

JAY SHREE TEA and INDUSTRIES LTD. Vs DY. COMMISSIONER OF INCOME TAX

Court: Calcutta High Court

Date of Decision: Sept. 16, 1998

Acts Referred: Income Tax Act, 1961 &" Section 148, 154

Citation: (1999) 106 TAXMAN 508

Hon'ble Judges: Y. R. Meena, J

Bench: Division Bench

Judgement

1. The Court, by this writ petition, the writ petitioner has challenged the Notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as

`the Act"), by the respondent No. 1 and has prayed that the Notice be quashed and no steps be taken further for reassessment in pursuance to the

impugned Notice dated 30-9-1997, issued u/s 148.

2. The writ petitioner is a public limited company and derives its income from the business of growing and manufacturing tea in India, manufacturing

chemicals and fertilisers and manufacturing plywood, shipping and warehousing. For the assessment year 1990-91, the accounting period ending

on 31-3-1990, the petitioner filed return along with Tax Audit Report and claimed deduction u/s 32AB(5) of the Act. The assessment was

completed on 22-3-1993, u/s 143(3) of the Act and the assessing officer determined the income chargeable to tax under the Act from growing

and manufacturing of tea in India, being 40 per cent at Rs. 6,47,84,258. In computing the said taxable income from growing and manufacturing of

tea in India, the deduction of Rs. 1,59,92,021 was allowed, being 40 per cent of Rs. 3,99,80,053.

3. After completion of the assessment year, the assessing officer had issued Notice u/s 148 read with section 147, being Annexure "B" to the

petition, dated 30-9-1997, asking the petitioner that its income had escaped as deduction u/s 32AB(5) allowed more than the amount permissible

u/s 32AB.

4. The petitioner has challenged this Notice on the ground that the Notice has been issued after four years from the end of the relevant assessment

year. Therefore, before the issue of Notice, the Income Tax Officer should satisfy whether any income has escaped and that the assessee has failed to disclose fully and truly all material facts necessary for the assessment.

5. The counsel for the petitioner submits that all materials required for assessment of income were disclosed fully and truly by the assessee.

Therefore, even if some income had escaped, but the materials being fully and truly disclosed, the Income Tax Officer had no jurisdiction to issue

Notice u/s 148.

6. The case of the department is that the assessee has claimed the deduction u/s 32AB to the tune of Rs. 3,99,80,053. The assessing officer has

wrongly allowed the claim. Therefore, income had escaped and there was justification for issuing Notice u/s 148. If the assessee has any

grievance, the assessee can submit its case before the assessing officer in re-assessment proceedings and even if it has any further grievance, the assessee

can change that order before the Commissioner and thereafter before the Tribunal. Therefore, there is an alternative remedy and this Court should

not interfere at the Notice-stage.

7. Before I proceed, I would like to give some relevant facts to see whether deduction is allowed more than admissible u/s 32AB. The counsel for

the petitioner has furnished the following chart-

8. The counsel for the respondent also filed a chart indicating total income deduction allowed u/s 32AB as per the Act and excess deduction

allowed which reads as under:-

JAY SHREE TEA & INDUSTRIES LTD.

10, CAMAC STREET, CALCUTTA - 700 017

Statement of Income from Tea growing and manufacturing business and deduction allowed u/s 32AB of the Income Tax Act, 1961 for the

Assessment year 1990-91 as per the Assessment Order

Composite Deduction Composite 40 as per Deduction Net income

income from u/s 32AB Tea Income cent of the Allowable Chargeable

Tea as per considered before Tea income u/s 32AB@ to Tax

Asst. order in the asst. deduction u/s chargeable 20 per cent

year from 32AB to Income

composite Tax before

tea income deduction

u/s 32AB

Sholayar 2,88,28,498 72,15,644 3,60,44,142 1,44,17,657 28,86,258 1,15,31,399

Merchiston 7,78,023 1,96,447 9,74,470 3,89,788 78,579 3,11,209

Dewan 5,53,78,317 1,36,88,658 6,90,66,975 2,76,26,790 54,75,463 2,21,51,327

Towkok 3,31,87,080 82,02,552 4,13,89,632 1,65,55,853 32,81,021 1,32,74,832

Meleng 1,01,15,045 24,38,245 1,25,53,290 50,21,316 9,75,298 40,46,018

Nahorhabi 58,05,562 13,70,314 71,75,875 28,70,350 5,48,125 23,22,225

Kalline 1,51,81,119 37,94,237 1,89,75,356 75,90,142 15,17,695 60,72,448

Jellapore 82,70,580 20,63,851 1,03,34,431 41,33,772 8,25,540 33,08,232

Tukvar 12,09,868 2,25,883 14,35,751 5,74,300 90,353 4,83,947

Risheehat 32,06,553 7,84,222 39,90,775 15,96,310 3,13,689 12,82,621

16,19,60,645 3,99,80,053 20,19,40,698 8,07,76,287 1,59,92,021 6,47,84,258

8. The counsel for the respondent also filed a chart indicating total income deduction allowed u/s 32AB as per the Act and excess deduction

allowed which reads as under :-

JAY SHREE TEA & INDUSTRIES LTD.

ASSESSMENT YEAR 1990-91

Statement of total income and deduction u/s 32AB as allowed in the Assessment Order

S. Name of the Total income Deduction Deduction u/s Excess

No. estates before allowed u/s 32AB allowed deduction

deduction u/s 32AB in the as per Income allowed in

32AB assessment Tax Act, 1961 the asstt.

1. Sholayer T.E. 360,44,142 72,15,644 28,86,258 43,29,386

2. Merchiston 9,74,470 1,96,447 78,529 1,17,868

3. Dewan T.E. 690,66,975 136,88,658 54,75,463 82,13,195

4. Towkok T. 413,89,632 82,02,552 32,81,021 49,21,531

E.

5. Neleong T. 125,53,290 24,38,245 9,75,298 14,62,947

E.

6. Nahorhabi, 71,75,876 13,70,314 5,48,126 8,22,188

T. E.

7. Kalling T.E. 189,75,356 37,94,237 15,17,695 22,76,542

8. Jellapore 103,34,431 20,63,851 8,25,540 12,38,311

T.E.

9. Tukver T.E. 14,35,751 2,25,883 90,353 1,35,530

10. Risheehat 39,90,775 7,84,222 3,13,689 4,70,533

T.E.

2019,40,698 399,80,053 159,92,022 239,88,031

There is no dispute that deduction allowable u/s 32AB is Rs. 1,59,92,002 on perusal of both the charts given by the counsels for the parties.

9. The counsel for the assessee, Dr. Pal, submits that though the deduction u/s 32A is initially allowed on the total income from tea-growing and

manufacturing, yet ultimately deduction u/s 32AB allowed is Rs. 1,59,92,021, i.e., 20 per cent of 40 per cent of the total income. So instead of

apportioning the total income first what the assessing officer has done is that he had allowed straightway 20 per cent deduction on the total income.

Then he apportioned it between 60 to 40 ratio. But there is no dispute that the net taxable income from tea growing comes to 32 per cent. So

either the deduction be allowed on 40 per cent income or on total income if deduction is allowed on total income, it can be apportioned thereafter,

the taxable income from tea-growing should be 32 per cent of total income from tea-growing and manufacturing income.

10. The counsel for the petitioner places reliance on various decisions, wherein the notices u/s 148 were issued and before issuing of notice u/s 148

the Income Tax Officer should satisfy himself about the escapement of income and that the assessee had failed to disclose fully and truly all material

facts for assessment of the income.

Proviso to section 147 provided that where an assessment under subsection (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 subsection (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary

for his assessment, for that assessment year".

11. Before issue of notice whether assessing officer should satisfy that there was escapement of income in the assessment order and that is on

account of omission or failure to disclose fully and truly all material facts by the assessee. in Calcutta Discount Company Limited Vs. Income Tax

Officer, Companies District, I and Another, their Lordships observed as under:-

"...The scheme of the law clearly is that where the Income Tax Officer has reason to believe that an under-assessment has resulted from

nondisclosure he shall have jurisdiction to start proceedings for reassessment within a period of 8 years; and where he has reason to believe that an

under- assessment has resulted from other causes he shall have jurisdiction to start proceedings for reassessment within 4 years. Both the

conditions, (i) the Income Tax Officer having reason to believe that there has been under-assessment and (it) his having reason to believe that such

under-assessment has resulted from non-disclosure of material facts, must co-exist before the Income Tax Officer has jurisdiction to start

proceedings after the expiry of 4 years. . ." (p. 207)

12. In The Coca-Cola Export Corporation Vs. Income Tax Officer and Another, . Their Lordships observed as under:-

. . The assessments for the years 1971-72 to 1973-74 were already completed before the issuance of this letter. If any remittance of foreign

exchange had been made in excess of the prescribed limit from January 1, 1969, that will be for the Reserve Bank or the Central Government to

take action or to grant permission as may be provided under the Foreign Exchange Regulation Act, 1973. That, however, cannot be a ground for

the Income Tax Officer to assume jurisdiction to start reassessment proceedings either u/s 147(a) or 147(b) of the Act on the ground that that will

be"" in consequence of information"" in his possession in the shape of these two letters. Whatever amount be payable in respect of home office

expenses or service charges by the Indian Branch to its principal Office abroad as allowed by the Income Tax authorities under the Income Tax

Act, the remittance can only be permitted under the provisions of the Foreign Exchange Regulation Act by the Reserve Bank of India. Both Acts

the Income Tax Act and the Foreign Exchange Regulation Act, operate in different fields."" (p. 214)

13. Finally their Lordships held that there was inherent lack of jurisdiction in the Income Tax Officer to issue the notices u/s 148.

14. The Counsel for the respondent placed reliance on AIR 1986 SC 1850, Inspecting Assistant Commissioner of Income Tax Vs. V.I.P.

Industries Ltd., and Sri Krishna Private Ltd. Etc. Vs. I.T.O., Calcutta and Others, . In Indo-Aden Salt Mfg. and Trading Co. Pvt. Ltd. Vs.

Commissioner of Income Tax, Bombay, their Lordships observed that mere production of evidence before the Income Tax Officer was not

enough. That 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. In the

case of Central Provinces Manganese Ore Co. Ltd. Vs. I.-T.O., Nagpur, their Lordships observed as under:-

...If the true price has not been disclosed and there was under invoicing, the logical conclusion prima facie is that there has been failure on the part

of the appellant to disclose fully and truly all material facts before the Income Tax Officer. We are, therefore, satisfied that both the conditions

required to attract the provision of section 147(a) have been complied with in this case." (p. 667)

15. In Sri Krishna (P) Ltd. v. case (supra) in para 8 their Lordships reproduced the observations of the Constitution Bench which read as under:-

In material particulars, the provisions in Section 34 were similar to those in section 147. Having regard to the fact that it is the only Constitution

Bench decision on the point, it is necessary to examine it in some detail. The Constitution Bench explained the purport of Section 34 in the

following words:-

"To confer jurisdiction under this section to issue notice in respect of assessment beyond the period of four years under-assessed. The second is

that he must have reason to believe ... income u/s 22 or (it) Omission or failure on the part of an assessee to disclose for the year. It postulates a

duty on every assessee to disclose fully and truly all material facts necessary for his assessment".

16. Considering the observations of their Lordships before issue of notice u/s 148, if he wants to issue notice after 4 years from the assessment

years, the Income Tax Officer has to satisfy himself that there was an escapement of income to tax in the assessment order and secondly, that the

assessee has failed to disclose fully and truly all material facts for assessment of his income. Admittedly, the notice u/s 148 has been issued after the

expiry of 4 years from the end of the relevant assessment years.

17. Again, we come to the chart indicating the total income disclosed, assessed and deduction u/s 32AB allowed by the assessing officer.

18. If we see the assessment order and take the figure of Unit Sholayar, composite income from tea as per order is Rs. 2,88,28,498. That has

been accepted and there is no dispute of income computed. The dispute is only on the deduction u/s 32AB of the Income Tax Officer as done. He

straightway allowed Rs. 71,12,106 instead of Rs. 28,86,258 but finally he has allowed only Rs. 28,86,258. If we see from the assessment order,

he assessed the composite income from tea which comes to Rs. 2,88,28,498.40 per cent of Rs. 2,88,28,498 comes to Rs. 1,44,17,657 but finally

he taxed the income only to the extent of Rs. 1,15,31,399 and if we take 20 per cent of Rs. 1,44,17,657, that roughly comes to Rs. 28,86,258.

So net taxable income comes to Rs. 1, 15,31,399 and that he has taxed. Therefore, the total taxable income from all these units comes to Rs.

6,47,84,258. There is no dispute on this assessed income.

19. It we look into the assessment order as well as the chart produced by both the counsels, there is hardly any case of escapement of income.

Secondly, the department has failed to prove that the assessee has failed to disclose fully and truly all material facts required for assessment of its

income.

20. Assuming but not accepting that there is some mistake in calculation either on the part of the assessee or on the part of the Income Tax Officer,

that does not mean that the assessee has not disclosed fully and truly the material facts regarding his income. If some calculation mistake has been

committed for the purpose of deduction under a particular section, that can be rectified, u/s 154 of the Act, but on that ground no notice u/s 148

can be issued.

21. When the notice itself is bad in law, there is no reason to carry on with the futile exercise of completion of re-assessment proceedings.

Therefore, on both the counts 1 find no case or justification to issue the notice u/s 148, particularly when the Income Tax Officer cannot assume

jurisdiction to issue notice u/s 148 as per the provisions of the Act and the facts of this case.

22. In the result, the impugned notice issued is quashed.

23. There will be no order as to costs.
