Rasalika Trading and Investment Co. Pvt. Ltd. Vs Deputy Commissioner of Income Tax and Another

Court: Delhi High Court

Date of Decision: Feb. 14, 2014

Acts Referred: Income Tax Act, 1961 - Section 143(3) 147 148 151

Citation: (2014) 365 ITR 447

Hon'ble Judges: S. Ravindra Bhat, J; R.V. Easwar, J

Bench: Division Bench

Advocate: Rakesh Gupta, Mr. Rishabh Kapoor and Ms . Khshbu Upadhyay, for the Appellant; Rohit Madan, for the Respondent

Judgement

S. Ravindra Bhat, J.
The petitioner in this case challenges the notice proposing reassessment u/s 147/148 of the Income Tax Act in respect

of assessment year 2005-06. The assessee, an investment and security business company, had raised additional capital and offered shares at a

premium of Rs. 90 per share during the concerned assessment year. The regular assessment u/s 143(3) was completed by an order framed on

24.12.2007. The notice proposing reassessment, in the present case reads as follows:

ANNEXURE "A"

RASALIKA TRADING & INVESTMENT CO. PVT. LTD.

2005-06

In this case initiation was received from DIT (Investigation), New Delhi which was circulated amongst the Assessing officers of Delhi Charge vide

F. No. CIT-I/2005-06/2132 dated 13.03.2006. The information received indicated that the assessee is amongst the beneficiaries of bogus

accommodation entries as under:

The information received also indicated that the bank accounts of M/s. Ashiana Electronics Pvt. Ltd. and M/s. Propkari Finstock Pvt. Ltd. were

maintained and controlled by one Shri Hari Om Bansal, who has in statement given on oath on 12.04.2005 before the Investigation Wing admitted

that he had received cash in lieu of cheque or draft to various persons through various bank accounts maintained by him with the help of his

associates.

In view of the reports received from the Investigation Wing and the above facts and findings, it is clear that the assessee company has not disclosed

fully and truly all material facts necessary for its assessment for the assessment year under consideration. I am in possession of material that

discredits and impeaches the particulars furnished by the assessee company and also establishes the link with the self-confessed ""accommodation

entry providers"", whose business is to help assessee bring into their booms of accounts their unaccounted money.

In view of the above facts, I have reason to believe that the assessee had introduced its unaccounted/disclosed income routed through such bogus

accommodation entries. Thus, the Income chargeable to tax amounting to Rs. 11,00,000/- during the A.Y. 2005-06 has escaped assessment in

the case and there has been a failure on the part of the assessee to disclosed fully and truly all material facts necessary for his assessment in the AY

2005-06. Hence, the same is to be brought to tax u/s 147 of the Income Tax Act. It is a fit case for initiating proceedings u/s. 147 of the Act.

Sanction for issue of notice u/s. 148 as prescribed u/s. 151, to assessee such income may kindly be accorded.

(Signature of Officer)

Name: KEYUR PATEL

Designation: DCIT. Circle - 15(1), N.D.

The petitioner urges that on the face of it the impugned notice and subsequent proceedings are beyond the authority of law. It is urged that the fresh

or tangible material, on the basis of which recourse to section 148 is proposed, existed even when the original regular assessment was completed.

The learned counsel pointedly referred to the first sentence of the impugned notice stating that the intimation or report of the DIT (Investigation)

was circulated to all concerned including AOs of Delhi Charge on 13.3.2006. It was therefore urged that the reasons in support of the notice were

based upon material which was stale and therefore plainly outside the jurisdiction conferred u/s 148. Counsel relied upon the decision of Supreme

Court in Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited, . The learned counsel relied upon the response given during the

assessment proceedings particularly the letters dated 20.9.2007, 5.11.2007, 15.11.2007, 29.11.2007, 10.12.2007 and 17.12.2007. It was

submitted that the details of the share applicants, who had applied for allotment, sought for by the AO in the regular assessment were furnished to

the AO. It was submitted that in these circumstances the reopening of assessment proposed on the basis of the material said to have been

contained in the investigation report of 13.3.2006 was a matter that had been specifically enquired and gone into by the revenue. It was argued that

in these circumstances, the notice is illegal and liable to be quashed.

2. Counsel for the revenue submitted that the notice no doubt adverted to an investigation wing report of 13.3.2006. However, counsel argued that

this report was not on the record when the assessment was completed originally on 20.4.2007. In the counter affidavit the revenue stated as

follows :

The contents of the para are correct and admitted to the extent that the Respondents had passed the order after application of mind and accepted

the income declared by the Assessee with no adverse finding but all this done on the basis of material/documents disclosed by the Assessee. The

main reason for reopening the assessment was that the Assessee has not disclosed full and true material and the same has led to escapement of

Income. So, the notice u/s. 148 when issued after complying with all the legal formalities cannot be bad in law. Moreover the earlier order passed

u/s. 143(3) cannot be made a basis for proving the reopening bad in law when there was no disclosure of full and true material by the Assessee

before the Assessing authority.

3. The learned counsel relied upon the following averment made in additional affidavit filed after the counter affidavit is filed. The additional affidavit

was filed by one Arun S. Bhatnagar, Commissioner of Income Tax, Delhi-V and affirmed on 16.12.2013. The relevant contents of the said

affidavit are as under:

3. That after going through the original assessment records, it has been noticed that letter dated 13.03.2006 was not on record before the

Assessing Officer when the original assessment was framed on 24.12.2007.

4. The information regarding the letter dated 13.03.2006 was received by the office of DCIT, Respondent No. 1 after the proceedings u/s. 143(3)

were concluded and based on the contents of the letter dated 13.03.2006, appropriate proceedings have been initiated by the Department u/s.

147/148 of the Income Tax Act, 1961.

4. Counsel for the revenue urged that in terms of Kelvinator (India) Ltd. (supra) the reassessment proceedings were within jurisdiction and ought

not to be interfered with.

5. It is evident from the above discussion that the reassessment proceedings were initiated by the impugned notice which expressly and plainly

states that ""reasons to believe"" are based upon the materials contained in an investigation report of 13.3.2006. The notice itself does not spell out

that the report was not on the record when the original assessment was completed on 24.12.2007 nor did the revenue even suggest so in the

counter affidavit filed in the proceedings. It is only in a subsequently filed additional affidavit that the position is sought to be clarified. Clearly this

Court refrains from making such an enquiry, at a time when the AO has, in the first instance, failed to spell out clearly in the section 148 notice itself

that such report was not on record. In other words ""the reasons to believe"" do not state that even in one sentence that the investigation report of

13.3.2006 was not with the AO when he completed the assessment. The material on record in fact suggests otherwise; the nature of the queries

put to assessee and the replies and confirmation furnished to the AO in the course of the regular assessment clarify that what excited the suspicion

was indeed gone into by the AO himself while framing the assessment u/s 143(3). This Court is fortified in its conclusions by the decision of the

Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, where it was held that public orders made by public authorities

intended to have effect on the public should be construed objectively with reference to the language used rather than explanations subsequently

offered. This principle was reiterated in a somewhat different vein in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New

Delhi and Others, by the Supreme Court. Such being the case this Court has no doubt that the impugned notice, in the circumstances of the case is

based upon stale information which was available at the time of the original assessment and in fact appears to have been used by the AO at the

relevant time i.e. during the completion of proceedings u/s 143(3). Therefore, the attempt to reopen the proceedings u/s 147/148 is really the result

of a change of opinion - and thus beyond the pale of the AD''s jurisdiction and falling under the illustration spelt out in Kelvinator (India) Ltd.

(supra). Consequently, the impugned notice and all proceedings further thereto are beyond the authority of law and are hereby quashed. The writ

petition is allowed in the above terms.