

Central Provinces Manganese Ore. Co. ... vs I.T.O Nagpur on 20 August, 1991

Equivalent citations: 1992 AIR 567, 1991 SCR (3) 627, AIR 1992 SUPREME COURT 567, 1992 AIR SCW 194, 1992 TAX. L. R. 317, (1991) 3 JT 452 (SC), (1991) 3 SCR 627 (SC), (1991) 59 TAXMAN 17, 1991 (3) SCR 627, 1991 (3) JT 452, 1991 (2) UPTC 1100, 1991 (4) SCC 166, 1991 KERLJ(TAX) 727, (1991) 191 ITR 662, (1991) 98 CURTAXREP 161

Author: Kuldip Singh

Bench: Kuldip Singh, K. Ramaswamy

PETITIONER:

CENTRAL PROVINCES MANGANESE ORE. CO. LTD.

Vs.

RESPONDENT:

I.T.O NAGPUR

DATE OF JUDGMENT 20/08/1991

BENCH:

KULDIP SINGH (J)

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RAMASWAMY, K.

CITATION:

1992 AIR 567	1991 SCR (3) 627
1991 SCC (4) 166	JT 1991 (3) 452
1991 SCALE (2) 362	

ACT:

Income Tax Act, 1961: Sections 147(a) and 148- Reassessment-Assessee exporting manganese ore--Customs authorities detecting under-invoicing--Whether a valid reason for income-tax authorities to believe that income escaped assessment--Proven charge of under-invoicing--Whether amounts to failure on assessee's part to disclose truly all material facts--Notice for reassessment--Validity of.

HEADNOTE:

The appellant, a non-resident company, was carrying on

the business of exporting manganese ore, and was assessed to income-tax for the assessment year 1953-54. Subsequently, on coming to know that proceedings for under-invoicing were pending against the appellant before the Customs Authorities, the respondent, the Income-Tax Officer issued a notice under Section 148 of the Income-Tax Act, 1961 to the appellant 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 Section 147 of the Act and called upon the appellant to show cause as to why it should not be re-assessed to income. The appellant's writ petition challenging the notice was dismissed by the High Court.

In the appeal before this Court on behalf of the appellant company, it was contended that 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, which could at the most be an information within the ambit of Section 147 of the Act, but could not be the basis or the reason to entertain the belief, as required under Section 147(a) of the Act and that the notice had been issued under Section 147(b) and not under Section 147(a).

Dismissing the appeal, this Court,

HELD: 1.1 Two conditions are required to confer jurisdiction on the Income Tax Officer under Section 147(a) of the Income-Tax Act, 1961. The first is that the Income-Tax Officer must have reason to..

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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. [631F]

1.2 In the instant case, the Income-Tax Officer in his recorded reasons, has relied upon the facts as found by the Customs Authorities that the appellant under-invoiced the goods he exported. Though the said finding may not be binding upon the Income-Tax Authorities, 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. There should be 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. Thus, the first condition was satisfied. Secondly, the appellant-company did not produce the books of accounts kept by it at its head office located outside the country, nor the original contracts of sale which were entered into with the buyers at that place, or any of the accounts which related to the foreign banks. No reasons were given for the supply of manganese ore at 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. Thus, the proven charge of under-invoicing per se satisfies the second condition. [631G-H, 632A-C]

1.3 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 had 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. In the circumstances, both the conditions required to attract the provisions of Section 147(a) have been complied with. [632D]

2. Although the notice only mentioned Section 146 of the Act without indicating whether it was under Sub-Section(a) or Sub. Section (b) the reasons recorded by the Income-Tax Officer specifically state that the proposed action was under Section 147(a)i of the Act. Even otherwise, the material on record and the reasons recorded by IncomeTax Officer justify the issue of the notice under Section 147(a) of the Act. [632F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 565 of 1976.

From the Judgment and Order dated 5.8.1975 of the Bombay High Court in Special Civil Application No, 429 of 1970. K. Rajgopal, pardeep Rajgopal, Ms. Rekha Rajgopal M.S. Ganesh and S. Sukumaran for the Appellant.

Dr. V. Gauri Shankar, M. Arora and Ms. A. Subhashini for the Respondent, The Judgment of the Court was delivered by KULDIP SINGH, J. 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 Section 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 Section 147 of the Act. The company was called upon to show cause why it should not be re-assessed to. income for the said year. The appellant company challenged the notice by way of writ petition under Article 226/227 of the Constitution of India before the Nagpur bench of the Bombay High Court. The High Court by its judgment 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. 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 customs 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 was 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.

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 re-hearing. 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 lesser than the contemporaneous market prices. The custom authorities thus found as a fact that the appellant company was indulging in under-invoicing.

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 Section 148 of the Act. In the notice the reasons on the basis of which he entertained the necessary belief as required under Section 147 of the Act, were not given, however, alongwith the return filed on behalf of the revenue before the High Court, the reasons which led to the issue of notice under Section 148 on the grounds mentioned under Section 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.

Section 147 of the Act provides for assessment or re-assessment 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 Section 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.

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"'.

It is not disputed in the year 1970 the Income Tax Officer had no jurisdiction to issue notice under Section 148 on the grounds contained under Section 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 Section 147(a) of the Act.

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 Section 147(b) of the Act but it could not be the basis or the reason to entertain the belief as requires under Section 147(a) of the Act.. The only question which arises for our consideration is whether the two conditions required to confer jurisdiction on the Income Tax Officer under Section 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.

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 Section 147(a) of the Act was satisfied.

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 Section 147(a) have been complied with in this case. Mr. V. Rajagopal further argued that in fact the notice was issued under Section 147(b) of the Act and not under Section 147(a) of the Act. We are unable to accept this contention. Although the notice only mentioned Section 147 of the Act without indicating whether it was under Section 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

Section 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 Section 147(a) of the Act.

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

N.P.V.
missed.

Appeal dis -