Indo-Aden Salt Mfg. & Trading Co. Pvt. ... vs Commissioner Of Income Tax, Bombay on 12 March, 1986

Equivalent citations: 1986 AIR 1857, 1986 SCR (1) 627, (1986) 1 SCJ 562, AIR 1986 SUPREME COURT 1857, 1986 TAX. L. R. 876, 1986 SCC (SUPP) 279, (1986) 25 TAXMAN 356, 1986 UJ(SC) 2 480, (1986) JT 642 (SC), 1986 20 TAX LAW REV 355, 1986 SCC (TAX) 579, 1986 UPTC 908, 1986 TAXATION 82 (2) 1, (1986) 2 CURCC 33, (1986) 159 ITR 624, (1986) 2 SUPREME 257, (1986) 58 CURTAXREP 9, 1986 BOM LR 88 202

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, K.N. Singh

PETITIONER:
INDO-ADEN SALT MFG. & TRADING CO. PVT. LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, BOMBAY

DATE OF JUDGMENT12/03/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
SINGH, K.N. (J)

CITATION:
1986 AIR 1857 1986 SCR (1) 627
1986 SCC Supl. 279 JT 1986 642
1986 SCALE (1)555

ACT:
Jurisdiction to reopen assessment by the Income Tax Officer, when arises - Reopening assessment on the ground that the assessee had obtained depreciation at 6 per cent on the assets as masonry works, but the assets consisted of earth work wholly or substantially - Whether escaped assessment Duty of the assessee to disclose primary facts and truly Income Tax Act, 1961, section 147 (a).

HEADNOTE:

A partnership firm business carried on by M/s. Indo Aden Salt Works Co. was taken over by the appellant-assessee by an agreement dated 24.8.1949. During the assessment year 1950-51, the said Agreement as well as the Valuation Report of the assets had been filed before the assessing authority. The Income Tax Officer did not discuss the point whether the assets were constructed of masonry or made of earth but on the assessee's letter conveying its agreement that for the purpose of depreciation the value should be taken as Rs.20,31,000 in the aggregate, in the assessment order allowed 6 per cent depreciation. Later it was found that 93% of the construction works were made of earth and only 7% of masonry and that 59% of piers were made of masonry and 41% of them were made of earth were allowed 12% depreciation which rate is available only if constructed entirely or mainly of wood. The Income Tax Officer, on these facts proposed to reopen the assessment on escaped income for the years 1955-56 to 1962-63. The jurisdiction of the Income Tax Officer to reopen the assessment under section 147(a) of the Income Tax Act, 1961 and the High Courts' declining to call for a statement of case on a question of law by rejecting the application under section 256(2)of the Act are under challenge in the appeals on certificate granted by the Bombay High Court.

Dismissing the appeals, the Court,

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HELD: 1.1 If there are some primary facts from which reasonable belief could be formed that there was some non-disclosure or failure to disclose fully and truly all material facts, the Income Tax Officer has jurisdiction to reopen the assessment. Assessee knows all the material and relevant facts - the assessing authority might not. In respect of the failure to disclose, the omission to disclose may be deliberate or inadvertent. That was immaterial. But if there is omission to disclose material facts, then, subject to the other conditions, jurisdiction to reopen is attracted. [632 D-F]

1.2 The obligation of the assessee is to disclose only primary facts and not inferential facts. What facts are material facts would depend upon the facts and circumstances of each case. Further, whether there has been such non-disclosure of primary facts which has caused escapement of income in the assessment was basically a question of fact.

In this case, what portion of the asset consisted of earth and what portion or proportion consisted of masonry work was indubitably a material fact for the purpose of calculating the depreciation. If over depreciation has been allowed on the basis that the entire work consisted of masonry work, income might have been under-assessed. The Income Tax Officer can reasonably be said to have material to form that belief. [631 E-F]

1.3 Mere production of evidence before the Income Tax

Officer and leaving him to find out the position by further probing is not enough. The assessee must make full disclosure truly. There may be omission or failure to make a true and full disclosure, but if some material for the assessment lay embedded in the evidence which the revenue could have uncovered but did not, then, it is the duty of the assessee to bring it to the notice of the assessing authority. [632 D]

Calcutta Discount Co. Ltd. v. Income Tax Officer Companies District I, Calcutta & Another, 41 I.T.R. 191; Hazi Amir Mohd. Mir Ahmed v. Commissioner of Income-Tax, Amritsar, 110 I.T.R. 630; Income Tax Officer I Ward, Distt VI Calcutta & Ors. v. Lakhmani Mewal Das, 103 I.T.R. 437; and Malegaon Electricity Co. P. Ltd. v. Commissioner of Income Tax, Bombay, 78 I.T.R. 466 applied.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 800- 807 (NT) of 1974.

From the Judgment and Order dated 21st June, 1973 of the Bombay High Court in Income Tax Application No.6 of 1972.

P.G. Gokhale, B.R. Agarwal and V. Menon for the Appellant.

S.C. Manchanda, K.C. Dua and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. These appeals are by certificate from the decision of the High Court of Bombay dated 21st June, 1973 whereby the High Court had declined the application made under section 256 (2) of the Income Tax Act, 1961 (hereinafter called 'the Act') wherein the assessee sought two questions to be referred to the High Court. The questions were:

> (1) Whether, on the facts and in the circumstances of the case, the re-assessment proceedings under section 147 (a) of the Income-tax Act, 1961, initiated by the Income-tax Officer for the assessment years 1955-56 to 1962-63 against the assessee were valid in law ?
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> (2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in up-

holding the action under section 147(a) of the Income Tax Act, 1961 for the assessment years 1955-56 to 1962-63 ?

The real question, therefore, is whether there were facts from which it could be believed that there was failure or omission to disclose fully and truly all material facts necessary for the assessment as a result of which income has escaped assessment. The assessment was sought to be re-opened for the years 1955-56 to 1962-63 (for failure to disclose fully and truly all material facts). It is well- settled that the obligation of the assessee is to disclose only primary facts and not inferential facts - See Calcutta Discount Co. Ltd. v. Income Tax Officer Companies District I, Calcutta and Another, 41 I.T.R. 191. There must be, therefore, (a) full disclosure, and (b) true disclosure of all material facts. What facts are material for a particular case would depend upon the facts and circumstances of each case, (c) there must be escapement of tax or under assessment due to such failure or omission.

In this case the reason for the belief of the Income Tax Officer was that the assessee had obtained depreciation at 6 per cent on the assets which were masonry works but the assets really consisted of earth work wholly or substantially. If that was the position then the assessee was not entitled to depreciation as was granted. The question, is, whether the assessee had disclosed the nature of the masonry work and whether the nature of the asset had been fully and truly disclosed.

The assessee's case was that a partnership business carried on by M/s. Indo-Aden Salt Works Co. was taken over by the assessee by an agreement dated 24th August, 1949 and during the assessment year 1950-51 the said agreement dated 24th August, 1949 as well as the Valuation Report had been filed before the assessing authority. It is, further, the case of assessee that there was discussion on this Valuation Report. It further appears from the assessment Order and the affidavit that the Valuation Report was discussed and the amount of depreciation was more or less agreed to between the parties. The revenue's case, on the other hand, is that which portion of the assets consisting of masonry work and which of earth work was not discussed or disclosed. The assessee's contention before the revenue authorities was that the primary facts were discussed fully and it was open to the revenue to examine into this aspect greater and it was not possible after the lapse of such a long time to say actually whether what portion of asset consisted of earth work has been disclosed or not. It appears, however, from the order of the Tribunal that by its last letter addressed to the Income Tax Officer the assessee had conveyed its agreement that for the purpose of depreciation the value should be taken as Rs.20,31,000 in the aggregate, in the assessment. The Tribunal has, further, found that in granting the depreciation the I.T.O. did not discuss the point whether the assets were constructed of masonry or made of earth and the I.T.O. did not exclude for depreciation the value of reservoirs, salt pans and piers and condensers and channels made of earth but allowed the depreciation claim of the assessee on the entire value of the reservoirs, salt pans and piers and condensers and channels at 6% even though these were only partly constructed of masonry and partly made of earth. The Tribunal has noticed that 93% of the construction works were made of earth and only 7% of masonry, and the facts that 41% of the piers were made of earth and only 59% of masonry was not challenged before the A.A.C. and were not in dispute before the Tribunal. There is also no dispute that depreciation at 6% is available only in respect of such assets constructed of masonry and not if made of earth. It was also not in dispute that depreciation on piers is available at 12% only if constructed entirely or mainly of wood. The fact that for the assessment years 1955-56 to 1962-63 excessive depreciation allowance had been allowed in the original assessments and income chargeable to tax had escaped assessment and/or was under-assessed for these years was also not in dispute.

The only question, therefore, is, whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and future whether such income escaped assessment and whether such escapement or under-assessment has been caused as a result of the failure or omission on the part of the assessee to disclose fully and truly all material facts. What facts are material facts would depend upon the facts and circumstances of a particulate case. This follows from the scheme of the section and is well-settled by the authorities of this Court.

It is the admitted position that the assessee had not disclosed either by valuation report or by statement before the I.T.O. as to what portion consisted of earth work and what portion or proportion consisted of masonry work. For the purpose of calculating depreciation that indubitably was a material fact. If over depreciation has been allowed on that basis i.e. that the entirety of the work consisted of masonry work, income might have been under-assessed. The Income tax Officer can reasonably be said to have material to form that belief. That position is also well-settled by the scheme of the section, and concluded by the authorities of this Court.

The assessee's contention is that the I.T.O. could have found out the position by further probing. That, however, does not exonerate the assessee to make full disclosure truly. The explanation 2 to section 147 of the Act makes the position abundantly clear. The principles have also been well-settled and reiterated in numerous decisions of this Court. See Hazi Amir Moh. Mir Ahmed v. Commissioner of Income-tax, Amritsar, 110 I.T.R. 630 and Income-Tax Officer I Ward, Distt. VI Calcutta & Others v. Lakhmani Mewal Das, 103 I.T.R. 437. Hidayatullah, J. as the learned Chief Justice then was, observed in Calcutta Discount's case (supra) that mere production of evidence before the Income- tax Officer was not enough, that there may be omission or failure to make a true and full disclosure, if some material for the assessment lay embedded in the evidence which the revenue could have uncovered but did not, then, it is the duty of the assessee to bring it to the notice of the assessing authority. Assessee knows all the material and relevant facts - the assessing authority might not. In respect of the failure to disclose, the omission to disclose may be deliberate or inadvertent. That was immaterial. But if there is omission to disclose material facts, then, subject to the other conditions, jurisdiction to re-open is attracted. It is sufficient to refer to the decision of this Court in Calcutta Discount's case (supra) where it had been held that if there are some primary facts from which reasonable belief could be formed that there was some non- disclosure or failure to disclose fully and truly all material facts, the I.T.O. has jurisdiction to reopen the assessment. This position was again reiterated by this Court in Malegaon Electricity Co. P. Ltd. v. Commissioner of Income-Tax, Bombay, 78 I.T.R. 466.

Further more bearing these principles in mind in this particular case whether there has been such non-disclosure of primary facts which has caused escapement of income in the assessment was basically a question of fact.

The High Court was right in declining to call for a statement of case on a question of law. The appeals, therefore, fail. However, there will be no order as to costs.

S.R. Appeals dismissed.