Tecumseh Products India Pvt. Ltd. Vs Assistant Commissioner of Income Tax and Another

Court: Andhra Pradesh High Court

Date of Decision: Nov. 29, 2013

Citation: (2014) 361 ITR 429

Judgement

Kalyan Jyoti Sengupta, C.J.
This writ petition has been filed challenging the notice issued u/s 147 of the income tax Act, 1961 (for short

the Act""), for reopening the assessment in relation to the assessment year 2005-06. The notice has been issued for reopening of the assessment

with a date, if we take it, on March 30, 2012. Therefore, going by arithmetic calculation, it is more than four years. It is not the law that delayed

notice cannot be issued, it can be, provided that the conditions as mentioned in the first proviso to section 147 of the Act are fulfilled. We,

therefore, set out the first proviso to section 147 as hereunder:

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action

shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax

has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return u/s 139 or in response to a

notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for

that assessment year.

It is clear that before any notice is issued after expiry of four years, the officer concerned must be satisfied that there has been an escapement in

assessment of income, which is chargeable to tax and this is because of the failure on the part of the petitioner-assessee to make a return u/s 139 of

the Act or in response to a notice issued under sub-section (1) of section 142 or section 148 for not disclosing the material facts.

2. Therefore, the aforesaid conditions are sine qua non. In other words, the aforesaid conditions must reflect in the notice itself. In the absence of

the same, exercise of jurisdiction in issuance of the notice under aforesaid provision is patently illegal. To draw an analogy, if the plaint does not

disclose any cause of action in a suit, then such plaint is liable to be rejected. Similarly, if a complaint lodged u/s 154 of the Code of Criminal

Procedure does not disclose prima facie, any cognizable offence, then such a complaint is liable to be quashed.

3. The Legislature has created a right in favour of the assessee that assessment which has been made cannot be reopened after expiry of four

years. But, such right is sought to be taken away in the situation as mentioned in the first proviso. Unless that situation exists, the issue is always a

closed chapter.

4. Mr. J.V. Prasad, learned counsel appearing for the Revenue submits that there are conditions in this regard.

5. Unfortunately, as rightly pointed out by Mr. Ratnakar, nothing has been disclosed or shown even in the subsequent stages. Under the

circumstances, we have no option, but to set aside the first notice dated March 30, 2012, and the consequential steps being order dated January

15, 2013, issued by respondent No. 2. However, it would be open for the Revenue, if so advised, to proceed in accordance with law taking

impartial decision by taking note of the records, if there exists a strong ground for issuance of such notice.

6. The writ petition is accordingly disposed of Consequently, the miscellaneous applications, if any pending, shall also stand disposed of. No costs.