E.I. Dupont India Pvt. Ltd. and Another Vs The Deputy Commissioner of Income Tax

Court: Delhi High Court

Date of Decision: Feb. 14, 2013

Citation: (2013) 351 ITR 299

Hon'ble Judges: R.V. Easwar, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Kavita Jha with Mr. Vaibhav Kulkarni, for the Appellant; Abhishek Maratha, Senior Standing Counsel, for the Respondent

Judgement

Badar Durrez Ahmed, J.

CM. APPL. No. 9341/2012 (for exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P. (C) No. 4507/2012 & CM. APPL. 9340/2012

1. Mr. Maratha, Sr. Standing Counsel seeks another opportunity to file the counter affidavit. However, we have given sufficient opportunity to the

respondent to file the counter affidavit in this matter. Mr. Maratha states that he is handicapped because he has not received any comments from

the department. We, therefore, close the right of the respondent to file the counter affidavit in this matter.

2. This writ petition is directed against the notice dated 27.03.2012 issued u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the

said Act") proposing to reopen the assessment for the assessment year 2005-06. After the receipt of the said notice dated 27.03.2012, the

purported reasons behind the issuance of the said notice were also supplied to the petitioner. Those purported reasons read as under:

Reasons for Notice u/s. 148 of the IT Act 1961

The assessment u/s. 143(3) of the IT Act in the above mentioned case for A.Y. 2005-06 was completed in December 2008 determining total

income of Rs. 66,47,07,190/-. On the perusal of the record that pursuant to the scheme of amalgamation with Ms. Liqui Box Liabilities, duties and

obligations Etc. would be transferred and the deficit arising on account of excess of fair value of net assets taken over as a part of amalgamation

over the face value of shares issued under the scheme should be treated as Goodwill/Capital Reserve in accordance with the scheme of

amalgamation. Accordingly Rs. 2,87,90,431/- being the difference between consideration and the net value of identifiable assets acquired, after

adjustments was treated as Reserve. As, the assessee had received the benefit of Rs. 2,87,90,431/- from the scheme of amalgamation, the same

would be offered for tax as business Income. By doing so, the assessee has not disclosed the total income correctly to the extent of Rs.

2,87,90,431/-.

Based on the above facts, I have reason to believe that the income of the assessee chargeable to tax to the extent of Rs. 2,37,90,431/- has

escaped assessment.

3. In response to the said notice and purported reasons, the petitioner submitted its objections by virtue of its letter dated 08.05.2012. An

opportunity of hearing was also granted to the petitioner whereupon the assessing officer passed an order on 31.05.2012 rejecting the objections.

4. In the reply submitted by the petitioner it had been categorically stated that the proposed proceedings were hit by the first proviso to section

147 of the said Act which specifically laid down that, in case an assessment has already been made u/s 143(3) of the said Act, in order to reopen

the said assessment after the expiration of four years the assessing officer has to necessarily demonstrate that there was failure on the part of the

assessee to disclose the facts and particulars necessary for the assessment. However, this contention of the petitioner was brushed aside by the

assessing officer in the order dated 31.05.2012 by simply stating as under:-

The objection raised by the assessee has been considered but are found to be not tenable. The assessment in the case of assessee has been

completed u/s. 143(3) of the Act at total income of Rs. 66,47,07,190/- on December 2008. However, on perusal of records it was observed that

assessee has failed to disclose its income fully and truly resulting in under assessment. Accordingly notice u/s. 148 was issued on 27.03.2012 after

obtaining prior approval of Ld. CIT vide dated 15.03.2012.

5. We have heard the learned counsel for the parties and we feel that since this was a case of proposed reopening of assessment after four years

from the end of the relevant assessment year it was incumbent upon the assessing officer to demonstrate that there was failure on the part of the

assessee to fully and truly disclose all material facts necessary for its assessment. The purported reasons which we have extracted above do not

even allege that there has been a failure on the part of the assessee to disclose any material fact. In fact, even in the impugned order dated

31.05.2012 there is no mention of what fact the assessee had failed to disclose which was necessary for the assessment in the original round of

assessment. Failure to disclose all material facts necessary for assessment is a condition precedent for reopening of an assessment beyond the

period of four years from the date of assessment. This is a pre-condition set out in the statute itself. In view of the fact that this pre-condition has

not been satisfied, we feel that the impugned notice dated 07.03.2012 as also the order dated 31.05.2012 ought to be set-aside. It is ordered

accordingly. All the proceedings pursuant to the notice dated 27.03.2012 are quashed. The writ petition is allowed. There shall be no order as to

costs. Consequently, all the pending applications also stand disposed of.