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Calcutta High Court

Case No: G. A. No. 2447 of 1996, September 17, 1996.

BROOKE BOND LIPTON INDIA LTD.		APPELLANT
	Vs	
COMMISSIONER OF INCOME TAX and Others		RESPONDENT

Date of Decision: Sept. 17, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 263

Citation: (1997) 137 CTR 579

Hon'ble Judges: V. N. Khare, C.J; V. K. Gupta, J

Bench: Full Bench

Judgement

V. K. GUPTA, J. :

This appeal against the judgment of the learned single judge of this Court passed on 16th July, 1996, has been filed by Brooke Bond Lipton India Ltd., an existing public company incorporated under the Companies Act, 1956, and having its registered office at Brooke House, Calcutta.

2. Tea Estates India Ltd. was a company in existence prior to the year 1993, and was engaged in the business of growing green tea leaves in its tea gardens and manufacturing black tea and selling the same in the market. The method of accounting of the said company was mercantile and the accounting period of this was the financial year. This company was a regular Income Tax assessee under the IT Act, 1961, and was being assessed by the IT Department, Sector-10, Calcutta, for all the relevant assessment years including the asst. yr. 1993-94. It is claimed that in computing the taxable income, Tea Estates India Ltd. was entitled to benefits under the provisions of s. 32AB and s. 33AB of the IT Act, apart from other benefits and reliefs allowable thereunder. It is further claimed that in the asst. yrs. 1987-88,

1988-89, 1989-90 and 1990-91, Tea Estates India Ltd. made deposits in the accounts opened under the Investment Deposit Accounts Scheme (Tea), 1986, under s. 32AB(1) (a) of the IT Act. In the previous years relevant to the assessment years, the said assessee-company had also purchased assets in terms of s. 32AB and 33AB of the Act. In the said four assessment years, the company claimed deductions under s. 32AB(1) of the Act, which were allowed by the AO while making assessments for the relevant assessment years.

Certain other assessments for other accounting periods relevant for other assessment years were also made by the AOs. For instance, in the accounting period relevant for the asst. yr. 1993-94 the company made deposits under s. 33AB(1) of the IT Act and as such claimed deductions under the relevant section. This claim was, however, disallowed by the AO.

It is claimed that w.e.f. 1st Jan., 1993, Tea Estates India Ltd. merged and amalgamated with Brooke Bond India Ltd. along with another company called Doom Dooma Tea Ltd. The said scheme of amalgamation was made under s. 391(2) and s. 394 of the Companies Act, 1956, and it is claimed that this amalgamation was approved and sanctioned by the Madras High Court, vide its order dt. 27th April, 1993, as well as by this Court vide order dt. 6th April, 1993. On this said amalgamation, by operation of law, it is further claimed that all the assets and liabilities of Tea Estates India Ltd. and Doom Dooma Tea Ltd. stood vested in Brooke Bond India Ltd. and that the said Tea Estates India Ltd. went into liquidation. Subsequently, w.e.f. 7th March, 1994, even the aforesaid Brooke Bond India Ltd. got merged with Lipton India Ltd. and is now known as Brooke Bond Lipton India Ltd., of which Tea Estates India Ltd. is one of the divisions.

On 2nd May, 1996, the CIT, West Bengal-II, respondent No. 1, in this appeal issued a notice to Tea Estates India Ltd., Brooke House No. 1, Post Office Road, Coonoor, under s. 263 of the IT Act calling upon the said Tea Estates India Ltd. to explain and submit as to why the said CIT may not exercise the powers available to him in terms of s. 263 of the IT Act to direct the AO to revise the assessment bringing to tax the amounts of Rs. 8,93,89,258 and Rs. 3,22,91,765 in the light of the details contained in the said notice. It shall be advantageous to reproduce the text of the notice, which reads thus :

"I found on perusal of the assessment records that the assessment for the asst. yr. 1993-94 has been completed in your case on 28th March, 1996, under sub-s. (3) of s. 143 of the IT Act, 1961, and that the total income stood determined at Rs. 4,62,19,080. I further found that your claim for deduction under s. 33AB of the IT Act for an amount of Rs. 72,63,966 had been rejected as the AO found that you have transferred all yours assets to Brooke Bond (India) Ltd. on 31st Dec., 1993, the transfer took place before the expiry of 8 (eight) years from the end of the previous year in which the assets have been acquired. But it is observed that the deduction under s. 33AB allowed for the earlier years remained to be withdrawn. Year-wise

details of the deduction are as under :

Asst. yr.	Amount (Rs.)
1986-87	2,51,39,035
1991-92	3,88,99,045
1992-93	2,53,51,178
Total	8,93,89,258

The aforesaid amount of Rs. 8,93,89,258 should have been assessed to tax for the asst. yr. 1993-94. The AO should have included this amount in the total income. Secondly, it appears that the deductions under s. 32AB of the IT Act have been allowed to you for the asst. yrs. 1987-88, 1988-89 and 1989-90 as below :

Asst. yr.	Amount (Rs.)
1987-88	1,03,00,000
1988-89	97,80,740
1989-90	1,22,11,025
	3,22,91,765

Owing to the transfer of the assets, the provisions of s. 32AB applied and an amount totalling Rs. 3,22,91,765 is assessable in the assessment for the asst. yr. 1993-94. The AO, however omitted to bring this to tax.

For the reasons for the preceding paragraphs, I consider the order of assessment for the asst. yr. 1993-94 erroneous and as such prejudicial to the interests of the Revenue and propose to exercise the powers available in s. 263 of the IT Act, 1961, to direct the AO to revise the assessment bringing to tax the amounts of Rs. 8,93,89,258 and Rs. 3,22,91,765 as aforesaid stated. If you have submissions to make in the matter you may do so either in person or through your authorised representative on 15th May, 1996, at 11.30 a. m. at my chamber at Aayakar Bhawan (2nd floor, Room No. 34). Should you prefer to make written submissions please

ensure that the papers reach me on or before the date fixed for hearing."

On 15th May, 1996, the appellant sent a communication to respondent No. 1 pleading for time to submit a reply to the notice because of some administrative difficulties and for collecting relevant data from remote hilly areas of Tamil Nadu. Finally on 10th June, 1996, a detailed reply running into seven pages was submitted by the appellant to respondent No. 1 in which the liability was denied and it was pleaded that the conditions for assumption of jurisdiction under s. 263 of the IT Act have not been satisfied and that the notice in question and all proceedings thereunder being wholly illegal, invalid and inoperative, as also without jurisdiction and authority of law, be withdrawn, cancelled or rescinded.

Even while the aforesaid reply was submitted by the appellants and respondent No. 1 was seized of the matter, on 25th June, 1996, the appellant moved a writ application under art. 226 of the Constitution of India for the issuance of a writ of certiorari for quashing and setting aside the impugned notice dt. 2nd May, 1996, by respondent No. 1 and all proceedings arising thereunder and for a writ of mandamus consequently commanding the respondents to act according to law and to cancel and withdraw the aforesaid notice dt. 2nd May, 1996. Various other consequential and ancillary reliefs were also claimed in this said writ application filed by the appellant.

After a detailed consideration, the learned single judge vide the judgment under appeal passed on 16th July, 1996, dismissed the writ application but issued the following two directions to respondent No. 1 :

"(a) The writ petitioner may file another reply to the notice under s. 263 of the Act within a month from this date or can treat dt. the letter dt. 10th June, 1996, to be a reply to the aforesaid notice issued under s. 263 of the Act. If any further reply is filed by the writ petitioners it would be open to them to take all the points that have been taken in this writ application.

(b) The concerned CIT after hearing the writ petitioner and after considering the reply filed and to be filed in terms of this order against the notice under s. 263 of the Act, shall pass a reasoned order in accordance with law within four months from the date of filing the additional reply to the notice under s. 263 of the Act by the writ petitioner."

Aggrieved, the appellant has come up in appeal before us.

3. In somewhat similar circumstances, in FMAT No. 2278 of 1996 [reported as Indo Asahi Glass Company and Another Vs. Income Tax Officer and Others, vide our judgment pronounced today itself, we have held that it is not open to a party to invoke the writ jurisdiction of this Court upon receipt of a mere show-cause notice and that the party should avail of the alternative remedy of replying to the show-cause notice and submit its explanation to the authority who issued the notice

so that the matter is decided at his level. As in the case of Indo Asahi Glass Co. (supra) in the present case also the jurisdiction of the CIT to invoke his power under s. 263 of the IT Act has not been disputed by the appellant. Only the liability has been disputed. In fact the case of the appellant in the present appeal is on a weaker footing than the case of Indo Asahi Glass Co. (supra) because in that case, the appellant had not submitted any reply to the impugned show-cause notice and had straightaway come to the High Court seeking its quashing by issuance of a writ of certiorari. As is seen in the present appeal, the appellant initially sought time from the CIT to submit a reply to the show cause notice, on the ground that it needed to collect information and data. After time was granted, it chose to send a detailed reply to the show cause notice and, despite having submitted such a detailed reply, without waiting for the outcome of the proceedings, it rushed to this Court seeking this Courts intervention in the matter. It is indeed very surprising that the appellant did not pursue the matter to its logical conclusion after submitting the reply to the show cause notice and, rather than having the matter adjudicated at the level of the CIT, it attempted to pre-empt proceedings pending before him and rushed to this Court seeking the reliefs, as indicated above. In the light of the observations made by us in the case of Indo Asahi Co. Ltd. (supra) we have no reason to take a different view in the present case, even though we have already indicated that the present appeal is on a weaker footing than the Indo Asahi Co. Ltd. Without, therefore, commenting upon the merits of the controversy between the parties and without expressing any opinion with regard to their respective contentions, finding ourselves in complete agreement with the views expressed by the learned single judge, we uphold the judgment under appeal and dismiss the appeal, but without any order as to costs.

V. N. KHARE, C. J. :

I agree.