought as to when the payments were actually made to the Department. The assessee

without furnishing specific information gave copies of sales-tax accounts for the previous years 1st Sept., 1976 to 31st Aug., 1977 for asst. yr.

1978-79. Similar was the case for asst. yr. 1979-80. The information furnished by the assessee in no way gave clue to the payment of liability in

regard of the sales-tax collected in excess. On the other hand, the remarks of the assessee that ''as and when demand arises'' were misleading. This

is evident from that fact that at the time the information was furnished i.e. 3rd Dec., 1980, the sales-tax assessment for the year 1977-78 had

already stood finalised as is evident from the order of the Sales-tax authorities which is dt. 14th Dec., 1979. As per this order, no further liability in

regard to sales-tax for the concerned assessment year existed towards the Department. This fact, though within the knowledge of the assessee,

was not brought to the notice of the AO. Thus, the assessee did not make a true disclosure in regard to the facts pertaining to payment of liability.

On the other hand, in an information furnished, the assessee maintained that the demand is payable as and when raised. By this, the AO was

precluded from making further enquiries in this regard...

9. Learned counsel for the assessee could not point out any infirmity or error apparent on the face of the record with the aforesaid observations.

Accordingly, the first limb of the argument of the learned counsel for the petitioner is rejected and it is held that the AO had validly initiated the

reassessment proceedings u/s 147 of the Act for both the years under consideration.

10. We shall now advert to the second limb of the argument of the learned counsel for the petitioner.

11. In Kedarnath''s case (supra) where the assessee was following mercantile system of accounting, the question arose regarding the deduction of

sales-tax out of the trading receipts. It was held by the Supreme Court that the obligation of the assessee to pay sales-tax, arose the moment the

assessee made purchases or sales which were subject to sales-tax. It has further been held that the assessee was entitled to deduct the liability of

sales from the profits and gains of its business which arose in sales made by it during the relevant previous year even though the sales-tax had not

been paid.

12. A Division Bench of this Court in Sirsa Industries v. CIT and Anr. (supra), while reversing the view taken by the learned Single Judge, held as

under :

We have closely read both the decisions of the Supreme Court and are of the opinion that while in The Kedarnath Jute Mfg. Co. Ltd. Vs. The

Commissioner of Income Tax, (Central), Calcutta, , the manner of keeping mercantile system of accounting and claim of deduction of sales-tax

from the profits without making actual payments, was allowed, such a point did not directly arise in Chowringhee Sales Bureau (P) Ltd. Vs.

Commissioner of Income Tax , West Bengal, . In Chownnghee Sales Bureau''s case (supra), the sole point for consideration was whether an

auctioneer would be a dealer within the meaning of the Bengal Finance (Sales-tax) Act, 1941. In the Sale of Goods Act, 1930, an auctioneer is

neither the seller nor the buyer and is merely a commission agent. In an earlier decision [See COMMISSIONER OF Income Tax WEST

BENGAL Vs. CHOWRINGHEE SALES BUREAU P. LTD.,], the Calcutta High Court had declared the provision whereby an auctioneer was

made liable to sales-tax, as ultra vires and, therefore, the precise question before the Supreme Court was whether the decision of the Calcutta High

Court declaring the provision to be ultra vires was right or wrong and it did not agree with the Calcutta High Court and held that it was within the

competence of the State legislature to include within the definition of the word "dealer"--an auctioneer who carries on the business of selling goods

and who has, in the customary course of business, authority to sell goods belonging to the principal and, therefore, concluded that in law he was

liable to pay sales-tax and the sales-tax received by him formed part of the trading or business receipts. The point whether the assessee was right

in claiming deduction in the year in which liability to pay tax accrued or whether he was entitled to claim deduction in the year in which the amount

was actually paid on the basis of its manner of maintaining accounts, did not directly arise. In spite of the point not having directly arisen, the

following sentence was added :

The party would, of course, be entitled to claim deduction of the amount as and when it passes it on to the State Government.

13. The aforesaid decision was followed in CIT v. Leader Engineering Works (supra) by another Division Bench of which one of us (G.S. Singhvi,

J.) was a member.

14. The assessee in the present case is following the mercantile system of accounting. The sales-tax collected is a part of trading receipt and

deduction is to be allowed in respect of amounts which are actually the liability of the assessee under mercantile system of accounting. The excess

collection of sales-tax is an income to be assessed in the hands of the assessee. The assessee-company collected the sales-tax and Central sales-

tax on the sale price of Vanaspati including the excise duty chargeable on Vanaspati, but the sale price cannot exceed the particular amount as

fixed by the Government. Thus, the sales-tax which was payable by the assessee-company, was to be computed on the basis of that sale price and

not on the price on which it collected the sales-tax from the customers. The assessee had collected the sales-tax after including the excise duty to

the sale price. Therefore, it is held that excess sales-tax collected has to be treated as income of the assessee-company for the assessment year

under reference. It would be relevant to note that taxable turnover as returned by the assessee to the Sales-tax Department is the same as assessed

by them. Therefore, the assessee-company was fully aware at the time of filing the return with the Sales-tax Department that it had collected excess

sales-tax. Accordingly, a sum of Rs. 1,05,243 collected as excess sales-tax and Rs. 3,337 collected as excess Central sales-tax has to be treated

as income. The income which has escaped assessment, therefore, comes to Rs. 1,08,580.

The excess sales-tax collected was taxed in the asst. yr. 1981-82 by invoking the provisions of Section 263 of the Act as during the previous year

relevant to the asst. yr. 1981-82, the assessee-company transferred the excess sales-tax collected to the suspense account. Therefore, the same

was treated as taxable u/s 41 of the Act. The assessee has filed an appeal against the said order. Thus, so far as taxability on Rs. 1,08,580 is

concerned, the same shall form part of the income of the asst. yr. 1978-79. Further, a perusal of order passed by judicial member dt. 14th May,

1996 shows that the assessee had admitted that despite the expiry of about two decades from the date of collection that neither there has been any

claim from the customers nor was any refund granted out of the said collections.

Accordingly, the second limb of the argument is also rejected. The reference is accordingly answered against the assessee and in favour of the

Revenue.