Gujarat High Court
Hindustan Fashions Ltd. vs Inspecting Assistant ... on 1 November, 1993
Equivalent citations: (1995) 117 CTR Guj 153, 1995 211 ITR 279 Guj
ORDER G. T. NANAVATI, ACTG. C.J. - In this petition, the petitioner has challenged issuance of notices dated March 30, 1982, under section 148 of the Income-tax Act, 1961, calling upon the petitioner to show cause why the assessment for the assessment years 1977-78 and 1978-79 should not be reopened.

The assessee manufactures textile garments for export. In respect of the assessment year 1977-78, the assessee showed on the credit side an amount of Rs. 37,79,985 under the head "Incentives and drawback". It consisted of drawback of Rs. 4,01,572 and actual cash incentives of Rs. 33,77,473. The Income-tax Officer adopted the method of considering the incentives and drawback, on accrual basis, in view of the mercantile system of accounting followed by the assessee and in view of the previous assessments made on that basis, and assessed the export benefit at Rs. 30,10,289. The taxable income of the assessee was then computed and the assessment order was passed on July 17, 1981. For the assessment year 1978-79, the assessee had filed a return showing loss of Rs. 10,82,062. In the èfinancial year relevant to the said assessment year, the assessee had received Rs. 13,87,091 as cash incentive and Rs. 3,70,602 as drawback. The Income-tax Officer made an addition of Rs. 8,22,970 under the same head for the same reason for which he had computed this benefit for the earlier assessment year. He passed the assessment order on July 23, 1981. While examining the assessment proceedings for the assessment year 1979-80, the Inspecting Assistant Commissioner had occasion to look into the records of the petitioner for the assessment years 1978-79 and 1977-78. He noticed that the petitioner had, while computing the export benefits, "totally separated the f.o.b. value of goods sold in the accounting period from the respective export benefits". He felt that there was "suppression of sale proceeds". It appears that the Inspecting Assistant Commissioner was of the view that f.o.b. value of the goods sold in the accounting period had to be calculated on the basis of the export benefits received in respect of sale of those goods and not after considering the export benefits received during that accounting year though they pertained to the goods sold in the previous accounting period. He, therefore, directed that suitable action under section 147(a) of the Act should be taken against the petitioner and a notice under section 148 be issued immediately. Accordingly, notices under section 148 came to be issued to the petitioner on March 30, 1982. They are at annexures "F-1" and "F-2". The petitioner is challenging in this petition the said two notices on the ground that they are invalid and without jurisdiction.

What is submitted by the learned advocate for the petitioner is that in this case, notices have been issued because of the change of opinion and this cannot be regarded as a case of suppression of primary material facts which would have disclosed the true nature of the export transactions.

The learned advocate for the Revenue, on the other hand, submitted that for the assessment years 1977-78 and 1978-79, the assessee had not disclosed those primary facts which would have shown the true and exact nature of the export transactions. In support of his submission, he drew our attention to the reply affidavit filed by the Inspecting Assistant Commissioner wherein it is stated as under :

"I further say that after evaluation of true and full facts on the point during the assessment of the petitioner for the assessment year 1979-80, it was found that the aforesaid four items, together and only together, constituted complete composite trading proceeds of the accounting period arising precisely from the export sales of the accounting period and the true and correct position of yearly profits and gains of the business of the export sales can be arrived at only if the complete trading proceeds of the relevant accounting period are fully taken into consideration."

Now, coming to the relevant assessment years of 1977-78 and 1978-79, primary facts disclosed by the petitioner were as under :

"For the assessment years 1977-79 and 1978-79, in the profit and loss accounts filed along with the original returns, the following details were disclosed on the ècredit side :

Assessment year 1977-78 Assessment year 1978-79 Rs. (in lakhs) Rs. (in lakhs) By sale of garments 214.41 206.74 By cash incentives and drawbacks (received) 37.78 24.17 By stock-in-trade 5.33 9.77 In both the assessment years, namely, assessment years 1977-78 and 1978-79, the Income-tax Officer, following his decision for earlier assessment years of 1975-76 and 1976-77, took the stand that cash incentives and drawback should be taxed on the mercantile system."

The Inspecting Assistant Commissioner has further stated in his affidavit that the trading proceeds of goods sold by export can be split into two broad parts, namely :

(i) c.i.f. value of goods exported during the accounting period,

(ii) value of all export benefits arising as a result of export sales of the accounting period.

He has further stated that the aforesaid two items, together and only together, constitute the correct and complete trading proceeds of export sales of the accounting period. He has then stated :

"In view of the above facts, it is submitted that the income, profits and gains of assessment years 1977-78 and 1978-79 have been underassessed because the complete trading proceeds of export sales of the accounting period have not been taken into consideration for arriving at the profits of the year. Such underassessment has resulted because of the omission and failure of the petitioner to disclose primary material facts peculiar to the export business pertaining to the exact nature of export transactions, f.o.b. value of goods, c.i.f. value of goods, their relationship with the quantification of export benefits, etc., etc."

Relying upon these statements made in the reply affidavit, it was submitted by the learned advocate for the Revenue that all those primary material facts were not disclosed by the petitioner and, therefore, the Inspecting Assistant Commissioner had thought it proper to reopen the cases because the tax for those years was underassessed because of such non-disclosure. It is not the case of the Revenue that the relevant materials were not produced by the petitioner when he was called upon to

do so by the Assessing Officer. On the contrary, from the letter dated October 25, 1980, annexure "A" to the petition, it appears that the petitioner attended before the Assessing Officer on September 27, 1980, pursuant to the notice issued by the Assessing Officer and had produced before him details of cash incentives received during the year ended June 30, 1976, copy of the drawback account and also the books of account. It was, therefore, submitted that the said accounts showed at what price the exported goods were sold and what was the tax paid by the petitioner and what were the expenses incurred by the petitioner for the purpose of exporting the said goods. If in spite of these disclosures, the Assessing Officer had not taken the same into consideration, it cannot be said that there was any suppression of primary material facts by the petitioner. Moreover, we find that this aspect was also considered by the Assessing Officer and the Assessing Officer had come to a different conclusion because he noticed that the petitioner was consistently following the mercantile system of accounting. The petitioner was being assessed since many years and all along, he had been following the same system of accounting. It is nobodys case that for the assessment years 1977-78 and 1978-79, the petitioner èhad changed the method of accounting for avoiding payment of proper amount of tax. It appears that the Inspecting Assistant Commissioner was of the opinion that accounts should have been maintained in a different manner as suggested by him and that the petitioner should have calculated in advance the export benefits which the petitioner was likely to receive in view of the export sales made during the accounting period and, on that basis, should have computed its total taxable income.

We are, therefore, of the opinion that it was not open to the Inspecting Assistant Commissioner to reopen the case by issuing notice under section 148 as there was no suppression or omission on the part of the petitioner to disclose truly and fully the primary material facts.

We, therefore, allow this petition, quash the impugned notices and issue a writ of mandamus restraining respondent No. 1 from taking further steps pursuant to the said two notices. Rule is made absolute accordingly. No order as to costs.