

(1993) 04 CAL CK 0038

Calcutta High Court

Case No: IT Ref. No. 59 of 1992

CALCUTTA ASBESTOS and
BELTING CO.

APPELLANT

Vs

COMMISSIONER OF INCOME
TAX.

RESPONDENT

Date of Decision: April 5, 1993

Citation: (1993) 115 CTR 117 : (1993) 70 TAXMAN 615

Hon'ble Judges: Nure Alam Chowdhury, J; Ajit K. Sengupta, J; Ajit K. Sen gupta, J

Bench: Full Bench

Judgement

AJIT K. SENGUPTA, J. :

In this reference under s. 256(1) of the IT Act, 1961 for the asst. yr. 1983-84 the following question of law has been referred to this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessment proceedings under s. 147(a) r/w s. 148 of the IT Act, 1961 as per recorded reasons under s. 148(2) is valid in law ?"

Briefly stated the facts are that the original assessment in the case of the assessee was made or less on the basis of the return filed. In the course of assessment proceedings, the assessee filed a statement in regard to the transactions with M/s. New Age Corporation in which the credit balance was shown at Rs. 60,000 which was duly confirmed by the creditor.

2. When the assessment for the asst. yr. 1984-85 was taken up the Assessing Officer noticed that a sum of Rs. 60,000 which was shown as payable to New Age Corporation as on 31st December, 1982 was not shown in the opening balance as on 1st January, 1983. The Assessing Officer verified the books of account of the assessee and found that no amount was payable by the assessee to New Age Corporation on 31st December, 1982. He, therefore, reopened the assessment for the asst. yr. 1983-84 under s. 147(a) of the IT Act, 1961 by the issue of notice under s.

148 dt. 3rd January, 1986. The following reasons have been recorded for reopening the assessment for the asst. yr. 1983-84 :

"3rd January, 1986 1983-84 Under s. 147

In the balance-sheet as at 31st December, 1983 relevant for the asst. yr. 1983-84 assessee has shown loan outstanding of Rs. 60,000 to M/s. New Age Corporation. Loan Confirmation filed as well as verification of books of accounts with reference to bank statement of M/s. New Age Corporation show that assessee has no dues as loan payable to M/s. New Age Corporation on 31st December, 1982. As such said amount of Rs. 60,000 is assessee's cash credit for the asst. yr. 1983-84.

In view of the above, I have reason to believe that assessee failed to disclose fully and truly all material facts necessary for assessments for asst. yr. 1983-84 and income chargeable to tax has escaped assessment for the asst. yr. 1983-84.

Issue notice under s. 148.

sd. M. M. Mazumdar."

3. Various explanations were offered by the assessee in regard to the discrepancy in the balance-sheet. The Assessing Officer, however, rejected the explanations as not acceptable and assessed the sum of Rs. 60,000 observing that the amount was rightly assessable as cash credit for the period relevant to the asst. yr. 1983-84.

4. Aggrieved by the said order of assessment, the assessee took up the matter in appeal before the CIT(A) and raised various points challenging the validity of reopening of assessment and also of the assessability for the year under consideration. The learned CIT(A) accepted the contention and held that the reasons recorded by the Assessing Officer for reopening of the assessment were factually wrong and hence the reopening of the assessment was invalid. The learned CIT(A) further held that the statement in the balance-sheet as on 31st December, 1982 that an amount of Rs. 60,000 was due to M/s. New Age Corporation was not based on the entries in the books of account maintained and, therefore, it cannot be held that the income chargeable to tax escaped assessment in the absence of actual entry of credit of such amount in the assessee's books of account. The learned CIT(A) held that additional reasons cannot be imported to substantiate the issue of notice under s. 148. The learned CIT(A) further held that the mere difference in the balance-sheet involving assets being in excess of liabilities will not automatically result in income chargeable to tax escaping assessment. Even in any case it was his view that the amount of Rs. 60,000 cannot be assessed as income under s. 68 of the Act. He accordingly deleted the addition of Rs. 60,000.

5. The Revenue came up in appeal before the Tribunal and the Tribunal allowed the appeal and set aside the order of the CIT(A), restored the matter to the Assessing Officer for fresh decision.

6. It appears from the narration of facts and from the orders of the authorities below that the assessee had shown a sum of Rs. 60,000 as liability in the balance-sheet for the asst. yr 1983-84 and also obtained confirmation of the creditor in the statement of account submitted before the Assessing Officer at the time of assessment. In the course of subsequent assessment proceedings for the asst. yr. 1984-85 it was discovered by the Assessing Officer that no such amount was due and payable to the alleged creditor New Age Corporation as on 1st January, 1983 which is the first day of the previous year relevant to the asst. yr. 1984-85. The Assessing Officer, therefore, examined the books of account of the assessee and found that there were no amount payable to the alleged creditor even on 31st December, 1982 as the accounts stood closed as on 25th November, 1982. He accordingly initiated proceedings under s. 147(a) of the Act.

7. In our view on the facts found in the subsequent year of assessment that there was no loan as shown due and payable the ITO was justified in holding the belief that by reason of omission and failure on the part of the assessee to disclose fully all necessary facts for his assessment for the asst. yr. 1983-84 the income chargeable to tax had escaped assessment. There is a live link between the materials and the belief formed by the ITO. In our view, therefore, the Tribunal was right in coming to conclusion that there were materials before the ITO for reopening the assessment. Since the Tribunal has remanded the matter for fresh disposal as regards the assessability of the sum of Rs. 60,000 any observation made in this judgment will not be taken to be our finding or conclusion on the merits of the assessment.

7. We, therefore, answer the question in this reference in the affirmative and in favour of the Revenue. There will be no order as to costs.

NURE ALAM CHOWDHURY, J. :

I agree.