

(1990) 08 BOM CK 0109

Bombay High Court

Case No: Writ Petition No. 1906 of 1988

Hyundai Heavy Industries Co.
Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision: Aug. 3, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 220

Citation: (1991) 93 CTR 162 : (1991) 189 ITR 325 : (1991) 54 TAXMAN 127

Hon'ble Judges: T.D. Sugla, J

Bench: Single Bench

Advocate: N.A. Dalvi, for the Appellant; Dr. V. Balasubramanian, for the Respondent

Judgement

T.D. Sugla, J.

By this petition under article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the letter dated June 9, 1988, issued to it by the Deputy Commissioner of Income Tax (Assessment), Special Range, Dehradun, for recovery of Rs. 5,69,11,730 being demand raised for the assessment year 1985-86 in the case of M/s. Micoperi S. P. A., Italy.

2. It appears that, under an agreement entered into by the petitioner with Micoperi S. P. A., the tax liability of Mociperi S. P. A. was undertaken by the petitioner-company and the above notice was issued by the Deputy Commissioner of Income Tax (Assessment) on that basis.

3. Shri Dalvi, learned counsel for the petitioner, states that, by an order of this court dated September 5, 1988, in Appeal No. 1049 of 1988 arising out of Writ Petition No. 1306 of 1988, the assessment in pursuance of which the said demand was raised and the petitioner was asked to make the payment was quashed. This court also directed the departmental authorities not to take any further steps for recovers of the tax and interest in pursuance of that assessment against Micoperi S. P. A. or the

petitioner. It is submitted that, in view thereof, the question of recovery of demand in pursuance of the assessment of the assessment order which stands quashed does not arise against Micoperi S. P. A. or the petitioner. Dr. Balasubramanian, learned counsel for the Department, submits that, under the order of this court, a fresh assessment was required to be made by the Assessing officer on Micoperi S. P. A. for the same year at Bombay and that if any demand is created as a result of such an assessment, the Department should be at liberty to take appropriate proceedings against Micoperi S. P. A. or the petitioner. Shri Dalvi has no objection to it subject to the condition that, in that case, the petitioner should have liberty to challenge any such order.

4. In view of what has been stated above, the question of recovering any amount in pursuance of the quashed assessment order from the petitioner does not arise. The rule is accordingly, made absolute. No order as to costs.