Indo-Aden Salt Mfg. & Trading Co. P. Ltd.

Vs

Commissioner of Income- Tax, Bombay

Civil Appeal Nos. 800 to 807 of 1974

(K. N. Singh, Sabyasachi Mukharji JJ)

12.03.1986

JUDGMENT

SABYASACHI MUKHARJI J. -

1. These appeals are by certificate from the decision of the High Court of Bombay dated June 21, 1973, whereby the Court had declined the application made under section 256(2) of the Income-tax Act, 1961 (hereinafter called "the Act"), wherein the assessee sought two questions to be referred to the High Court. The questions were :

> "(1) Whether, on the facts and in the circumstances of the case the reassessment proceedings under section 147(a) of the Income-tax Act, 1961, initiated by the Income-tax Officer for the assessment years 1955-56 to 1962-63 against the assessee were valid in law ?
>
> (2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the action under section 147(a) of the Income-tax Act, 1961, for the assessment years 1955-56 to 1962-63 ?"

The real question, therefore, is whether there were facts from which it could be believed that there was failure or omission to disclose fully and truly all material facts necessary for the assessment as a result of which income has escaped assessment. The assessment was sought to be reopened for the years 1955-56 to 1962-63 (for failure to disclose fully and truly all material facts). It is well-settled that the obligation of the assessee is to disclose only primary facts and not inferential facts - see Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191 (SC). There must be, therefore (a) full disclosure, and (b) true disclosure of all material facts. What facts are material for a particular case would depend upon the facts and circumstances of each case, and (c) there must be escapement of tax or under-assessment due to such failure or omission.

In this case, the reason for the belief of the Income-tax Officer was that the assessee had obtained depreciation at 6 per cent. on the assets which were masonry works but the assets really consisted of earth work wholly or substantially. If that was the position, then the assessee was not entitled to depreciation as was granted. The question is, whether the assessee had disclosed the nature of the masonry work and whether the nature of the asset had been fully and truly disclosed.

The assessee's case was that a partnership business carried on by M/s. Indo-Aden Salt Works Co. was taken over by the assessee by an agreement dated August 24, 1949, and during the assessment year 1950- 51 the said agreement dated August 24, 1949, as well as the valuation report had been

filed before the assessing authority. It is further the case of assessee that there was discussion on this valuation report. It further appears from the assessment order and the affidavit that the valuation report was discussed and the amount of depreciation was more or less agreed to between the parties. The Revenue's case, on the other hand, is that, which portion of the assets consisted of masonry work and which of earth work were not discussed or disclosed. The assessee's contention before the revenue authorities was that the primary facts were discussed fully and it was open to the Revenue to examine this aspect in greater detail and it was not possible after the lapse of such a long time to say actually whether what portion of asset consisted of earth work has been disclosed or not. It appears, however, from the order of the Tribunal that by its last letter addressed to the Income-tax Officer, the assessee had conveyed its agreement that, for the purpose of depreciation, the value should be taken as Rs. 20,31,000 in the aggregate, in the assessment. The Tribunal has further found that in granting depreciation, the Income- tax Officer did not discuss the point whether the assets were constructed of masonry or made of earth and the Income-tax Officer did not Exclude for depreciation the value of reservoirs, salt pans, piers and condensers and channels made of earth but allowed the depreciation claim of the assessee on the entire value of the reservoirs, salt pans, piers and condensers and channels at 6% even though these were only partly constructed of masonry and partly made of earth. The Tribunal has noticed that 93% of the construction work was made of earth and only 7% of masonry, and the fact that 41% of the piers were made of earth and only 59% of masonry was not challenged before the Appellate Assistant Commissioner and was not in dispute before the Tribunal. There is also no dispute that depreciation at 6% is available only in respect of such assets as are constructed of masonry and not if made of earth. It was also not in dispute that depreciation on piers is available at 12% only if constructed entirely or mainly of wood. The fact that for the assessment years 1955-56 to 1962-63, excessive depreciation allowance had been allowed in the original assessments and income chargeable to tax had escaped assessment and/or was under assessed for these years was also not in dispute.

The only question, therefore, is, whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and further whether such income had escaped assessment and whether such escapement or underassessment had been caused as a result of the failure or omission on the part of the assessee to disclose fully and truly all material facts. What facts are material facts would depend upon the facts and circumstances of a particular case. This follows from the scheme of the section and is well-settled by the authorities of this court.

It is the admitted position that the assessee had not disclosed either by a valuation report or by a statement before the Income-tax Officer as to what portion consisted of earth work and what portion or proportion consisted of masonry work. For the purpose of calculating depreciation, that indubitably was a material fact. If excess depreciation has been allowed on that basis, i.e., that the entirety of the work consisted of masonry work, income might have been under- assessed. The Income-tax Officer can reasonably be said to have material to form that belief. That position is also well-settled by the scheme of the section and concluded by authorities of this court.

The assessee's contention is that the Income-tax Officer could have found out the position by further probing. That, however, does not exonerate the assessee to make full disclosure truly. Explanation 2 to section 147 of the Act makes the position abundantly clear. The principles have also been well-settled and reiterated in numerous decisions of this court : See Kantamani Venkata Narayana & Sons v. First ITO [1967] 63 ITR 638 (SC) and ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC). Hidayatullah J., as the learned Chief Justice then was, observed in Calcutta Discount Co.'s case [1961] 41 ITR 191 (SC) that mere production of evidence before the Income-tax Officer was not enough, that there may be omission or failure to make a true and full disclosure, if some material for

the assessment lay embedded in the evidence which the Revenue could have uncovered but did not, then it is the duty of the assessee to bring it to the notice of the assessing authority. The assessee knows all the material and relevant facts - the assessing authority might not. In respect of the failure to disclose, the omission to disclose may be deliberate or inadvertent. That was immaterial. But if there is omission to disclose material facts, then, subject to the other conditions, jurisdiction to reopen is attracted. It is sufficient to refer to the decision of this court in Calcutta Discount Co.'s case [1961] 41 ITR 191 (SC) where it had been held that if there are some primary facts from which a reasonable belief could be formed that there was some non-disclosure or failure to disclose fully and truly all material facts, the Income-tax Officer has jurisdiction to reopen the assessment. This position was again reiterated by this court in Malegaon Electricity Co. P. Ltd. v. CIT [1970] 78 ITR 466 (SC).

Furthermore, bearing these principles in mind, in this particular case, whether there has been such non-disclosure of primary facts which has caused escapement of income in the assessment was basically a question of fact.

The High Court was right in declining to call for a statement of case on a question of law. The appeals, therefore, fail. However, there will be no order as to costs.

Appeals dismissed.

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