

(2008) 01 BOM CK 0185

Bombay High Court

Case No: Writ Petition No. 1942 of 1990

Niba India and Another

APPELLANT

Vs

Smt. Arti Handa, Assistant
Commissioner of Income Tax
and OthersRESPONDENT

Date of Decision: Jan. 9, 2008**Acts Referred:**

- Income Tax Act, 1961 - Section 132(4), 143(3), 148

Citation: (2008) 215 CTR 121 : (2008) 300 ITR 283**Hon'ble Judges:** R.S. Mohite, J; F.I. Rebello, J**Bench:** Division Bench**Advocate:** Arun Sathe, Punjabrao Naik and Mandar Vaidya, instructed by Rajesh Shah and Co, for the Appellant; S.M. Shah and Sandip Wasnik, for the Respondent**Final Decision:** Allowed

Judgement

F.I. Rebello, J.

The petitioners by the present petition have challenged the notices issued under Section 148 for reopening of assessment for the asst. yrs. 1977-78 and 1978-79. The notices are dt. 30th March, 1989. The reasons for reassessment have been annexed to the reply filed by the respondents as on annexures to the affidavit of Mr. Y.S. Sonawane. It is recorded therein that the search operations were carried out in the concerns belonging to the petitioner and the group companies and the employees were examined. Their statements were also recorded u/s 132(4) of the Act. From the said statement it is set out that it was noticed that the brass scrap and plastic powder scrap generated in the manufacturing process is of significant quantity and value. On the basis of the observations made from the manufacturing process carried out by the search party and from the statements of directors/partners, who were examined, it was noticed that the brass scrap is about 45 per cent of the total consumption of brass item-wire rod and strips and plastic scrap can be as much as

12 per cent of the consumption of plastic powder and that for the asst. yr. 1977-78, the assessee had not shown any value of scrap either by way of sale or in stock. There was suppression of profits by non disclosure of scrap. It was also mentioned that, the petitioners were using a very sophisticated machine for the consumption of stainless steel balls and the efficiency of the machine is such that not a single ball is wasted in the manufacturing process. Thus there was suppression of sale of refills.

2. It is the contention of the petitioner that insofar as scrap is concerned, accounting method followed by them is by showing the revenue generated from the scrap at the time the assessee finally sold and this has been accepted by Tribunal. Reference for that purpose is made to the order dt. 29th June, 2005 in ITA Nos. 1529/Mum/1996 and 83/Mum/1997 in the case of Asstt. CIT v. Nibs India. It is also set out that there were no reasons to believe, as all the material was available with the AO when the original assessment was made. In similar circumstances in respect of similar scrap this Court in a petition tiled by sister concern has held that there were no reasons to believe for reopening of the assessment. For that purpose reliance is placed in the judgment in [Sanghvi Swiss Refills \(P\) Ltd. Vs. Smt. Arti Handa, Assistant Commissioner of Income Tax and Another](#), . Our attention is also invited to the judgment in respect of another sister concern Sanghavi Swiss Refills (P) Ltd. for different assessment years in Writ Petn. No. 608 of 1990 decided on 23rd Oct., 2007 [reported as [Sanghvi Swiss Refills \(P\) Ltd. Vs. Smt. Arti Handa, Assistant Commissioner of Income Tax and Another](#), . It is pointed out that this Court noted that in the statement recorded nowhere is there any unequivocal statement or material to hold the percentage of scrap generated. It is therefore, submitted that considering that in respect of similar issue this Court has already taken a view, that merely because there was scrap, is no reason to reopen the assessment. The notice therefore, served u/s 148 has to be quashed and set aside.

3. On behalf of the respondents, reply has been filed by Mr. Y.S. Sonawane. The only material relied upon is the statement of Mr. B.G. Sanghvi wherein it is purported that he has made attempt to sell the scrap and shown bogus purchase. The said statement was placed before us for our consideration.

4. We are concerned with the reasons given for reopening the concluded assessment on the facts of the present case. As rightly pointed out by the learned Bench of this Court in Sanghvi Swiss Refills (P) Ltd. v. Smt. Arti Handa, Asstt. CIT and Anr. (supra) that there was no failure on the part of the assessee to disclose voluntarily and truly all material facts and the issue that scrap was generated during the manufacturing process was before the AO. In the case of petitioner itself, the Tribunal has accepted the manner in which the scrap generated was disposed of and the Tribunal has accepted the material of accounts when the scrap was finally sold. It is no doubt true that the stock register of the scrap generated was not maintained. But this information was available to the AO when the assessment was

made u/s 143(3) of the IT Act.

5. Even otherwise, this matter is pending in this Court since the year 1990 and interim relief was granted which is pending till date. We are therefore, of the opinion that as there were no reasons to believe warranting the reopening of the concluded assessment, consequently the petition will have to be allowed. Rule made absolute in terms of prayer Clauses (b) and (d). There shall be no order as to costs.