

Income-Tax Officer, Calcutta vs M/S. Selected Dalurband Coal Co. Pvt. ... on 29 March, 1995

Equivalent citations: AIR1995SC1934, (1997)10SCC68, AIR 1995 SUPREME COURT 1934, 1995 (4) SCC 255, 1995 AIR SCW 2988, (1995) 3 RECCRIR 692, (1995) 3 ALLCRILR 708, (1995) 2 EASTCRIC 687, (1995) 2 CHANDCRIC 133, (1995) 2 CRICJ 175, 1995 SCC(CRI) 708, (1995) 2 CURLJ(CCR) 717, (1995) 3 CURCRIR 2, 1995 CRILR(SC&MP) 563, 1996 SC CRIR 323, (1995) 7 JT 350 (SC), (1996) 33 ALLCRIC 13, 1995 CRILR(SC MAH GUJ) 563

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Bench: B.P. Jeevan Reddy

JUDGMENT

1. This appeal is preferred against the Judgment of the Division Bench of the Calcutta High Court dismissing a Letters Patent Appeal preferred by the Revenue against the Judgment of a learned Single Judge. The learned Single Judge had allowed the writ petition filed by the respondent-assessee challenging the validity of notices issued under Section 148 read with Section 147(a) of the Income-tax Act. We are concerned herein with three Assessment Years, viz., 1961-62, 1963-64 and 1965-66. For the year 1961-62, the notice under Section 148 was issued on March 12, 1970, whereas in respect of the other two Assessment Years, they were issued on 6th November, 1990. The said notices were issued by the Income-tax Officer on the basis of the letter dated January 30, 1969 addressed by the Chief Mining Officer to him. The letter reads as follows:

Sub: Under reporting of coal raising and shortage of surface coal stock by selected Samla Colliery, Owner M/s. Selected Dalurband Coal Co. Pvt. Ltd., 137, Cotton Street, Calcutta.

A joint inspection was made in the Colliery mentioned above on 9-1-1967 by Sri K.S. Gupta, Assistant Coal Superintendent, Rangunje Division and Sri Suniti Kumar Sarka, Mining Officer of this Mining Estates Branch, Directorate of Mines and Minerals.

As a result of underground measurement it was revealed that the Colliery Co. under reported the raising figure to the following extent during the period from 1956 to 9-1-1967.

Gr. 1 : 1.36.390 M.T. Shortage of surface coal stock was also detected to the extent of 387 M. T. of Gr. I Coal on 9-1-1967.

It has been decided to charge royalty on the aforesaid quantity of coal by the Government of West Bengal.

This is for your information and necessary action.

2. After receiving the said letter, the Income-tax Officer recorded the reasons as required by Sub-section (2) of Section 148 and thereafter issued the aforesaid notices. Soon after receiving the notices, the assessee approached the High Court of Calcutta by way of writ petition, with the result mentioned above.

3. It is well settled by various decisions of this Court that the notice under Section 148 read with Section 147 can be issued only where the Income-tax Officer has reason to believe that the income profits or gains chargeable to tax had been under-assessed or escaped assessment and further that such escapement or under assessment was occasioned by reason of the failure of the assessee to disclose fully and truly all material facts necessary for the assessment of that year. (We are not concerned with Clause (b) of Section 147 here but only with Clause (a). In other words, there must be relevant material before the assessing officer upon which he must reasonably and rationally form the requisite opinion (belief). The question, therefore, is whether the letter of the Chief Mining Officer aforesaid does not constitute relevant material upon which the Income-tax Officer could have formed the requisite belief? It must be remembered that the formation of belief by the Income-tax Officer is essentially within his subjective satisfaction.

4. After hearing the learned Counsel for the parties at length, we are of the opinion that we cannot say that the letter aforesaid does not constitute relevant material or that on that basis, the Income-tax Officer could not have reasonably formed the requisite belief. The letter shows that a joint inspection was conducted in the colliery of the respondent on January 9, 1967 by the officers of the Mining Department in the presence of the representatives of the assessee and according to the opinion of the officers of the Mining Department; there was under reporting of the raising figure to the extent indicated in the said letter. The report is made by Government Department and that too after conducting a Joint inspection. It gives a reasonably specific estimate of the excessive coal mining said to have been done by the respondent over and above the figure disclosed by it in its returns. Whether the facts stated in the letter are true or not is not the concern at this stage. It may well be that the assessee may be able to establish that the fact stated in the said letter are not true but that conclusion can be arrived at only after making the necessary enquiry. At the stage of the issuance of the notice, the only question is whether there was relevant material, as slated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was invalid. Inasmuch as, as a result of our order, the reassessment proceedings have now to go on we do not and we ought not to express any opinion on merits.

5. For the above reasons, the appeal is allowed. The orders of the High Court are set aside. The reassessment shall now go on according to law and as expeditiously as possible. No costs.