Claggett Brachi Co. Ltd

Vs

Commissioner of Income-Tax, A.P.

Civil Appeals Nos. 208 and 209 of 1975

(CJI R. S. Pathak, Rangath Misra JJ)

26.04.1989

JUDGMENT

R. S. PATHAK C.J.I. –

1. These appeals by special leave are directed against the judgment of the High Court of Andhra Pradesh answering the following two question of law in favour of the Revenue and against the assessee:

> "(1) Whether the Tribunal was right in holding that the reassessments being only consequent to a change as to the method of computation of the profits the initiation of proceedings under section 148 for each of the assessment years 1959-60 and 1960-61 was justified ?
>
> (2) Whether the Tribunal was right in law in holding that the original assessment for each of the years having been made on the agents. The reassessment proceedings could not be initiated against the assessee direct ?"

The appellate assessee is a non resident sterling company whose business consists in the purchase of tobacco from India and its sale outside. The tobacco is sole directly on the assessee's own account and for commission on behalf of others. The purchases of tobacco were effected through the British India Corporation Ltd. Guntur who were appointed agents of the assessee under section 43 of the Indian Income-tax Act, 1922. For the assessment years 1959-60 and 1960-61 the agents filed returns of income on behalf of the assessee. The Income- tax Officer. Guntur after examining the balance sheet and profit and loss account of the assessee for the relevant previous years, the calendar years 1958 and 1959, completed the assessment under section 23(3) of the Indian Income-tax Act, 1922. For the year 1958 the gross profit on the sale of Indian tobacco including commission, was shown in the balance sheet and profit and loss account of the assessee at $11,108. As the assessee carried on business not only in India but in other places also, the Income-tax Officer worked out the proportionate overhead expenses of the assessee for its business in India at $ 16,760 taking the total sales of tobacco at $ 5,34,031 and the sales of Indian tobacco at $ 4.48,590. The Income-tax Officer computed the loss at $ 5,652 and one half of this amount, namely $ 2,826 (Rs. 37,680) was taken as the adjusted loss being the percentage attributable to the purchasing operation in India. On the same basis for the assessment year 1960-61, after setting off the income against the previous loss. The total loss was found to be Rs. 96,482.

Subsequently, in the course of assessment proceedings for the assessment year 1962-63, the Income-tax Officer appears to have noticed that a mistake had been committed in the computation of the

overhead expenditure, the return filed on behalf of the assessee for that year had disclosed that the overhead expenses were attributable to the entire business of the assessee, including the business as commission agents, and not merely for the business of purchase and sale of tobacco. The Income-tax Officer believed that he ought to have first computed the proportionate overhead expenses in relation to the total profits by taking the proportion which out the proportionate overhead expenses for the profits arising out of the Indian sales. On that basis, he determined that the adjusted profits would be $ 160 (Rs. 2,253) and that this would have to be substituted in place of the loss of Rs. 37,680 arrived in the original assessment. Similarly for the assessment year 1960-61 the Income-tax Officer realised that the original assessment would have to be varied accordingly, being of the opinion that income had escaped assessment for the two assessment years 1959-60 and 1960-61 he issued notices on January 18,1964 under section 148 of the Income-tax Act, 1961, to the statutory agents. The agents contested the validity of the notices and contended that in view of section 149(3) of the Act, no notice of reassessment could be served on the agent of a non-resident assessee after the expiry of two years from the end of the relevant assessment year. The Income-tax Officer upheld the objection and dropped the proceedings.

Thereupon the Income-tax Officer issued notice under section 148 for the two assessment years directly to the assessee to their London address on February 29,1965. The assessee filed returns on August 19,1964, for both the years under protest, contending that it could not be served with those notices inasmuch as the Income-tax Officer had already proceeded against its agents. The Income-tax Officer rejected the objections and made reassessments on the assessee for the two assessment years.

The appeals filed by the assessee before the Appellate Assistant Commissioner were dismissed, but in second appeal, the Income-tax Appellate Tribunal took the view that the reassessments proceeded on a mere change of opinion on the part of the Income-tax Officer and, therefore, we with out jurisdiction and further as the assessments had been made originally on the agents, it was not open to the Income-tax Officer to proceed directly against the assessee. Accordingly the Appellate Tribunal allowed the appeals and set aside the reassessments made on the assessee.

At the instances of the Revenue, the Appellate Tribunal referred the two questions of law set forth earlier, to the High Court of Andhra Pradesh for its opinion. On the first question, the High Court held that it was not a mere change of opinion on the part of the Income-tax Officer pursuant to which he made the reassessments, but that the Income-tax Officer had received information subsequent to the original assessments from the records of the subsequent assessment year that the overhead expenses related to the entire business. Including the business as commission agents, and not merely to the business of purchases and sales of tobacco. On the second question, the High Court held that there was nothing to prevent the Income-tax Officer, when he found that reassessment proceedings could not be taken against the agents. from proceeding directly against the assessee and reassessing it for the two assessment years.

Two points have been urged before us by learned counsel for the assessee. It is contended that the Income-tax Officer has no jurisdiction to take proceedings under sections 147 and 148 of the Income-tax Act because the conditions prerequisite for making the reassessments were not satisfied. The reassessments were made with reference to clause (b) of section 147 of the Act, and apparently the Income-tax Officer proceeded on the basis that in consequence of information in his possession, he had reasons to believe that income chargeable to tax had escaped assessment for the two assessments years. From the materiab before us it appears that the Income-tax Officer came to realised that income had escaped assessment for a subsequent assessment year. While making that

assessment, he came to know from the documents pertaining to that assessment that the overhead expenses related to the entire business including the business as commission agents and were not confined to the business of purchase and sale. It is true, as the High Court has observed, that this information could have been acquired by the Income-tax Officer if he had exercised due diligence at the time of the original assessment itself. If does not appear, however, that the attention of the Income- tax Officer was directed by anything before him to the facts that the overhead expenses related to the entire business. The information derived by the Income-tax Officer evidently came into his possession when taking assessment proceedings for the subsequent year. In the circumstances, it cannot be doubted that the case falls within the terms of clause (b) of section 147 of the Act, and that, therefore, the High Court is right in holding against the assessee.

The second point urged before us is that when the Income-tax Officer had taken the assessment proceedings against the Indian agent of the assessee, it was not open to him to take assessment proceeding against the assessee. It is open to an Income-tax Officer to assets either a nonresident assessee or to assess the agent of such non resident assessee. It cannot be disputed also that if an assessment is made on one there can be no assessment on the other, and therefore, in this case if the assessment had been made on the Indian agent, the assessment could not have been made on the assessee. However, facts show that the reassessment proceedings commenced against the agent were found to be barred by time by reason of section 149(3) of the Act. The issue of notice under section 148 of the Act to the agent after the expiry of two years from the end of the relevant assessment year is prohibited by the statue. The Income-tax Officer dropped the proceedings when he was made aware of that prohibition. The assessment proceedings taken by him against the agent have to be ignored and cannot operate as a bar to assessment proceedings directly against the assessee. On this point also, the High Court has taken the correct view when it answered the question in favour of the Revenue.

In the result the appeals fail and are dismissed with costs. Appeals dismissed.

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