Income Tax Officer, Cuttack and Others

Vs

Biju Patnaik

Civil Appeal No.571 (NT) of 1976

(CJI S. Ranganath Misra, P.B. Sawant, K.Ramaswamy JJ)

7.12.1990

JUDGMENT

K. RAMASWAMY J

1. By proceeding dated January 21, 1959 the respondent was assessed to income-tax for the assessment year 1957-58 ending with financial year March 31, 1957. On transfer on point of jurisdiction, the Income-tax Officer, Special IV Circle, Cuttack had drawn his proceeding on July 2, 1965 to reopen the assessment under Sections 147(a) and 148 of the Income-tax Act, 1961 (for short 'the Act) and obtained the approval of the Commissioners of Income-tax, Cuttack, Bihar and Calcutta thus: .

> "The assessee sold his mining business during the relevant accounting year to a Company named Messrs. B. Patnaik Mines (P.) Ltd. and earned a profit of Rs. 15 lakhs which was assessable as capital gains but was not shown by the assessee in his return. The transfer of the business was stated by the assessee to have been made on 31-3-1956 and as such the amount of capital gains was not liable to taxation, it was claimed by the assessee since capital gains was not subjected to taxation in the assessment year 1956-57. But from information now available it appears that the transfer of the business took place on 3-11-1956 and thus the assessee was liable to be taxed on the capital gains earned in the accounting year ended 31-3-1957. Hence action under Section 147(a) is required to assess the said sum of R.s. 15 lakhs which escaped assessment."

2. The respondent was called upon by notice dated July 31, 1965 to deliver within 30 days from the date of the service of the notice a return in the prescribed form of the income assessable for the assessment year 1957-58 and on failure thereof the notice dated September 17, 1965 under S. 142(1) was followed to produce or caused to be produced the relevant records before the officer. Calling in question and to quash the notices the respondent filed writ petition under S. 226 of the Constitution. The learned single Judge by judgment dated February 7, 1973, dismissed the writ petition upholding the validity of the notice under S. 147 of the Act. On appeal the Division Bench by judgment dated November 27-28, 1974, while upholding the exercise of the power under S. 147(a) of the Act held that the income derived by the respondent was towards sale of goodwill and that, therefore, the income was not liable to capital gains tax and the impugned notices were quashed. The High Court granted leave under Art. 133 (1)(a) & (b) of the Constitution. Thus this appeal.

3. The contention of Dr. Pal, the learned counsel for the respondent is that the Income-tax Officer merely communicated the notice without complying with the provisions of S. 147(a) read with S. 148 of the Act. The Income-tax Officer must have reason to believe that the income for the relevant assessment Year had escaped assessment and that the escapement of the income was on account of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year. The sum of Rs. 15,00,000/- received by the respondent was consideration for the transfer of the goodwill of the business as an on-going concern. The Income-tax Officer has no reason to believe that the income had escaped assessment for that year. The findings of the Courts below that the respondent failed to disclose the material facts that the transfer of the goodwill took place on November 3, 1956 and a sum of Rs. 15,00,000/- escaped assessment was not correct. Even otherwise, as per findings of the Division Bench, it was not liable to tax. Therefore, the condition precedent, namely, that the Income-tax Officer is satisfied that the escapement was due to omission or failure to disclose the material facts was not made out. Since the receipt of a sum of Rs. 15,00,0001- was consideration for the transfer of the goodwill, it was not liable to capital gains tax.-The satisfaction arrived at by the Income-tax Officer under S. 147(a) did not exist on the facts of the instant case. The impugned notices under S. 147(a) read with S. 148 and S. 142(1) of the Act are without jurisdiction and illegal. Shri Ahuja, the learned counsel appearing for the revenue resisted these contentions and contended that the learned single Judge has rightly found all the facts against the respondent and that the Division Bench was not justified in law in reversing the well considered judgment of the learned single Judge.

4. Section 12-B of the Indian Income-tax Act, 1922 making capital gains exigible to tax had come into force with effect from April 1, 1957. Therefore, for the assessment year 1956-57 ending with financial year March 31, 1956 the capital gains was not exigible to tax. It is not also in dispute that the respondent claimed that the income of Rs. 15,00,000/-was received before March 31, 1956. Consequently the Income-tax Officer did not assess Rs. 15,00,000 / - to capital gains tax. By agreement dated November 3, 1956 the assets and goodwill of the Mining business of the respondent was transferred to M/s. B. Patnaik Mines(P.)Ltd. for a consideration of Rs. 15,00,000/- payable in instalments. The Income-tax Department subsequently came Into possession of this information through the Director of Mines, by letter dated June 29, 1965. On the basis of this information the aforestated proceedings to reopen the assessment has been drawn by the Income-tax Officer. Section 147(a) of the Act postulates two conditions, namely, that the Income-tax Officer must, on the basis of material facts on record, prima facie, be satisfied that the income of the assessee is exigible to tax for that relevant assessment year and that he had reason to believe that it had escaped assessment. He must have reason to believe that the escapement of income was on account of the omission or failure on the part of the assessee to fully and truly disclose all the material facts necessary for the assessment. Both the conditions are conditions precedent to the exercise of the jurisdiction under S. 147(a) read with S. 148. This is so laid by this Court in Calcutta Discount Co. Ltd. v. I.T.O., (1961) 41 ITR 191 : (AIR 1961 SC 372) and host of later decisions.

5. The learned single Judge found that the material on record would show that the Income-tax Officer had before him the material that the respondent had a sum of Rs. 15,00,000/- as capital gains by transferring his mining business to a limited company during the accounting year ended on March 31, 1957 which has escaped assessment. The respondent had stated that he received the amount before March 31, 1956 from the material which had come to the possession of the Income-tax Officer, but was not available at the time of original assessment, disclosed that the date of transfer of the business under law fell during the accounting year ended on March 31, 1957. Hence it was necessary to reopen the assessment for the year 1957-58. This finding was affirmed by the Division Bench.

6. It is undoubtedly true that the notice does not prima facie disclose the satisfaction of the two conditions precedent enjoined under S. 147(a), but in the Counter Affidavit filed by the Income-tax Officer in the High Court he stated all the material facts. The respondent had inspected the record and the record also bears out the existence of the material facts. The proceedings drawn which was abstracted earlier also shows that the Income-tax Officer had applied his mind to the facts on record and was prima facie satisfied that reopening of the assessment for the assessment year 1957-58 was needed due to those stated facts. Thus though ex facie the disclose does not disclose the satisfaction of the requirement of S. 147(a), but from the record and the averments in the counter affidavit it is clear that the Income-tax Officer had applied his mind to the facts and after prima facie satisfying himself of the existence of those two conditions precedent reached the conclusion to reopen the assessment. It is settled law that in the administrative action, though the order does not ex facie disclose the satisfaction by the officer of the necessary facts, but if the record discloses the same, the notice or the order does not per se become illegal.

7. We reject the contention of Dr. Pal, that the Income-tax Officer had no reason to believe that the income had escaped assessment for the relevant accounting year for the reasons mentioned by the Income-tax Officer in the proceedings drawn on July 2, 1965. It is also clear therefrom that the escapement of assessment was on account of the omission or failure on the part of the respondent to disclose the material fact truly and fully. It is the contention of the respondent, before making assessment, that the income was received before March 31, 1956 by which date S. 12-B of the Income-tax Act had not come into force. Accepting the sum of Rs. 15,00,000/- was excluded from the consideration of the assessment. The subsequent information in possession of the Income-tax Officer discloses that the assets were transferred on November 3, 1956 by which date Section 12-B, came into force.

8. It is true that the Division Bench has stated in the judgment that it repeatedly enquired the counsel for the revenue whether the income was towards the transfer of goodwill of the mining business as on-going concern or the capital receipt and that no satisfactory reply was given by the counsel. We are afraid that it is not correct to reach at conclusion or to record a finding on the basis of indecisiveness of the counsel for revenue to make a positive statement or a wrong concession that the sum of Rs. 15,00,000/- was received towards consideration for sale of goodwill of the on-,going mining business. The Division Bench, therefore, has committed illegality in reaching the above conclusion Whether assets and goodwill together were transferred or the goodwill alone was transferred as on-going concern of the mining business is a matter yet to be gone into by the Income-tax Officer. It is open to the respondent to place all the necessary material facts and the Income-tax Officer is free to consider the material and to make a decision in that regard. The Division Bench rested its conclusion on the ground that since income derived was for the transfer of the goodwill of the business as on-going concern as it is not capital gain and that, therefore, is not exigible to tax. It is premature, on the facts and circumstances in this case to reach such a decision. We are clearly of the opinion that the Division Bench committed grave error of law in holding that the notice under Ss. 148 and 142 are vitiated on account of the above conclusion. It is open to the respondent to submit his return and all the necessary materials in support of his case and the Income-tax Officer is free to consider on merits and pass the assessment order in accordance with law. It is made clear that any observations made here or by the High Court shall not be construed to mean any opinion expressed by this Court on merits. It is limited only for the purpose of finding the legality of the exercise of the power under Ss. 147(a) and 142. The Income-tax Officer had validly and legally exercised his jurisdiction and reopened the assessment for the assessment year 1957-58. The judgment of the Division Bench is set aside and that of the single Judge is restored.

9. The appeal is allowed, but in the circumstances without costs.

Appeal allowed.

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