

Central Provinces Manganese Ore Co. Ltd.

Vs

I.-T.O. Nagpur

Civil Appeal No. 565 of 1976

(Kuldip Singh, K. Ramaswamy JJ)

20.08.1991

JUDGEMENT

KULDIP SINGH, J.:-

1. The appellant company carries on the business of exporting manganese ore to England and United States of America. The Income-tax Officer, Nagpur issued a notice dated March 20, 1970 under S. 148 of the Income-tax Act, 1961 (hereinafter called the 'Act') stating that he had reasons to believe that the income of the appellant chargeable to tax for the assessment year 1953-54 had escaped assessment within the meaning of S. 147 of the Act. The company was called upon to show cause why it should not be reassessed to income for the said year. The appellant-company challenged the notice by way of writ petition under Art. 226/227 of the Constitution of India before the Nagpur Bench of the RP may High Court. The High Court by its judgement dated August 5, 1975 dismissed the writ petition with costs. This appeal via special leave petition is against the said judgment of the High Court.

2. The relevant facts are hereinafter. The appellant is a non-resident company having its office in London. It has its office in India at Nagpur. The appellant is assessed to income tax at Nagpur and it has been the practice of the appellant-company to produce before the Income-tax Officer the relevant books which are kept by the local office at Nagpur, the balance sheets, the trade account and the profit/ loss account from their head office in London. It appears that sometime in 1958 the custom authorities came to know that the appellant company had declared very low prices in respect of all the consignments of manganese ore exported by them out of India. It is also found that most of the export was only to three buyers who in turn did not purchase manganese ore from any other company except the appellant. After due enquiries/ investigation the custom authorities found that the appellant was systematically showing lesser value for the manganese ore exported as compared with the prevailing market price for the same grade of manganese ore.

3. The Collector, Customs, Visakhapatnam by an order dated March 2, 1959 held that there was under-invoicing by the appellant to the tune of Rs. 78 lacs. The said order of the Collector was, however, set aside in appeal and the matter was remanded to the Collector for rehearing. In the final order passed by the Collector of Customs dated November 16, 1972, under-invoicing was shown to the tune of about Rs. 44/45 lacs. It is thus obvious that the custom authorities came to the conclusion that the prices mentioned in the relevant contracts between the appellant and the buyers were less than the contemporaneous market prices. The custom authorities, thus, found as a fact that the appellant-company was indulging in under-invoicing.

4. The Income-tax Officer, on coming to know about the pendency of proceedings before the

Collector of Customs, issued a notice dated March 20, 1970 under S. 148 of the Act. In the notice the reasons on the basis of which he entertained the necessary belief as required under S. 147 of the Act, were not given, however, along with the return filed on behalf of the revenue before the High Court, the reasons which led to the issue of notice under S. 148 on the grounds mentioned under S. 147(a) of the Act were disclosed. It is not disputed that the reasons need not be set out in the notice and the same can be produced before the Court.

5. Section 147 of the Act provides for assessment or reassessment in cases where income has escaped assessment. The Revenue's right to take action under the section is subject to the conditions laid down therein. The requisite conditions provided under S. 147(a) at the relevant time were as under:

The Income-tax Officer should have reason to believe that income has "escaped assessment" by reason of omission or failure on the part of the assessee.

(i) to make return of his income under the relevant provisions of the Act; or

(ii) to disclose fully and truly all material facts necessary for his assessment for the year.

6. Section 147(b) of the Act on the other hand required that the Income-tax Officer should have, in consequence of information in his possession, reason to believe that income has "escaped assessment."

7. It is not disputed that in the year 1970 the Income-tax Officer had no jurisdiction to issue notice under S. 148 on the grounds contained under S. 147(b) of the Act as the period of limitation for the issue of such notice provided under the Act had expired. There was however no bar at that point of time to issue the said notice on the grounds under S. 147(a) of the Act.

8. Mr. V. Rajagopal, Senior Advocate, learned counsel for the appellant has contended that the Income-tax Officer could not have reason to believe that there was omission or failure on the part of the appellant to disclose fully and truly all material facts necessary for the assessment and that the income chargeable to tax had escaped assessment. According to him, it was not the practice with the appellant to produce the account books from their head office in London before the Income-tax Officer. The appellant-company produced before the Income-tax Officer the balance sheets, profit and loss account and all other necessary records required for the purpose of assessment. According to the learned counsel the only material before the Income-tax Officer was the original order of the Collector of Customs wherein it was held that the appellant had indulged in under-invoicing, resulting in declaring lesser price than the prevailing market price. The learned counsel contended that the order of the Collector could at the most be an information within the ambit of S. 147(b) of the Act but it could not be the basis or the reason to entertain the belief as required under S. 147(a) of the Act.

9. The only question which arises for our consideration is whether the two conditions required to confer jurisdiction on the Income-tax Officer under S. 147(a) of the Act have been satisfied in this case. The first is that the Income-tax Officer must have reason to believe that the income chargeable to income tax had been under assessed and the second that such under assessment has occurred by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the year 1953-54.

10. So far as the first condition is concerned, the Income-tax Officer, in his recorded reasons, has relied upon the fact as found by the Custom Authorities that the appellant under-invoiced the goods he exported. It is no doubt correct that the said finding may not be binding upon the Income-tax authorities but it can be a valid reason to believe that the chargeable income has been under-assessed. The final outcome of the proceedings is not relevant. What is relevant is the existence of reasons to make the Income-tax Officer believe that there has been under-assessment of the assessee's income for a particular year. We are satisfied that the first condition to invoke the jurisdiction of the Income-tax Officer under S. 147(a) of the Act was satisfied.

11. As regards the second condition the appellant did not produce the books of accounts kept by them at their head office in London nor the original contracts of sale which were entered into at London with the buyers. The appellant did not produce before the Income-tax Officer any of the accounts which related to the foreign buyers. No reasons were given for the supply of manganese ore at a lower than the market rate. It is for the assessee to disclose all the primary facts before the Income-tax Officer to enable him to account the true income of the assessee. The proven charge of under-invoicing per se satisfy the second condition. The appellant's assessable income has to be determined on the basis of the price received by it for the goods exported. If the true price has not been disclosed and there was under-invoicing the logical conclusion prima facie is that there has been failure on the part of the appellant to disclose fully and truly all material facts before the Income-tax Officer. We are, therefore, satisfied that both the conditions required to attract the provisions of S. 147(a) have been complied with in this case.

12. Mr. V. Rajagopal further argued that in fact the notice was issued under S. 147(b) of the Act and not under S. 147(a) of the Act. We are unable to accept this contention. Although the notice only mentioned S. 147 of the Act without indicating whether it was under S. 147(a) or 147(b), but the reasons recorded by the Income-tax Officer on February 26, 1970 which run into more than 20 pages specifically state that the proposed action was under S. 147(a) of the Act. Even otherwise we are satisfied that the material on the record and the reasons recorded by the Income-tax Officer justify the issue of the notice under S. 147(a) of the Act.

13. We, therefore, dismiss the appeal with costs which we quantify as Rs. 15,000/-

Appeal dismissed.

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