

Punjab-Haryana High Court

Devgon Rice And General Mills vs Commissioner Of Income-Tax And ... on 22 January, 2003

Author: G Singhvi

Bench: G Singhvi

JUDGMENT G.S. Singhvi J.

1. This petition involves adjudication of the petitioner's challenge to notice annexure P-1 dated November 27, 1984, issued by the Income-tax Officer, Central Circle-II, Amritsar (respondent No. 2), under Section 148 of the Income-tax Act, 1961 (for short, "the Act"), proposing reassessment of its income.

2. The petitioner is a registered firm engaged in the business of rice shelling and manufacturing dal. A search was carried out at the business premises of the petitioner on November 30, 1976. During the search operation, certain books of account and other documents are alleged to have been seized from its premises. The petitioner filed a return for the assessment year 1977-78 on April 5, 1978, declaring a total income of Rs. 1,19,350. During the course of assessment, the petitioner was asked to file a certificate of the Central Bank of India, Majitha Mandi Branch, Amritsar (for short "the bank"), regarding stock pledged/hypothecated as on November 30, 1976, and March 31, 1977, for availing of overdraft facility. In reply, the petitioner gave out that the bank had not furnished the required certificate. Thereupon, respondent No. 2 sent a letter annexure P-3 dated December 14, 1979, to the manager of the bank to furnish the following information in terms of Section 133(6) of the Act :

"(i) Amount due to the bank in overdraft account as on November 30, 1976 and also as on March 31, 1977.

(ii) Details of stocks pledged as on November 30, 1976, and also as on March 31, 1977, with quantity and value.

(iii) The details of stocks hypothecated as on November 30, 1976 and also as on March 31, 1977, showing the quantity of the goods as well as the value of the goods."

3. Finally, he made the assessment by making addition of Rs. 1,75,000 representing the value of the excess stock of paddy and rice which, in his opinion, was not accounted for by the petitioner. The Commissioner of Income-tax (Appeals), Amritsar Range, Amritsar, dismissed the appeal filed by the petitioner and upheld the order of assessment. However, the Income-tax Appellate Tribunal, Amritsar Bench (for short, "the Tribunal"), partly allowed the second appeal for the petitioner and deleted various additions made by respondent No. 2 including the addition of Rs. 1,75,000. The reference application filed by the Revenue under Section 256(1) of the Act was rejected by the Tribunal vide its order dated September 20, 1984, with the observation that the question sought to be raised by the application was not determination by the High Court. After two months respondent No. 2 issued notice under Section 148 of the Act with the approval of the Commissioner of Income-tax (Central), Ludhiana, for reassessment of the income of the petitioner.

4. The petitioner has challenged the impugned notice on the following grounds :

(a) Respondent No. 2 does not have the jurisdiction to initiate proceedings for reassessment because the conditions precedent enumerated in Sections 147(a) and 148 of the Act have not been satisfied.

(b) The petitioner had fully and truly disclosed all the material and primary facts relevant for the assessment of its income and no material was available before respondent No. 2 which, could make him to believe that the income chargeable to tax had escaped assessment.

(c) Section 147(a) does not empower respondent No. 2 to make a fishing and roving enquiry with a view to find out that some income chargeable to tax had escaped assessment.

(d) The mere change of opinion by respondent No. 2 cannot justify initiation of proceedings under Section 147(a) particularly when the order of assessment had been partly set aside by the Tribunal.

5. In the written statement filed on behalf of the respondents, an objection has been taken to the maintainability of the writ petition on the ground that the petitioner has failed to avail of the alternative remedy of showing cause to respondent No. 2 against the proposed reassessment. On the merits, it has been averred that the impugned notice has been issued in view of the information furnished by the branch manager of the bank vide letter annexure R-2/ 2 dated November 22, 1982. The respondents have defended the proposed reassessment of the income of the petitioner by asserting that respondent No. 2 had formed a bona fide opinion that, the income of the petitioner had escaped assessment.

6. Shri A.C. Jain, learned counsel for the petitioner, argued that the proceedings for reassessment initiated by respondent No. 2 are without jurisdiction and the impugned notice is liable to be quashed because the conditions precedent enumerated in Section 147(a) and 148 of the Act have not been satisfied. He laid emphasis on the fact that at the time of assessment, the petitioner had truthfully disclosed all the facts relevant to the assessment proceedings and argued that respondent No. 2 cannot reopen the assessment after the Tribunal had accepted the petitioner's plea regarding artificial stock position given to the bank for the purpose of securing higher credit. In support of his argument, Shri Jain relied on the decisions of the Supreme Court in *S. Narayanappa v. CIT* [1967] 63 ITR 219 and *Ganga Saran and Sons P. Ltd. v. ITO* [1981] 130 ITR 1.

7. Dr. N.L. Sharda, learned counsel for the respondents defended the impugned notice and argued that respondent No. 2 did not commit any illegality by initiating proceedings for reassessment after seeking approval from respondent No. 1. He further argued that the impugned notice cannot be declared without jurisdiction because respondent No. 2 had reason to believe that income of the petitioner had escaped assessment. Dr. Sharda pointed out that the letter annexure R-2/2 sent by the bank was not available before respondent No. 2 till the decision of the second appeal of the petitioner by the Tribunal and submitted that he was entitled to issue notice under Section 147(a) in view of the information subsequently made available by the bank. Learned counsel argued that the petitioner had deliberately refrained from disclosing the true status of the stock hypothecated with the bank and, therefore, the conditions enumerated in Sections 147(a) and 148 are satisfied in the

present case. Dr. Sharda relied on the judgment of a Division Bench of this court in CIT v. Ess Ess Kay Engineering Co. Pvt. Ltd. [1982] 137 ITR 446 and of the Supreme Court in Ess Ess Kay Engineering Co. Pvt. Ltd. v. CIT [2001] 247 ITR 818 .

8. I have given serious thought to the respective arguments. Sections 147(a) and 148 of the Act read as under :

"147. If-

(a) the Assessing Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under Section 139 for any assessment year to the Assessing Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax had escaped assessment for that year.

148(1). Before making the assessment, reassessment or recomputation under Section 147, the Assessing Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 139 ; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

(2) The Assessing Officer shall, before issuing any notice under this section record his reasons for doing so."

9. A reading of the provisions quoted above shows that the Income-tax Officer can reopen an assessment if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reason to believe that on account of omission or failure on the part of the assessee to make a true and full disclosure of material facts necessary for his assessment, any part of his income, profits or gains chargeable to tax has escaped assessment. He can also start reassessment proceedings because some fresh facts have come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes to his possession which demonstrates the untruthfulness of those facts. However, before issuing notice under Section 148, the Income-tax Officer is required to record reasons.

10. The ambit and scope of Sections 147 and 148 of the Act was considered by the Supreme Court in Phool Chand Bajrang Lal v. ITO [1993] 203 ITR 456. After reviewing several judicial precedents on the subject, a two-judge Bench of the Supreme Court held as under (page 477) :

"From a combined review of the judgments of this court, it follows that an Income-tax Officer acquires jurisdiction to re-open an assessment under Section 147(a) read with Section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to Income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed

or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income-tax Officer, at the time of making the original assessment, could or could not have found by further enquiry or investigation, whether the transaction was genuine or not if, on the basis of subsequent information, the Income-tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore, income chargeable to tax had escaped assessment ....

11. One of the purposes of Section 147 appears to us to be to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say 'you accepted my He, now your hands are tied and you can do nothing'. It would be a travesty of justice to allow the assessee that latitude." (underlining is mine)

12. In *Raymond Woollen Mills Ltd. v. ITO* [1999] 236 ITR 34, their Lordships of the Supreme Court rejected the challenge to the notice issued for reassessment by observing that at that stage, the court can only consider whether there is a prima facie case for reassessment and reopening proceedings cannot be struck down by going into the sufficiency or correctness of the material relied upon by the assessing authority for the purpose of reopening.

13. If the case in hand is examined in the light of the above analysis of the two sections and the law laid down by the Supreme Court, I do not find any difficulty in rejecting the petitioner's plea that respondent No. 2 did not have jurisdiction to initiate proceedings for reassessment. A careful scrutiny of the averments contained in the pleadings of the parties and the order of assessment passed by respondent No. 2, the appellate order passed by the Commissioner of Income-tax (Appeals), Amritsar Range, Amritsar, order dated September 4, 1982, passed by the Tribunal, impugned notice annexure P-1 and annexures R1/1 and R2/2 shows that in the statement of closing stock filed with the return, the petitioner had disclosed the total value of different varieties of paddy at Rs. 5,87,892. Respondent No. 2 issued notice dated April 20, 1979, to the petitioner under Section 143(3) requiring it to furnish a certificate regarding stock pledged/hypothecated to the bank as on November 30, 1976, and March 31, 1977, for securing overdraft facility. The petitioner did not furnish required information in this behalf. It did not even make a request to the bank till, December 1, 1979, for issuing the necessary certificate. The bank authorities too did not furnish the required information/certificate despite written request made by respondent No. 2 vide letter No. 2275 dated December 14, 1979, and the fact that the Inspector of Income-tax was deputed to

personally collect the information. In response to the second letter dated January 16, 1980 sent to the branch manager of the bank he furnished the following information vide letter dated January 21, 1980 :

Chand : M1 Manohari (widow) M2 Manti M3 Miro M4 Shanti-

Rani M5 Prithi-

Ramkumar's Widow died M6 Kamlesh-

K1 (Pavan) K2 (Shri Parkash) K3 (Tara Devi) K4 (Darshana Devi) (Defendants) Deyot 2. Patch Ram Chand 1. Chameli

2. Lado

3. Ramchander R1 (Girdhar) R2 (Mahavir) R3 (Kamla-widow) R4 (Krishna)

4. Ishwar

5. Desh Raj

6. Dev Raj (Plaintiffs)

11. Sarhati

12. Niranjan

13. Kusum

3. Dalip (Died issue-less)

4. Mokhi (Died issue-less)

14. However, the quantity and quality-wise information of the stock was not furnished. Therefore, letter dated August 25, 1980, was written by respondent No. 2 to the bank to furnish the details of the stock pledged/hypothecated with the quantity of the goods and value thereof. In response to that letter, the bank sent communication dated September 3, 1980, stating therein that old books are not yet traceable and the desired information would be furnished as soon as the record is traced out. In view of this, the assessment proceedings were finalised by taking into consideration certificate dated January 21, 1980, sent by the bank in which the value of stock hypothecated by the petitioner as on March 30, 1977 was disclosed at Rs. 8,21,000. The cost price of the stock was worked out at Rs. 6,46,600 against the value of Rs. 5,87,892 disclosed by the petitioner and on that basis, addition of Rs. 1,75,000 was made. Respondent No. 2 gave detailed reasons for not accepting the plea of the petitioner. The Commissioner of Income-tax (Appeals) agreed with him, but the Tribunal

overturned their orders and accepted the plea of the petitioner that it had given an inflated position of the stocks for availing of higher overdraft facility. After the order of the Tribunal, the bank furnished details of the stocks vide letter dated November 22, 1982 (annexure R2/2). On receipt of that letter, respondent No. 2 again examined the matter and found that the income of Rs. 3,18,108 chargeable to tax had escaped assessment. He then referred the case to respondent No. 1, who accorded approval for initiation of proceedings for reassessment. The reasons recorded by respondent No. 2 for issuing the impugned notice, as contained in annexure R2/1, read as under :

"2. After the matter was finally disposed of by the Income-tax Appellate Tribunal, Amritsar and the addition of Rs. 1,75,000 on account of valuation of unaccounted for stocks was deleted, the Department has succeeded in procuring from the bank the original statement of the stocks hypothecated with the bank as on March 30, 1977. From a perusal of the bank statement not only the contention of the assessee with regard to the over-valuation of stocks has been found to be misleading, even there is a large variation in the quantity of stocks hypothecated with the bank vis-a-vis those disclosed to the Department. In the statement of closing stock as on March 31, 1977, submitted by the assessee with the return, the valuation has been made as under :

Q. Kg. Cms Rice IR-8 1430-40-700 at 140 200257.00 Rice Parmal 196-96-000 at 200 39212.00  
Rice Basmati 300-06-000 at 300 90018.00 Paddy IR-S 867-35-000 at 90 78061.00 Paddy Basmati  
1052-20-000 at 130 136786.00 Rice Brarni 571-16-000 at 50 28558.00 Arhar A/C 75-00-000 at  
200 15000.00 587892.00

15. On the other hand, the details of stocks and the valuation thereof as disclosed to the bank by the assessee in its statement submitted on March 30, 1977 are as under :

Paddy IR-8 Bag 2000 Qtls. 1400 Rs. 74 1,05,600 Faddy Basmati Bag 4000 Qtls. 2800 Rs.130  
3,64,000 Rice IR-8 Bag 1400 Qtls. 1400 Rs. 130 1,82,000 Rice Basmati Bag 600 Qtls. 600 Rs. 240  
1,44,000 Rice Parmal Bag 200 Qtls. 200 Rs. 140 28,000 8,21,600

16. Not to speak of the over-valuation of stock hypothecated with the bank as claimed by the assessee, in respect of certain items of stocks the assessee has clearly made an under-valuation of the stocks and this is quite evident from the details as given above. The valuation of the closing stock as per the statement filed with the return is the admitted value of the closing stock as on March 31, 1977 which the assessee can under no circumstances dispute now and if the valuation of the stocks hypothecated with the bank is made at the same rate the total valuation of stocks available with the assessee as on March 31, 1977 would work out to Rs. 9,06,000 as under :

Paddy IR-8 Bag 2000 Qtls. 1400 Rs.90 1,26,000 Paddy Basmati Bag 4000 Qtls. 2800 Rs. 130  
3,64,000 Rice IR-8 Bag 1400 Qtls. 1400 Rs. 140 1,96,000 Rice Basmati Bag 600 Qtls. 600 Rs. 300  
1,80,000 Rice Parmal Bag 200 Qtls. 200 Rs. 200 40,000 9,06,000

17. The information from the bank with regard to the hypothecation of stocks in terms of quantitative details was gathered by the Department on January 13, 1983, i.e., after the appeal for the assessment year under consideration was finally disposed of by the Income-tax Appellate

Tribunal. From the information now collected by the Department, it is evident that during the course of regular assessment proceedings, the assessee had suppressed the particulars of the closing stock both in terms of its quantity and valuation as on March 31, 1977 and, therefore, income chargeable to tax amounting to Rs. 3,18,108 had escaped assessment at the time of original assessment.

18. In view of the foregoing, I have, therefore, reasons to believe that 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 assessment year 1977-78 income chargeable to tax amounting to Rs. 3,18,108 has escaped assessment. Approval under Section 151(2) of the Income-tax Act, 1961 is, therefore, solicited to initiate proceedings under Section 148." (underlining is mine)

19. In my opinion, the case set up by the assessee at the time of initiation of assessment that the value of the stocks was inflated for availing of higher overdraft facility and there was deficiency in quantity of the stocks lying with it and disclosed in the return on the one hand and that furnished to the bank is prime facie proved to be false by the contents of the letter annexure R2/2. Therefore, respondent No. 2 had sufficient reason to believe that the petitioner had not made full, complete and truthful disclosure of the material facts and its income had escaped assessment.

20. In view of the above conclusion, I do not find any valid ground to entertain the petitioner's prayer for quashing of the notice at the threshold. This view of mine is amply supported by the decision of the Division Bench in CIT v. Ess Ess Kay Engineering Co. Pvt. Ltd. [1982] 137 ITR 446. In that case, the court rejected the challenge to the notice issued under Section 147(a) and observed as under :

It is well settled that though the assessee may have disclosed fully the facts at the time of the original assessment, if they are found to be untrue on the basis of material discovered later on by the assessing authority, the assessment could be reopened under Section 147(a) because in such a case the assessee will be deemed to have failed to disclose truly all the material facts necessary for assessment it would not be a case of mere change of opinion."

In that case, the assessee had claimed deduction of the commission paid to its sole selling agent firm in its original assessment. The assessee furnished details regarding the payment and the commission was allowed as a deduction. Subsequently, on the basis of fresh material, the Income-tax Officer found that the assessee had not truly disclosed all the material particulars with regard to the services rendered by the sole selling agent and that the sole selling agent firm was nothing but a legal device to avoid tax. The Division Bench uphold the proceedings under Section 147(a) and quashed the order passed by the Tribunal.

21. The aforementioned judgment of the Division Bench was approved by the Supreme Court in Ess Ess Kay Engineering Co. (P.) Ltd. v. CIT [2001] 247 ITR 818 with the following observations (page 818) :

"This is a case of reopening. We have perused the documents. We find there was material on the basis of which the Income-tax Officer could proceed to reopen the case, it is not a case of mere change of opinion. We are not inclined to interfere with the decision of the High Court merely because the case of the assessee was accepted as correct in the original assessment for this assessment year. It does not preclude the Income-tax Officer to reopen the assessment of an earlier year on the basis of his findings of fact made on the basis of fresh materials in course of assessment of the next assessment year. The appeal is dismissed. No order as to costs."

22. In ITO v. Purushottam Das Bangur [1997] 224 ITR 362 (SC) ; [1997] 3 SCC 253, their Lordships considered the validity of a notice under Section 147(b). The facts of that case were that the Income-tax Officer completed the assessment for the assessment years 1969-70 and 1971-72 accepting the assessee's claim that they had suffered long term capital loss on the sale of shares of Maharaja Shree Umaid Mills at the price quoted by the Calcutta Stock Exchange. Subsequently, the Income-tax Officer received a letter from the Deputy Director, Directorate of Inspector (Investigation), Special Cell, New Delhi which, on the basis of the Bombay Stock Exchange Directory stated that the paid-up capital of the company was Rs. 72 lakhs divided into 72,000 shares of Rs. 100 each ; that the book value per equity share rose from Rs. 318.55 for the year ending December 31, 1965 to Rs. 401 for the year ending December 31, 1970 ; that the earning per share rose from Rs. 8.37 per share to Rs. 44 per share during that period and the dividend percentage also rose from two per cent, to ten per cent. for the same period. But, inspite of all these facts, the quotation of the shares on the Calcutta Stock Exchange fell from Rs. 168 per share to Rs. 85 per share during the said period. The Deputy Director further expressed the opinion that the quotations appearing in the Calcutta Stock Exchange were as a result of certain manipulated transactions between the group itself and could not be said to reflect the fair market value of the shares of the company. Consequently, the Income-tax Officer issued notice under Section 147(b) of the Act informing the assessee about the proposed reassessment of its income. The High Court quashed the notice. Allowing the Revenue's appeal, the Supreme Court held as under (headnote of [1997] 3 SCC 253) :

"On the basis of the information contained in the Deputy Director's letter and the documents annexed to the same, the Income-tax Officer could have had reason to believe that the fair market value of the shares was far more than the sale price and the market quotations from Calcutta Stock Association shown by the assessee at the time of original assessment were manipulated ones and as a result income chargeable to tax had escaped assessment. It could not be said that the information that was contained in the said letter was not definite information and that the same could not be acted upon by the Income-tax Officer for taking action under Section 147(b) of the Act.

Merely because the impugned notice was sent on the next day after receipt of the letter of the Deputy Director, it could not be inferred that the Income-tax Officer did not apply his mind to the information contained in the said letter. On the basis of the said facts and information contained in the said letter, the Income-tax Officer, without any further investigation, could have formed the opinion that there was reason to believe that the income of the assessee chargeable to tax had escaped assessment."



23. On the basis of the above discussion, I hold that the petitioner has failed to make out a case for interference by this court with the proceedings initiated by respondent No. 2 for reassessment of its income for the assessment year 1977-78.

24. Hence, the writ petition is dismissed. It is expected that respondent No. 2 would finalise the proceedings of reassessment at the earliest because the same have remained in abeyance for the last 17 years on account pf the stay order passed by this court.