

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 325 of 2022**

RANJITSINH K RATHOD PRO. M/S R.K. TRADERS

Versus

INCOME TAX OFFICER, WARD-4

Appearance:

UMAIDSINGH BHATI(7973) for the Appellant(s) No. 1
for the Opponent(s) No. 1**CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 29/06/2022

ORAL ORDER**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

Heard learned advocate Mr.Umaidsingh Bhati for the appellant.

1. The appellant-assessee has preferred this Appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act, 1961') challenging the order dated 4th January, 2022 passed by the Income Tax Appellate Tribunal Ahmedabad "SMC" Bench, Ahmedabad (for short 'the Tribunal') in ITA No.1496/Ahd/2018 for Assessment Year 2009-10.

2. The assessee has raised following proposed questions as substantial questions of law :

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the validity of section 147

proceedings in Asst. Year 2009-10?

(ii) Whether the Tribunal was justified in law in holding that reopening of assessment under section 148 of the Act is valid and complies with all the mandatory conditions for reopening on the facts and circumstance of the case?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that proceedings w/s.147 were rightly initiated based on incorrect reasons recorded?"

3.1. It is the case of the assessee that the assessee is a Proprietor of M/s R.K.Traders engaged in business of trading in packing material, packing tools and corrugated boxes. For the Assessment Year 2009-10, the assessee filed the return of income which was accepted under Section 143(1) of the Act, 1961.

3.2. There was a search and seizure proceedings on 18.12.2010 at the premises of Wonder Packaging Industries by the Central Excise Department and it was alleged by the Department that the said Company was clearing goods i.e. corrugated boxes under the cover of two units i.e. Blue Star Packaging (the unit owned by the wife of the assessee) and M/s R.K.Traders, Proprietorship of the assessee. Based upon the search and seizure conducted by the Central Excise Department, a letter under Section 133 of the

Act, 1961 was issued to the assessee which was not replied by the assessee.

3.3. Thereafter, the notice under Section 148 of the Act, 1961 dated 26th March, 2016 was issued by the Assessing Officer with the prior approval of the Principal Commissioner of Income Tax, Gandhinagar on two counts, first with regard to the verification of the cash deposits as appearing in the saving bank accounts of the appellant-assessee as per the annual information available with the Office of the Assessing Officer and second with regard to ascertain the transaction of Rs.1,09,99,263/- pertaining to the search and seizure at M/s. Wonder Packaging Industries Limited. The reasons recorded by the Assessing Officer are as under :

"In this case, the assessee had filed return of income for the A.Yr.2009-10 on 23.02.2011 declaring total income at Rs.4,78,570/-.

As per AIR information received, assessee had made cash deposit of Rs.13,27,954/- in the saving bank account of Axis Bank Ltd. during the F.Y. 2008-09. The assessee did not make any compliance in response to verification letter dtd. 08.02.2016 and 29.02.2016 in this regard, Further, Department has received information from Asstt. Commissioner (Preventive), Central Excise, Ahmedabad-Iff, Ahmedabad that R.K. Traders, situated at Mill Kamdar Society, Kalol which is the proprietary concern of Shri Ranjitsinh Kanubhai Rathod, during the F.Y.2008-09 has used the business premises of M/s Wonder Packaging, C/1/B/512/13, Phase-I, GIDC, Chatral and issued invoices of Rs.1,09,99,263/- to various concerns against sell of corrugated boxes.

However, from the return of income filed by the assessee, it cannot be ascertained as whether the assessee has taken the above transaction in his books or not. Therefore, it is believed that income to the extent of Rs.1,27,57,217/- is not offered to tax. The escapement has occurred on the part of assessee and the income is required to be brought to tax.

In view of the above facts, I have reason to believe that income chargeable to tax is escaped assessment to the extent of Rs.1,27,57,217/-."

3.4. It is pertinent to note that the assessee never raised any objection with regard to the reopening of the assessment and participated in the assessment proceedings and ultimately, the Assessing Officer claimed the assessment under Section 143(3) read with Section 147 of the Act, 1961 by order dated 09.12.2016 assessing the total income of Rs.16,21,640/-.

3.5. The Assessing Officer considering the fact admitted by the assessee that corrugated boxes manufactured by M/s. Wonder Packaging Industries Limited and sold to M/s. R.K.Traders were not recorded in the record of M/s. Wonder Packaging Industries Limited and not taken into account for the purpose of calculating the aggregate value of clearance of goods by M/s. Wonder Packaging Industries Limited. The Assessing Officer considered the amount received by the proprietary concern of the assessee as sales receipts from manufacturing in job work charges and proposed to reject the books of accounts under Section 145(3) of the Act, 1961 so as to apply the gross profit at the rate of 15% to the total receipts of the assessee. In reply to the show-cause notice issued by the Assessing Officer, the assessee changed his stand and submitted that the assessee is not ready to accept the turnover of Rs.1,09,99,263/- and therefore, it is not included in

his account and assessee is not maintaining any books of accounts as per Section 44AD of the Act, 1961 and therefore it is not reasonable to estimate the gross profit at the rate of 15% but the same should be applied at the rate of 9.5%. The Assessing Officer rejected the reply filed by the assessee and rejected the books of accounts invoking the provisions of Section 145(3) of the Act, 1961 and estimated the GP rate of 9.5% on the total sales of Rs.1,44,36,717/-, making an addition of Rs.11,23,617/-. Assessing Officer also made an addition of Rs.19,456/- towards interest income and as such, made a total addition of Rs.11,43,073/-.

3.6. The assessee being aggrieved by the addition of Rs.11,43,073/- made by the Assessing Officer to the return income of Rs.4,78,570/- preferred Appeal before the CIT (Appeals). The assessee never raised any ground with regard to reopening of the assessment even before the CIT (Appeals). The CIT (Appeals) by order dated 15th March, 2018, dismissed the Appeal of the assessee with regard to all the grounds.

3.7. The assessee therefore, preferred the Appeal before the Tribunal including the ground with regard to challenge to the reopening of the assessment in addition to challenge the addition sustained by the CIT (Appeals) on merits.

4.1. Learned advocate Mr.Umaidsingh Bhati for the appellant-assessee submitted that the questions of

law are raised only qua reopening and the ground raised before the Tribunal was purely a question of law with regard to the reopening of the assessment, the same is maintainable and rightly considered by the Tribunal in the impugned order.

4.2. It was submitted that the Tribunal committed an error in dismissing the ground with regard to the reopening of the assessment and remanded the matter back to the Assessing Officer for the purpose of applying the GP rate on merit.

4.3. It was submitted by learned advocate Mr. Bhati that the appellant has raised only questions with regard to the reopening of the assessment. It was submitted that the reasons recorded by the Assessing Officer at the relevant point of time could not have been the basis for reopening of the assessment. In support of his submissions, reliance was placed on the decision of this Court in case of **Harikishan Sunderlal Virmani Versus Deputy Commissioner of Income Tax**¹. It was submitted that this Court in the facts of the said case came to the conclusion that on perusal of the reasons recorded, there was no allegation that there was failure on the part of the assessee in not disclosing truly and fully material facts necessary for the assessment. It was further submitted that while recording the reasons in the said case, this Court considered that there is no allegation that the assessment

1 (2017) 394 ITR 0146 (Guj)

could be reopened considering the information received by the Department and as such, the conclusion arrived at by the Assessing Officer to reopen the assessment from the information received from the external sources could not be the basis for reopening.

4.4. It was therefore submitted that in the facts of the case, the Tribunal while dismissing the ground for reopening of the assessment, has committed a grave error in upholding the reasons recorded by the Assessing Officer wherein it is mentioned that M/s. R.K.Traders which is proprietary concern of the assessee had business dealing with M/s. Wonder Packaging Industries Limited as the business premises was used by the assessee firm. It was also pointed out that the Tribunal recorded that the return filed by the assessee on 23.02.2011 did not mention the income in the said return related to the transaction carried out with the said M/s. Wonder Packaging Industries Limited. It was therefore submitted that the reasons recorded by the Assessing Officer cannot be the basis for reopening as there was no reason to believe for the assessing officer that income has escaped assessment.

4.5. Learned advocate Mr.Bhati for the appellant further relied upon the decision of the Delhi High Court in case of ***Pr. Commissioner of Income Tax Versus G & G Pharma India Ltd²***.

2 (2016) 384 ITR 0147 (Delhi)

4.6. It was pointed out that in the facts of the said case the reasons recorded by the Assessing Officer held to reopen the original assessment under Section 143(3) of the Act, 1961, were held to be not tenable as the Assessing Officer had already considered the aspect of accommodation entry and more particularly, when the Assessing Officer as well as the CIT have proceeded on the basis of reopening assessment was valid and as such, the Tribunal was not correct in law in considering the issue of reopening in the facts of the said case. It was submitted that in the facts of the present case also the reasons recorded for reopening of the assessment do not justify the reason to believe on the part of the Assessing Officer to come to the conclusion that there was escapement of income for the year under consideration.

4.7. Learned advocate Mr. Bhati further invited the attention of the Court to the findings recorded by the Assessing Officer in the assessment order which was under challenge before the CIT (Appeals) with regard to the cash deposited in the saving account of the Axis Bank Limited and after verification of the details called from the Bank, it was found that the account was in the name of the assessee and only Rs.7,24,647/- was deposited in the bank account for the relevant year.

4.8. With regard to reconcile the receipt of Rs.1,09,99,263/- received by M/s.R.K.Traders which is

reflected in the return of income, the Assessing Officer after considering the reply of the assessee has come to the conclusion that the receipt of Rs.1,43,48,198/- was sales receipt from manufacturing and job work of corrugated boxes during the relevant year whereas the assessee has only shown the receipt to the tune of Rs.26,09,168/-. It was therefore, pointed out that the Assessing Officer has calculated the gross profit without there being any basis. It was pointed out that the Tribunal has remanded the matter back but the assessee has challenged the reopening only and has not challenged the issue with regard to the remand of the matter on the ground of GP addition made by the Assessing Officer.

5. We have considered the submissions made by the learned advocate for the appellant. It is pertinent to note that in the facts of the case, there was no regular assessment conducted under the provisions of Sub-section (3) of Section 143 of the Act, 1961 after scrutiny but the returned income was accepted under the provision of Section 143(1) of the Act, 1961. The assessee neither raised any objection to the notice issued under Section 148 of the Act, 1961 at the relevant point of time nor raised such issue or objection even during the course of assessment and participated in the assessment proceedings by filing reply. Even before the CIT (Appeals), no ground is raised with regard to the reopening of the assessment. The assessee for the first time challenged the reopening before the Tribunal by raising the ground which the Tribunal decided after

considering the materiel on record as under:

"8. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the reasons recorded on 21.03.2016 has categorically mentioned that R.K. Traders is a proprietary concern of the assessee which has business dealings with M/s. Wonder Packaging Industries as the business premises of M/s. Wonder Packaging Industries is used by the assessee (his proprietary firm). The assessee has filed return of income in the year 23.02.2011 but has not mentioned this particular issue/income in the said return related to the transactions. In fact, in respect of notice under Section 148 of the Act, the assessed opted that the said earlier return filed in February 2011 should be taken as it is. The reopening was done with the prior approval and proper satisfaction and the legal viable reasons. Therefore, the contention of the assessee that the notice issued under Section 148 of the Act itself is bad in law and is not sustainable. Therefore, ground nos.2 & 3 are dismissed."

6. The submissions made on behalf of the appellant-assessee are to be considered in the light of the facts emerging on the record and as found by the Tribunal for rejecting the grounds to challenge reopening raised by the assessee. The Tribunal has considered that the information which formed basis of the reasons recorded on 21.03.2016 categorically mentioned that M/s.R.K.Traders as the proprietary concern of the assessee had business dealing with M/s.Wonder Packaging Industries and the business premises was also used by the assessee. It was also found by the Tribunal that in the return of income, the assessee has not mentioned the income arising out of the transactions with M/s. Wonder Packaging Industries Limited.

7. Even on perusal of the reasons recorded which is

reproduced hereinabove, at this stage of considering the Second Appeal under Section 260(A) of the Act, 1961, it would not be possible as to verify and justify with regard to the sufficiency of the reasons which even otherwise could not have been considered by the Court while exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India.

8. Reliance placed by the learned advocate for the appellant-assessee on the decision of this Court in case of **Harikishan Sunderlal Virmani (Supra)** is not applicable to the facts of the case as in the said case notice under Section 148 of the Act, 1961 was issued when the scrutiny assessment was made under Section 143(3) of the Act, 1961 and in that context it was held that after considering information / material received from other source, Assessing Officer is required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion on the basis of the material on record that the income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other sources, there cannot be any reassessment for the verification. In such circumstances, the notice for reopening issued under Section 148 of the Act, 1961 was held to be not sustainable. However, in the facts of the case, on perusal of the reasons recorded, it emerges that on basis of the information received by the Assessing

Officer, more particularly when there was no scrutiny assessment, the Assessing Officer has formed an opinion that from the return of income filed by the assessee it was not possible to ascertain whether the assessee has taken the transaction with M/s. Wonder Packaging Industries Limited in his books or not.

9. Similarly, in the decision in case of **G & G Pharma India Ltd (Supra)** of the Delhi High Court, there was a scrutiny assessment under Section 143(3) of the Act, 1961 and after relying upon the decision in case of **ACIT Versus Dhariya Construction Company³**, Delhi High Court held that the the issue of accommodation entry was processed under Section 143(3) of the Act, 1961 and without forming a prima-facie opinion on the basis of the material and without application of mind to the information, if any collected, it was not possible for the Assessing Officer to have concluded that the assessing company introduced its own unaccounted money in its Bank by way of accommodation entries. Whereas, in the facts of the case, the Assessing Officer has considered the material by applying his mind to the information collected from the Central Excise Department preferring to the return of income furnished by the assessee, wherein it was not possible to ascertain as to whether the assessee has taken the transaction which is disclosed during the course of search of M/s. Wonder Packaging Industries Limited or not, and therefore, has rightly come to the opinion that he

3 (2010) 328 ITR 515

has reason to believe that income chargeable to tax has escaped assessment.

10. In view of the foregoing reasons, we do not find any legal infirmity in the impugned order of the Tribunal with regard to any question of law much less any substantial question of law which are proposed or otherwise and accordingly, the Appeal stands dismissed.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

PALAK

