ORDER SHEET
WP No. 1156 of 2016
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

RAMPURIA INDUSTRIES & INVESTMENTS LIMITED
Versus
DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 7(2), KOL. & ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK

Date : 11th January, 2017.

Appearance:
Mr. Ananda Sen, Adv.
Mr. Sabyasachi Mandal, Adv.
For the petitioner.

Mr. Shekhar B. Saraf, Adv.
For the respondents.

The Court :- The petitioner assails a notice under Section 148 of the Income Tax Act, 1961.

Learned Advocate for the petitioner submits that, the assessment of the petitioner was sought to be re-opened under Section 148 of the Income Tax Act, 1961 after four years. He submits that, in terms of Section 147 of the Income Tax Act, 1961 an Assessing Officer seeking to reopen an assessment after four years is required to form an opinion with regard to necessity to reopen such assessment. He submits that, in the present case, there is no material before the Assessing Officer to form such opinion. He submits that, the Assessing Officer did not apply his mind. The Assessing Officer had issued the notice under

Section 148 of the Income Tax Act, 1961 routinely, on the basis of a report on which the Assessing Officer did not apply his mind independently or to the return of the assessee so as to arrive at finding that, there was failure on the part of the assessee to disclose fully and truly of material facts necessary for the relevant assessment year and thereby an income has escaped assessment.

Learned Advocate for the petitioner submits that, immediately upon receipt of the notice under Section 148, the petitioner had raised an objection. Such objection has not been disposed of till date. He submits that, the reasons given for the purpose of invoking the provisions of Section 148 cannot stand judicial scrutiny. He further submits that, the re-assessment order has since been completed subsequent to the filing of the writ petition. He seeks leave to file a supplementary affidavit annexing a copy of the re-assessment order.

Learned Advocate for the petitioner relies upon 35 ITR (Y. Narayana Chetty & Anr.-Versus-Income Tax Officer, Nellore) and submits that, when the notice itself is invalid, further steps taken pursuant to such invalid notice is also invalid. Therefore, in the present case the order of the re-assessment does not assist the Department in any manner since the initial invocation of Section 148 of the Income Tax Act, 1961 was done wrongly.

Learned Advocate for the petitioner relies upon 41 ITR page 191 (Calcutta Discount Co. Ltd.-Versus-Income Tax Officer, Companies District-I, Calcutta & Anr.) in support of the proposition that, two conditions are required to be fulfilled for the purpose of invocation of Section 148 of the Income Tax Act, 1961. He submits that, none of the two conditions stand fulfilled in the present case and, therefore, the invocation is bad. He submits that, the Hon'ble Supreme Court has followed Calcutta Discount Co. Ltd. (supra) subsequently and relies upon an unreported decision of the Hon'ble Supreme Court rendered in Civil Nos. 11189/2016 (Jeans Knit Private Ltd, Bangalore-Versus-Deputy Commissioner of Income Tax, Bangalore and Ors.) in this regard.

Learned Advocate for the petitioner relies upon an unreported decision of the Hon'ble High Court at Bombay rendered in WP No. 2627/2016 [Coronation Agro Industries Ltd.-Versus-Deputy Commissioner of Income Tax, Circle-6(2)(1)] and submits that, similar reasons given by the Assessing Officer in that case was found to be insufficient for the purpose of invocation of Section 148 of the Income Tax Act, 1961.

Learned Advocate for the Department submits that, the conduct of the petitioner has to be looked into also to assess the steps taken by the Department in invoking the Section 148 and the ultimate disposal of such proceedings culminating in the order of re-assessment. He submits that, the petitioner was issued a notice under Section 148 of the Income Tax Act, 1961. The petitioner had replied thereto. The petitioner did not raise any objection of any substance in such reply. Subsequent thereto, the petitioner was provided with a reply to its objection. The petitioner did not assail the same. On the contrary, the petitioner requested for time to produce the documents asked for by the Assessing Officer through a Chartered Accountant. The petitioner produced such documents and participated in the re-assessment proceedings. Moreover, the reasons for invoking under Section 148 were duly made over the petitioner.

The petitioner accepted such reasons as sufficient and participated in the re-assessment proceedings. The petitioner allowed the re-assessment proceedings to continue. The petitioner did not challenge the reasons for reopening the assessment at the relevant time. In such factual background learned Advocate for the Department submits that, the petitioner is not entitled to any relief.

Learned Advocate for the Department submits that, the reasons are sufficient. The reasons given for reopening the assessment shows that, the Assessing Officer had applied his mind on information received. On the basis of such information received and after application of his mind, the Assessing Officer had invoked the provisions of Sections 147 and 148 of the Income Tax Act, 1961.

I have considered the rival contentions of the parties and the materials made available on record.

The petitioner was issued a notice dated May 15, 2015 under Section 148 of the Income Tax Act, 1961. The petitioner had requested for the reasons for issuance of such notice by its Chartered Accountant letter dated June 19, 2015. The petitioner had also filed an objection to the invocation of Section 148 by its Chartered Accountant letter dated June 23, 2015. The authorities had provided the petitioner the reasons for the invocation of Section 148 by a writing dated July 3, 2015.

The reasons enumerated in writing dated July 3, 2015 shows that, the Assessing Officer had received information through the Deputy Commissioner of Income Tax that, the assessee had received bogus loss from brokers by client code modification. The Assessing Officer had, thereafter, proceeded to state that, in view of such information income has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961, and, therefore, the Assessing Officer is of the opinion that, it is a fit case for reopening the assessment for the relevant year.

Subsequent to the receipt of the reasons, the petitioner had raised an objection by a writing dated August 21, 2015. Apparently, the objection was not dealt with by the Assessing Officer. At least, no material has been produced to suggest otherwise. However, the Assessing Officer by writing dated January 25, 2016 called upon the petitioner to participate in the re-assessment proceedings. The petitioner participated in such proceedings unconditionally. The petitioner did not press its objections nor did it participate without prejudice. The re-assessment proceedings has resulted in the order of re-assessment which has been annexed to the supplementary affidavit.

Supplementary affidavit filed by the petitioner in this regard be kept with the record.

The insistence on behalf of the petitioner that the Assessing Officer did not have any material to invoke Section 148, gave reasons for such invocation, and has proceeded to reassess without disposing of the objection raised in respect of such invocation and, therefore, all steps of the Assessing Officer ought to be set aside, is without any basis, in the facts of the present case. The Assessing Officer had received credible information as to income escaping assessment for the relevant assessment year. He had applied his mind to it and had informed the petitioner of his intention to invoke Section 148. He had given his reasons for doing so. As noted above, the petitioner had objected to the reasons furnished by the Assessing Officer for invoking of Section 148 of the Income Tax Act, 1961. However, the petitioner did not press its objections quite to the contrary the petitioner allowed the Assessing Officer to proceed with the re-assessment without any objection and without insisting upon disposal of the objection raised prior the re-assessment being done. The petitioner had also furnished the documents required by the Assessing Officer to be furnished in the proceedings under Section 148 after raising the objection. This conduct of the petitioner allows one to infer that, the petitioner had waived its rights to have the objections disposed of, alternatively, the petitioner had withdrawn its objections to the invocation of Section 148 of the Income Tax Act, 1961.

Y. Narayan Chetty (supra) is of the view that, in the event a notice is invalid then, the subsequent steps taken also renders itself bad. In the present case, the two requirements noted in Calcutta Discount Co. Ltd. (supra) to be satisfied for the Assessing Officer to invoke of Section 148 stands fulfilled. The Assessing Officer had reasons to believe that, there was under assessment and that he has reasons to believe that, such under assessment had resulted from non disclosure of materials facts. Both of these two essential conditions are present in this case. The allegation is of bogus loss from brokers by client code modification being booked in the accounts. The reasons supplied by the Assessing Officer as noted above, allows one to infer that, the Assessing Officer had addressed its mind to such issue. The petitioner has not demonstrated any material to substantiate that, such loss was placed before the Assessing Officer for consideration and that, the Assessing Officer had taken a view after production of the material facts by the assessee, before it.

An interim relief was granted in M/s. Coronation Agro Industries Ltd. (supra) on the basis of a prima facie finding by the Court. The result of such writ petition has not been produced before this Court. Therefore, it would not be proper to rely upon an interim order rendered on prima facie finding, at the time of final hearing of the writ petition.

In such circumstances, I do not find any merit in the present writ petition.

WP No. 1156 of 2016 is dismissed. No order as to costs.

(DEBANGSU BASAK, J.)

snn.