

HVN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1942 OF 1990

1. M/s. Niba India,  
18, Subhash Road, Vile Parle East,  
Bombay 400 057.
2. Mr.B.D. Sanghvi,  
residing at Pamanabh, Plot No. 43,  
N.S. Road No. 8, J.V.P.D. Scheme,  
Vile Parle (West),  
Bombay 400 059. ... Petitioners

Versus

1. Smt. Arti Handa,  
Assistant Commissioner of Income  
Tax, Central Circle, XIX, Bombay  
having her office at Old C.G.O.  
Building, Maharshi Karve Road,  
Bombay.
2. The Central Board of Direct  
Taxes, constituted under the  
Central Boards of Revenue Act, 1963  
and having its office at North Block,  
New Delhi.
3. Union of India. ... Respondents

Mr. Arun Sathe, Sr. Counsel with Mr. Punjabrao Naik, Mr. Mandar Vaidya i/by Rajesh Shah & Co. for Petitioner.

Mr. S.M. Shah with Mr. Sandip Wasnik for Respondent.

**CORAM: F.I. REBELLO &  
R.S. MOHITE, JJ.**  
**DATED: JANUARY 09, 2008**

ORAL JUDGMENT (Per F.I. Rebello,J.):

. The Petitioners by the present Petition have challenged the notices issued under Section 148 for reopening of assessment for the assessment years

1977-78 and 1978-79. The Notices are dated 30th March, 1989. The reasons for reassessment have been annexed to the reply filed by the respondents as on annexures to the affidavit of Mr. Y.S. Sonawane. It is recorded therein that the search operations were carried out in the concerns belonging to the Petitioner and the group companies and the employees were examined. Their statements were also recorded under Section 132(4) of the Act. From the said statement it is set out that it was noticed that the brass scrap and plastic powder scarp generated in the manufacturing process is of significant quantity and value. On the basis of the observations made from the manufacturing process carried out by the Search party and from the statements of directors/partners, who were examined, it was noticed that the brass scrap is about 45% of the total consumption of brass item - wire rod and strips and plastic scrap can be as much as 12% of the consumption of plastic powder and that for the assessment year 1977-78, the assessee had not shown any value of scrap either by way of sale of in stock. There was suppression of profits by non-disclosure of scrap. It was also mentioned that the Petitioners were using very sophisticated machine for the consumption of stainless steel balls and the efficiency of the machine is such that not a single ball is wasted in the manufacturing process.

Thus there was suppression of sale of refills.

. It is the contention of the Petitioner that in so far as scrap is concerned, accounting method followed by them is by showing the Revenue generated from the scrap at the time the assessee finally sold and this has been accepted by ITAT. Reference for that purpose is made to the order dated 29.6.2005 in I.T.A. No.1529/Mum/96 and 83/Mum/97 in the case of Asst. Commissioner of Income Tax Vs. M/s. Nibs India. It is also set out that there were no reasons to believe, as all the material was available with the Assessing Officer when the original assessment was made. In similar circumstances in respect of similar scrap this court in a Petition filed by sister concern has held that there were no reasons to believe for reopening of the assessment. For that purpose reliance is placed in the judgment in Sanghavi Swiss Refills Private Limited Vs. Smt. Arti Handa, Asst. Commissioner of Income Tax and another, (2006) 284 ITR 427 (Bom). Our attention is also invited to the judgment in respect of another sister concern Sanghavi Swiss Refills Private Limited for different assessment years in Writ Petition No. 608 of 1990 decided on 23.10.2007. It is pointed out that this court noted that in the statement recorded nowhere is there any unequivocal statement or material to hold the

percentage of scrap generated. It is therefore, submitted that considering that in respect of similar issue this court has already taken a view, that merely because there was scrap, is no reason to reopen the assessment. The notice therefore, served under Section 148 has to be quashed and set aside.

. On behalf of the respondents, reply has been filed by Mr.Y.S. Sonawane. The only material relied upon is the statement of Mr.B.G. Sanghvi wherein it is purported that he has made attempt to sell the scrap and shown bogus purchase. The said statement was placed before us for our consideration.

. We are concerned with the reasons given for reopening the concluded assessment on the facts of the present case. As rightly pointed out by the learned Bench of this court in Sanghvi Swiss Refills Pvt. Ltd. Vs. Smt. Arti Handa, Assistant Commissioner of Income Tax and another (2006) 284 ITR 427 (Bom) that there was no failure on the part of the assessee to disclose voluntarily and truly all material facts and the issue that scrap was generated during the manufacturing process was before the Assessing Officer. In the case of Petitioner itself, the ITAT has accepted the manner in which the scrap generated was disposed of and the

Tribunal has accepted the material of accounts when the scrap was finally sold. It is no doubt true that the stock register of the scrap generated was not maintained. But this information was available to the Assessing Officer when the assessment was made under Section 143(3) of the I.T. Act.

. Even otherwise, this matter is pending in this court since the year 1990 and interim relief was granted which is pending till date.

. We are therefore, of the opinion that as there were no reasons to believe warranting the reopening of the concluded assessment, consequently the Petition will have to be allowed. Rule made absolute in terms of Prayer Clauses (b) and (d). There shall be no order as to costs.

(R.S. MOHITE, J.)

(F.I.REBELLO, J.)