

(2001) 07 P&H CK 0229

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 14300 of 2000 20 July 2001 A.Y. 1998-99

HAPPY FORGING LTD.

APPELLANT

Vs

Commissioner of Income Tax
and Another

RESPONDENT

Date of Decision: July 20, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 142, 143, 147, 148, 37

Citation: (2001) 170 CTR 349

Hon'ble Judges: Jawahar Lal Gupta, J; Jawahar Lal Gupra, J; Ashutosh Mohunta, J

Bench: Full Bench

Advocate: G.C. Sharmawith A.K. Mittal, for the Assessee R.P. Sawhney with Rajesh Bindal, for the Revenue, for the Appellant;

Judgement

Jawahar Lal Gupta, J.

Have the respondents acted illegally in reopening the assessment of the petitioner-assessee for the assessment year 1998-99 ? This is the short question that arises for consideration in this writ petition. The relevant facts may be briefly noticed.

2. The petitioner is a limited company. It filed its return of income for the assessment year 1998-99 on 30-11-1998. It showed a gross income of Rs. 1,90,07,901. The petitioner claimed deductions including an amount of Rs. 50,07,669 on account of excise duty paid in advance allowable u/s 43B. This return was considered u/s 143(1)(a). An intimation was sent to the assessee vide letter dated 24-8-1999.

On 11-8-2000 the Dy. Commissioner respondent No. 2 gave a notice u/s 148 of the Income Tax Act, 1961, to the petitioner. The assessee was required to file its return of income for the assessment year 1998-99 within a period of 31 days. The petitioner

filed the return on 22-8-2000. A copy has been produced as Annexure P-4 with the writ petition. In response to this return filed u/s 148 of the Act, the petitioner was served with notice under sections 142(1) and 143(2) along with a questionnaire. The copies have been collectively produced as Annexure P-5 with the writ petition. The reasons for reopening the assessment proceedings were also communicated. A copy has been produced as Annexure P-6 with the writ petition. On receipt of the aforesaid notices, the petitioner filed his explanation on 10-10-2000. It claimed that no income had escaped assessment. Thus, the proceedings u/s 147 of the Act deserve to be dropped.

3. The petitioner alleges that respondent No. 2 has decided to continue with the proceedings u/s 147. It has, thus, filed the present petition. The petitioner maintains that the income has not escaped assessment. The reasons for re-opening the case are erroneous. The respondents have failed to "understand and comprehend the accounting procedure followed by the petitioner- company... The deduction as claimed by the assessee was in fact clearly admissible". The decision to reopen the assessment has been taken in clear contravention of the relevant provisions of the excise law and the judicial pronouncements in the matter". On this basis, the petitioner prays that the notice, etc. copies of which have been produced as Annexures P-3, P-5 and P-6 with the petition, be quashed.

4. A written statement has been filed on behalf of the respondents by Mr. K.K. Kapila, Commissioner, Ludhiana. The claim made by the petitioner has been controverted. It has been averred that the notices under sections 143(2) and 142(1) were served on the petitioner on 11-9-2000, and not on 11-8-2000. The allegation that the assessing officer has rejected the petitioners submissions is not correct. The objections raised by the assessee will be considered at the time of finalisation of the reassessment u/s 147 of the Income Tax Act, 1961". It has been further stated that a perusal "of the assessment record for the assessment year 1998-99 revealed that while computing its taxable income, the assessee had deducted a sum of Rs. 50,07,669 from the profit determined by it as per profit & loss account. This sum represented the advance excise duty paid and appeared as an asset in the balance sheet as on 31-3-1998. The amount was claimed to be a deductible expenditure u/s 43B of the Income Tax Act, 1961. This expenditure "was not routed by it through the profit & loss account". On this basis, it is claimed that the assessing officer "had reason to believe that the income of the assessee chargeable to tax had escaped assessment". It was "on the basis of facts and figures available in the balance sheet and profit & loss account, etc. that the assessing officer formed the belief that the assessee has wrongly claimed deduction u/s 43B..... and, therefore, the income to the extent of Rs. 50,07,669 had escaped assessment". It is maintained that the assessee "was charging to its profit & loss account, fiscal duties paid during the year However, while valuing its closing stock, the elements of fiscal duty and the other direct manufacturing costs were not included. This resulted in under-valuation of inventories and understatement of profits". Various other

averments made by the petitioner have been controverted. The respondents pray that the writ petition be dismissed.

5. The petitioner has filed a replication. It has been stated that "the formation of belief which is the condition precedent for initiating proceedings lawfully u/s 147/148 is completely lacking in this case and consequently the proceedings are liable to be quashed....."

6. Counsel for the parties have been heard.

7. Mr. G.C. Sharma contended that the respondents had not correctly appreciated the accounting procedure being followed by the petitioner. The authority had no reason to believe that any income had escaped assessment. Relying upon the decisions in [Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another](#), and [Jindal Photo Films Ltd. Vs. The Deputy Commissioner of Income Tax](#), the counsel contended that the court should quash the impugned notices.

8. The claim made on behalf of the petitioner was controverted by Mr. M.P. Sawhney, learned counsel for the respondents. He placed reliance on the decision of their Lordships of the Supreme Court in [Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others](#).

9. It is, undoubtedly, true that the court has the power to issue an appropriate writ, direction or order to save a person from "lengthy proceedings and unnecessary harassment". Whenever an authority acts without jurisdiction or in violation of law the court normally intervenes. However, in a case where the authority takes action within the parameters laid down by law and there is no failure of justice, the court is normally reluctant to exercise jurisdiction under Art. 226 of the Constitution.

10. What is the position in the present case ?

The petitioner had filed a return claiming a gross income of Rs. 1,90,07,901. It had claimed various deductions including an amount of Rs. 50,07,669 on account of "excise duty paid in advance which is allowable u/s 43B ". On an examination of the balance sheet as on 31-3-1998, the assessing officer found that the amount of excise duty shown to have been paid in advance figured as an asset. He observed that an asset "cannot be said to be an allowable expenditure u/s 37(1) ". Thus, the officer prima facie felt that the income chargeable to tax had escaped assessment. Accordingly, the officer directed the issue of notice u/s 148. At this stage, the court cannot decide as to whether or not the amount could be allowed as a deduction. The court has also not to decide as to whether or not the assessee is liable to pay the tax. It has only to see whether there was some material on the basis of which the second respondent could have reason to believe that the income had escaped assessment.

11. To determine this, we have perused the reasons given by the assessing officer. We have also seen the other documents. On an examination of the matter, we find that the requirements of law are fulfilled. Since the matter is still pending before the authority, we shall like to say no more at this stage.

In view of the above, we hold that there is, no infirmity in the notice given to the petitioner.

12. The petitioner alleges that its claim has already been rejected by the second respondent. We cannot accept this contention. As already noticed, it has been specifically stated in the written statement that the competent authority has to consider the objections raised by the petitioner. We have no doubt that the submissions made by the petitioner in reply to the notice shall be duly considered.

13. No other point has been raised.

In view of the above, we find no ground to interfere.

The writ petition is accordingly dismissed. However, there will be no order as to costs.