The Parashuram Pottery Works Co. Ltd.

Vs

The Income Tax Officer, Circle-1, Ward 'A', Rajkot, Gujarat

Civil Appeal No. 1792 of 1971

(H.R. Khanna, V.R. Krishna Iyer JJ)

16.11.1976

JUDGMENT

KHANNA, J. –

1. This appeal on certificate is against the judgment of Gujarat High Court dismissing petition under Article 226 of the Constitution of India filed by the appellant for a writ of certiorari or other appropriate writ to quash two notices issued by the respondent to the appellant under Section 148 of the Income-tax Act, 1961 (hereinafter referred to as the Act of 1961).

2. The matter relates to the assessment years 1957-58 and 1959-60. The appellant is a public limited company which carries on the business of manufacture of pottery and sanitary wares at Morvi and other places in the State of Gujarat. In respect of the assessment year 1957-58, the corresponding accounting year for which ended on July 31, 1956, the appellant filed its return under the Indian Income-tax Act, 1922 (hereinafter referred to as the Act of 1922). The predecessor-in-interest of the respondent by assessment order dated April 16, 1959 assessed the total income of the appellant at Rs. 4,60,372. In computing the said income the Income-tax Officer allowed depreciations amounting to Rs. 5,05,487. For the assessment year 1959-60 the appellant likewise filed return. Assessment order in respect of that year was made on March 30, 1961 and the income of the appellant was assessed at Rs. 11,04,650 after allowing depreciation of Rs. 3,57,926.

3. On October 5, 1965 a letter was addressed on behalf of the respondent to the appellant stating that there had been a mistake in the calculation of the depreciation allowance in respect of certain items of the capital assets of the appellant for the period covered by the assessment years 1955-56 to 1962-63. As a result of the mistake, it was stated, a sum Rs. 2,39,723 had been allowed as depreciation allowance in excess of the permissible limit. Enclosed with the letter was a chart showing excess depreciation allegedly allowed during the abovementioned period. The excess amounts of depreciation for the years 1957-58 and 1959-60 were mentioned in the chart to be Rs. 37,869 and Rs. 26,945 respectively. The appellant company was asked if it had any objection to the rectification of the mistake. The above letter was followed by another letter wherein the respondent wrote to the appellant that "the mistake in depreciation arose because the initial depreciation was not taken into account in finding out whether the total depreciation allowed exceeded the original cost". On February 2, 1966 the Income-tax Officer addressed another letter to the appellant stating that for the assessment years 1957-58 and 1959-60 the income of the appellant had escaped assessment for failure of the appellant to disclose all material facts within the meaning of Section 147(a) of the Act of 1961. The appellant in reply stated that depreciation calculation sheets had been worked by the income-tax authorities and there was no failure on the part of the appellant to disclose all facts. The impugned notices were thereafter issued on March 4, 1966 by the Income-tax Officer to the

appellant stating that he had reason to believe that the income of the appellant chargeable to tax for the assessment years in question had escaped assessment within the meaning of Section 147 of the Act of 1961. The Income-tax Officer accordingly stated that he proposed to recompute and reassess the income/loss/depreciation allowance for the aforesaid years. The appellant was called upon to furnish returns in the prescribed form within 30 days from the date of the service of the notices. It was also mentioned that the notices were being issued after obtaining the necessary satisfaction of the Commissioner or Income-tax.

4. The appellant thereafter filed writ petition in the High Court on April 29, 1966. According to the case of the appellant, there was no omission or failure on its part to disclose fully and truly all material facts necessary for the assessment. All material facts, it was stated, regarding the acquisition of various capital assets from time to time were on the record of the department. The fact that initial depreciation on the new assets had been allowed was also on the record of the department. If there was any oversight on the part of the Income-tax Officer, the appellant, it was claimed, could not be held responsible for that.

5. The petition was resisted by the respondent and the affidavit of Shri N. M. Baxi, Income-tax Officer was filed in opposition to the petition. According to that affidavit, the appellant did not disclose in the return that initial depreciation in respect of certain items of capital assets had been allowed in the past and that the same should be taken into account while calculating the depreciation allowable for the assessment years in question.

6. The High Court found that the first requirement of Section 147(a) of the Act of 1961 was satisfied inasmuch as the Income-tax Officer had reason to believe that the income of the appellant for the two assessment years in question had escaped assessment. The mistake arose because of the fact that the initial depreciation allowance which had been allowed to the appellant in respect of some of items of the capital assets was not taken into account while computing the depreciation allowance during the relevant years. As a result of that, it was found that the depreciation during the various years, including the initial depreciation, exceeded the original cost of those items of the capital assets to the appellant. Dealing with the question as to whether there was omission or failure on the part of the appellant to disclose truly and fully all material facts, it was observed that the appellant was bound to disclose the fact that initial depreciation had been allowed in respect of the items of capital assets in question during the previous years. The appellant as such was held to have failed to disclose all material facts. The plea of the appellant that all the material facts were already on the record of the department, in the opinion of the High Court, did not make material difference. In the result, the petition was dismissed.

7. Before dealing with the contentions advanced in appeal, it may be apposite to refer to the relevant provisions. According to Section 10 of the Act of 1922, the tax shall be payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profits or gains of any business, profession or vocation carried on by him. Such profits or gains shall be computed after making a number of allowances. Those allowances include those allowed in respect of depreciation, as mentioned in clauses (vi) and (vi-a) of sub-section (2), the material part of which at the relevant time read as under :

> (vi) in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent . . . to such percentage on the written-down value thereof as may in any case or class of cases be prescribed :

and where the buildings have been newly erected or the machinery or plant being new, not being machinery or plant entitled to the development rebate under clause (vi-b), has been installed, after the 31st day of March, 1945, and before the 1st day of April, 1956, a further sum (which shall however not be deductible in determining the written down value for the purposes of this clause) in respect of the year of erection or installation equivalent, -

(a) in the case of buildings the erection of which is begun and completed between the 1st day of April 1946 and the 31st day of March 1956 (both dates inclusive), to fifteen per cent of the cost thereof to the assessee;

(b) in the case of other buildings, to ten per cent of the cost thereof to the assessee;

(c) in the case of machinery or plant, to twenty per cent of the cost thereof to the assessee;

Provided that -

#(a) * * *(b) * * *##

(c) the aggregate of all allowances in respect of depreciation made under this clause and clause (vi-a) or under any Act repealed hereby, or under the Indian Income-tax Act, 1886 (II of 1886), shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant or furniture, as the case may be;

(vi-a) in respect of depreciation of buildings newly erected, or of machinery or plant being new which has been installed, after the 31st day of March 1948, a further sum (which shall be deductible in determining the written-down value) equal to the amount admissible under clause (vi) (exclusive of the extra allowance for double or multiple shift working of the machinery or plant and the initial depreciation allowance admissible under that clause for the first year of erection of the building or the installation of the machinery or plant) in not more than five successive assessments for the financial years next following the previous year in which such buildings are erected and such machinery and plant installed and falling within the period commencing on the 1st day of April, 1949, and ending on the 31st day of March 1959;.

It is apparent from the above provisions that depreciation of three distinct kinds could be allowed in respect of buildings, machinery and plant. The first category was of ordinary depreciation equivalent to such percentage on the written-down thereof as may be prescribed. The second category was of depreciation of buildings, newly erected, or new machinery or plant [not being machinery or plant entitled to development rebate under clause (vi-b)] which has been installed after the 31st day of March 1945 and before the 1st day of April 1956 equivalent to such percentage of the cost thereof as is prescribed. Such initial depreciation was granted in the first year of the construction of the building or installation of the plant or machinery. This category of depreciation was not deducted in determining the written-down value for the purpose of clause (vi). The third category of depreciation was additional depreciation which was claimable for a period of five years in respect of buildings, newly erected, or new machinery or plant installed after the 31st day of March 1948 in terms of clause (vi-a). The depreciation permissible under this category was deductible in determining the written-down value.

8. Clause (c) of the proviso to clause (vi) of sub-section (2) Section 10, however, makes it clear that the aggregate of all three categories of depreciation allowance was in no case to exceed the original cost to the assessee of the building, machinery or plant, as the case may be.

9. The case of the respondent is that the amount of depreciation allowed to the appellant in respect of certain items of capital assets for the two assessment years in question was so much that the aggregate of all allowances in respects of depreciation made under clauses (vi) and (vi-a) of sub-section (2) of Section 10 of the Act of 1922 exceeded the original cost to the appellant of those items of the capital assets. There was thus a violation of the provisions of clause (c) of the proviso to Section 10(2)(vi) of the Act. The above mistake, it is stated, occurred because the initial depreciation which had been allowed in respect of those items of the capital assets was not taken into account in computing the depreciation regarding those items in the two assessment years in question. The present is, therefore, a case, according to the respondent, of income escaping assessment under Section 147 of the Act of 1961. Reliance in this connection is placed upon clause (d) of explanation (1) to Section 147 of the Act 1961, according to which it would be a case of income escaping assessment where excessive depreciation allowance is computed.

10. The material part of Section 147 of the Act of 1961 reads as under :

> 147. Income escaping assessment. - If -
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> (a) the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under Section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or
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> (b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year).

According to Section 148 of the Act of 1961, before making the assessment, reassessment or recomputation under Section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139; and the provisions of the Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section. The Income-tax Officer has also, before issuing such notice, to record his reasons for doing so. Section 149 prescribes the time limit of the notice. The time limit in a case not falling under clause (ii) of sub-section (1) of Section 149, with which we are not concerned, shall be eight years from the end of the relevant assessment year. In cases falling under clause (b) of Section 147, however, the time limit for the notice is four years from the end of the relevant assessment year. Clause (a) of Section 147 of the Act of 1961 corresponds to clause (a) of sub-section (1) of Section 34 of the Act of 1922. The language of clause (a) of Section 147 read with Sections 148 and 149 of the Act of 1961 as also the corresponding provisions of the Act of

1922 makes it plain that two conditions have to be satisfied before an Income-tax Officer acquires jurisdiction to issue notice under Section 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year; viz., (i) the Income-tax Officer must have reason to believe that income chargeable to tax has escaped assessment, and (ii) he must have reason to believe that such income has escaped assessment by reason of the omission or failure on the part of the assess (a) to make a return under Section 139 for the assessment year to the Income-tax Officer, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must coexist to confer jurisdiction on the Income-tax Officer. It is also imperative for the Income-tax Officer to record his reasons before initiating proceedings as required by Section 148(2). Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice. The duty which is cast upon the assessee is to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the Income-tax Officer of the account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure contemplated by law. The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is for the Income-tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income-tax Officer with regard to the inference which he should draw from the primary facts. If an Income-tax Officer draws in inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment (see Income-tax Officer v. Lakhmani Mewal Das [(1976) 103 ITR 437 : (1976) 3 SCC 757 : 1976 SCC (Tax) 402]).

> 111. The words "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" postulate a duty on the assessee to disclose fully and truly all material necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inference as regards certain other facts; and ultimately from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable (see Calcutta Discount Co. v. Income-tax Officer [(1961) 41 ITR 191 : (1961) 2 SCR 241 : AIR 1961 SC 372]). As further observed in that case :
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> Does the duty, however, extend beyond the full and truthful disclosure of all primary facts ? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inference have ultimately to be drawn. It is not for somebody else - far less the assessee - to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people differ as regards what inference should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences - whether of facts or law - he would draw from the primary facts.

12. Keeping in view the principles enunciated above, we may deal with the contention advanced on behalf of the appellant that the present is not a case in which action could be taken under Section 147(a) of the Act of 1961. This contention has been controverted by the learned counsel for the respondent, who has canvassed for the correctness of the view taken by the High Court in the judgment under appeal.

13. It would appear from what has been discussed above that one of the essential requisites for proceeding under clause (a) of Section 147 of the Act of 1961 is that the income chargeable to tax should escape assessment because of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The present is not a case where the assessee had omitted or failed to file the return. Question then arises as to what has been omission or failure on the part of the assessee to make a full and true disclosure. There is nothing before us to show that in the return filed by the assessee-appellant, the particulars given were not correct. Form C under Rule 19 of the Indian Income-tax Rules, 1922 at the relevant time gives the form of return which had to be filed by the companies. Part V of that form deal with depreciation. The said part requires a number of columns to be filled in by the assessee. It has not been suggested that any of the information furnished or any of the particulars given in those columns by the appellant company were factually incorrect. Nor is it the case of the revenue that the appellant failed to furnish the particulars required to be inserted in those columns. Indeed, the copy of the return has not been filed and consequently no argument on that score could be or has been addressed before us. Part V of the form no doubt requires the assessee to state the written-down value in column no. (2). Such written-down value had to be specified without making into account the initial depreciation because such depreciation in terms of clause (vi) of Section 10(2) of the Act of 1922 could not be deducted in determining the written-down value for the purpose of that clause. The case of the appellant is that in determining the amount of depreciation at the time of the original assessment for the two assessment years in question, the Income-tax Officer relied upon the written-down value of the various capital assets as obtaining in the records of the department. This stand has not been controverted. When an Income-tax Officer relies upon his own records for determining the amount of depreciation and makes a mistake in doing so, we fail to understand as to how responsibility for that mistake can be ascribed to an omission or failure on the part of the assessee. It also cannot be disputed that initial depreciation in respect of items of capital assets in the shape of new machinery, plant and building installed or erected after the 31st day of March 1945 and before the 1st day of April 1956 is normally claimed and allowed. It seems that the Income-tax Officer in working the figures of depreciation for certain items of capital assets lost sight of the fact that the aggregate of the depreciation, including the initial depreciation, allowed under different heads could not exceed the original cost to the assessee of those items of capital assets. The appellant cannot be held liable because of this remissness on the part of the Income-tax Officer in not applying the law contained in clause (c) of the proviso to Section 10(2)(vi) of the Act of 1922. As observed by Shah, J. in Commissioner of Income-tax v. Bhanji Lavji [(1971) 79 ITR 582 :AIR 1971 SC 717], Section 34(1)(a) of the Act of 1922 [corresponding to Section 147(a) of the Act of 1961] does not cast a duty upon the assessee to instruct the Income-tax Officer on questions of law.

14. It may also be mentioned that so far as the assessment for the assessment year 1957-58 is concerned, the assessment order was once rectified and at another time revised. Despite such rectification and revision, the above mistake in the calculation of the depreciation remained undetected. It was only in October 1965 that the Income-tax Officer realised that higher amount of depreciation had been allowed to the appellant than was actually due. A letter to that effect was consequently sent to the assessee on October 5, 1965. It was, however, nowhere mentioned in that letter that the higher amount of depreciation had been allowed and the income as such had escaped

assessment because of the omission or failure on the part of the assessee to disclose truly and fully all material facts. Reference to such omission or failure came only in a subsequent communication. The submission made on behalf of the appellant is not without force that reference was made to assessee's omission or failure to disclose truly and fully all material facts because it was realised that after the expiry of four years from the end of the relevant assessment year, no action for reopening of assessment could be taken on the basis of detection of mistake alone unless there was also an allegation that the income had escaped assessment because of the omission or failure of the appellant to disclose fully and truly material facts. Looking to all the facts, we are of the opinion that it cannot be said that the excess depreciation was allowed to the appellant company and its income as such escaped assessment because of its omission or failure to disclose fully and truly all material facts.

15. It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. So far as income-tax assessment orders are concerned, they cannot be reopened on the score of income escaping assessment under Section 147 of the Act of 1961 after the expiry of four years from the end of the assessment year unless there be omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. As already mentioned, this cannot be said in the present case. The appeal is consequently allowed; the judgment of the High Court is set aside and the impugned notices are quashed. The parties in the circumstances shall bear their own costs throughout.

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