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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : September 15,2009
Pronounced on : December 11, 2009

1. W.P.(C) No.3210-11/2005

M/S SATNAM OVERSEAS LIMITED & ANOTHER ...Petitioner

Through: Mr. C.S.Aggarwal, Senior Advocate with
Mr. Parkash Kumar, Advocate.

VERSUS

ADDITIONAL COMMISSIONER OF INCOME TAX ...Respondent

Through: Mr. Sanjeev Sabharwal, Advocate.

2. W.P.(C) No.1533-34/2005

M/S SATNAM OVERSEAS LIMITED & ANOTHER ...Petitioner

Through: Mr. C.S.Aggarwal, Senior Advocate with
Mr. Parkash Kumar, Advocate.

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX ...Respondent

Through: Mr. Sanjeev Sabharwal, Advocate.



3. W.P.(C) No.3208-09/2005

M/S SATNAM OVERSEAS LIMITED & ANOTHER ...Petitioner

Through: Mr. C.S.Aggarwal, Senior Advocate with
Mr. Parkash Kumar, Advocate.

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAXRespondent

Through: Mr. Sanjeev Sabharwal, Advocate.

4. W.P.(C) No.3220-21/2005

M/S SATNAM OVERSEAS LIMITED & ANOTHER ...Petitioner

Through: Mr. C.S.Aggarwal, Senior Advocate with
Mr. Parkash Kumar, Advocate.

VERSUS

ADDITIONAL COMMISSIONER OF INCOME TAXRespondent

Through: Mr. Sanjeev Sabharwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?



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VALMIKI J.MEHTA, J

1. The present Writ Petitions challenge the proceedings initiated by the respondent/Income Tax Authorities under Sections 147/148 of the Income Tax Act, 1961(hereinafter referred to as the Act). In the Writ Petition, it is prayed for quashing of the impugned notices dated 25.3.2004(Assessment Year 1997-98), 30.3.2005(Assessment Year 1998-99) and 8.3.2004(Assessment Years 1999-2000 and 2000-01) issued under Section 148. Further orders are sought with respect to prohibiting the respondent from framing the re-assessment under the provisions of Sections 147/148 of the Act.

2. The petitioner company is engaged in the business of manufacturing of rice and also trades in pulses, rice etc. It is also engaged in the export of rice, pulses etc. For the assessment years in question, the petitioner had filed its return of income. The case was thereafter selected for scrutiny and queries were raised from time to time by the Assessing Officer during the course of the assessment proceedings which were duly replied to by the petitioner to the satisfaction of the Assessing Officer. On providing the necessary details, clarification and information to the Assessing Officer, the assessment with respect to these assessment years were completed under Section 143(3) of the Act. The assessments were completed as per Section 115JA of the Act.

3. The respondent thereafter issued the impugned show cause notices under Sections 147/148 of the Act dated 25.3.2004, 30.3.2005 and 8.3.2004. On



asking for the reasons for initiation of re-assessment under Section 147 of t

Act, the petitioner was supplied the following reasons:-

“ M/s Satnam Overseas Ltd.-**A.Y. 1997-98**

The return of income in this case was filed by the assessee on 30.11.1997 and the same was processed u/s 143(1)(a) on 31.07.1998. Subsequently, the case assessed u/s 143(3) on 30.12.1999, at income of Rs.41435318/- u/s 115JA, the income returned by the assessee.

Perusal of the case record reveals that as per the Schedule-M annexed to the notes to accounts, the assessee has given the quantity and values of the stock. The average rate of the closing stock of the rice works out at Rs.2022 per quintal and when this rate is applied to work out the value of sales, the same comes to Rs.2347573866/- whereas the value of sales declared by the assessee is Rs.1666683978/-. As such, the assessee has suppressed its sales to the tune of Rs.680889888/-.

Similarly, in the closing stock of pulses, the average value of works out at Rs.2498 per quintal. Applying this rate on the quantity of sale of pulses during the year, the value of sale of 46794.261 quintal works out to Rs.116892064/- as against Rs.32142360/- declared by the assessee. Here also, it is evident that the assessee has suppressed its sale by a sum of Rs.84749704/-

In the light of the Explanation 1 to the proviso to section 147, I am of the opinion that the assessee has not disclosed full and true particulars of its income. In view of the above facts, I have reasons to believe that income has escaped assessment within the meaning of Explanation 2(c)(i) given for section 147 of the IT Act, 1961, since the income chargeable to tax as per return filed by the assessee has been under-assessed.

Issue notice u/s 148 of the IT Act, 1961.

(Amaresh Singh)
Dy. Commissioner of Income Tax,
Circle 9(1), New Delhi”

“No. ACIT/Circle 7(1)/2004-05/813

Office of the
Asstt. Commissioner of Income Tax,
Circle 7(1), New Delhi.



Dated: 24.03.2005

To,

The Commissioner of Income Tax,
Delhi-III,
New Delhi.

(Through Addl. CIT, Range-7, New Delhi)

Sir,

Sub: Proposal to initiate proceedings u/s 147 in the case of M/s Satnam Overseas Ltd., **A.Y. 1998-99**-Regarding.

Kindly find enclosed herewith the prescribed proforma in the above mentioned case.

For the A.Y. 1998-99, the assessment records of the assessee company has been examined and it was observed that it had consumed 541565 quintals (value of Rs.76.73 crores) of paddy for the production of rice during the year under consideration. Therefore, the average rate of paddy consumed works out to Rs.1416 per quintal. In the closing stock the assessee had shown rice and paddy together at a value of Rs.103.27 crores. The closing stock of paddy was shown at Rs.76053 quintals meaning thereby that the value of closing stock of 76053 quintals of paddy @ 1416 per quintal works out to Rs.1076 crores. Therefore, closing stock of rice worked out Rs.92.51 crores (103.27 crores-10.76 crores). The quantity of rice in the closing stock was shown at 225481 quintals. Therefore, the per quintal value of rice in the closing stock worked out to Rs.4102/- (92.51 crores/225481).

During the year consideration, the assessee company has shown sale of 1287924 quintals of rice value at Rs.260.16 crores meaning thereby that the average selling rate of rice was Rs.2019 per quintal. Therefore, there is a large difference between the average selling rate 920190 and average closing rate (4102) during the year under consideration.

The assessment records of the assessee company for A.Y.1999-00 has also been examined from where it was observed that the assessee company had sold 1516110 quintals of rice at a value of Rs.293.75 crores which means that the average selling rate of rice per quintal is Rs.1937 only (Rs.293.75 quintals/1516110 quintals)

It is very surprising that again the A.Y.1999-00, the average selling rate of rice per quintal works out to Rs.1937 whereas the closing stock of rice for the A.Y.1998-99 i.e. opening stock for the A.Y.1999-00 was valued at Rs.4102 per quintal.

As the assessee has shown value of closing stock of rice per quintal at Rs.4102 and has shown the average sale value per quintal at



Rs.2019, the assessee company has sold 1287924 quintals of rice during the year if the assessee has sold the rice @ of closing stock the sale value realized during the year have been understated by Rs.268.27 crores. As the assessee company has not shown the sale in conformity with the rate as shown in the closing stock.

In the light of the Explanation 1 to the proviso to section 147, I am of the opinion that the assessee has not disclosed full and true particulars of its income. In view of the above facts, I have reasons to believe that income has escaped assessment within the meaning of Explanation 2(c)(i) given for section 147 of the I.T.Act, 1961, since the income chargeable to tax as per return filed by the assessee has been under-stated.

Yours faithfully,

(V.S.Kapoor)

Asstt. Commissioner of Income Tax,
Circle 7(1), New Delhi.

Encl: As above. ”

“ No.Addl.CIT/Range-7/2004-5/860

Office of the
Addl. Commissioner of Income Tax
Range-7, Room No.316,
C.R. Building, New Delhi
23378714,23370490(FAX)
Dated:24-01-2005

To

The Principal Officer
M/s. Satnam Overseas Ltd.
201, VIPPS Centre,
2, Community Complex
Masjid Moth. G.K.-II,
New Delhi-110 048

Sir,

Sub: *Reasons for issue of notice u/s 148 of the I.T.Act-A.Y.1999-2000-Reg.*

Please refer to your letter dated 19.1.2005 wherein you have sought the reasons for issue of notice u/s 148 of the I.T.Act.



As per the order sheet entry dated 8.3.2004, the reasons for issue notice u/s 148 are as under:

“In the instant case, the return of income was filed on 30-12-1999. Subsequently, the same was assessed u/s 143(3) on 22-3-2002 by the then Assessing Officer at income of Rs.132.02 lacs.

Perusal of the record revealed that in the order u/s 143(3) dated 22-03-2002, the assessee was inadvertently allowed depreciation @ 100% of the rates applicable in respect of such assets also which were acquired by the assessee and put to use for business purposes for less than 180 days. As per I.T. Rules, the depreciation of such assets is allowed @ 50% of the corresponding rates applicable. This resulted in excess depreciation being allowed to the assessee and consequential effect of income chargeable to tax escaping assessment.

Further, it is also seen that the assessee was inadvertently allowed deduction on account of deposits made in respect of employees' contribution towards PF and ESI schemes, which were deposited beyond the due date stipulated for the purpose in the respective statutes. However, as per I.T. Act, the same will be deemed to be income of the assessee company in view of section 36(1)(va) read with section 24(2)(x). The record also reveals that the assessment has been allowed excess claim in respect of deposits of employee's contribution to PF and ESI which should have been added back to the income of the assessee. The above mentioned inadvertent allowance in turn resulted in excess allowance of deductions claimed u/s 80HHC and 80-IA.

In view of the above facts, I have reason to believe that income has escaped assessment within the meaning of Explanation 2(c)(iii) of proviso to section 147 of the I.T. Act, 1961, since the income as per return filed by the assessee has been made the subject of excessive relief under the Act. Issue notice u/s 148 of the I.T. Act, 1961.”

Yours faithfully

(B. K. Gupta)

Addl. Commissioner of Income Tax
Range-7, New Delhi.”

“No. Addl.CIT/Range-7/2004-05/859

Office of the
Addl. Commissioner of Income Tax
Range-7, Room No.316,
C.R. Building, New Delhi.
23378714, 23370490 (FAX)



Date: 24-01-2005

To

The Principal Officer
M/s. Satnam Overseas Ltd.
201, VIPPS Centre,
2, Community Complex
Masjid Moth. G.K.-II,
New Delhi-110 048

Sir,

Sub: *Reasons for issue of notice u/s 148 of the I.T.Act-*
A.Y.2000- 01-Reg.

Please refer to your letter dated 19.1.2005 wherein you have sought the reasons of issue of notice u/s 148 of the I.T.Act.

As per the order sheet entry dated 8.3.2004, the reasons for issue of notice u/s 148 are as under:

“ In the instant case, the return of income was filed on 30-11-2000 (For A.Y.2000-01 which was revised by the assessee on 30-10-2000). Subsequently, the same was assessed u/s 143(3) on 28-3-2002 by the then Assessing Officer at income of Rs.324.55 lacs.

Perusal of the record revealed that the assessee was inadvertently allowed claim of deposits made in respect of employees contribution towards PF and ESI schemes, which were deposited beyond the due date stipulated for the purpose in the respective statutes. However, as per I.T. Act, the same will be deemed to be income of the assessee company in view of section 36(1)(va) of section 24(2)(x). The record also reveal that the assessee has been allowed excess relief in respect of deposits of employer's contribution to PF and ESI which should have been added back to the income of the assessee. The above mentioned inadvertent allowance in turn resulted in excess deductions claimed u/s 80HHC and 80-IA.

In view of the above facts, I have reason to believe that income has escaped assessment within the meaning of Explanation 2(c)(iii) of proviso to section 147 of the I.T.Act, 1961, since, the income as per return filed by the assessee has been made the subject of excessive relief under the Act. Issue notice u/s 148 of the I.T.Act, 1961.”

Yours faithfully

(B.K.Gupta)
Addl. Commissioner of Income Tax
Range-7, New Delhi.”



4. The learned Senior Counsel for the petitioner Mr. C.S.Aggarwal, Senior Advocate by referring to the reasons has urged that the reasons given for re-opening of the assessments are unsustainable on account of the following reasons:-

(i) The assessment proceedings for the concerned years were duly completed under Section 143(3) of the Act after detailed scrutiny by the Assessing Officer and which included raising of queries and giving satisfactory replies thereto by the assessee company for the different assessment years, consequently, he urged that a reference to the aforesaid reasons given for seeking re-assessment clearly only amounts to a change of opinion on the facts which were already existing, in the knowledge of and duly considered by the Assessing Officer and seeking re-assessment is impermissible in law because on a mere change of opinion proceedings under Sections 147/148 cannot be initiated.

(ii) The exercise which is now undertaken by the Assessing Officer in alleging that the assessee company has suppressed its sales is an exercise which could well have been carried out by the Assessing Officer in the assessment proceedings during the relevant assessment years because they pertain to issues which are sought to be raised on the basis of the record available before the Assessing Officer and there was no concealment of any facts by the assessee company. Arguing further, he stated that since the re-assessment proceedings



which are sought to be initiated are after the period of four years and the reasons for re-opening of the assessment are merely as a matter of lip service state that the assessee had not disclosed full and true particulars, however, a reference to the reasons show that it is not explained as to how the true and full particulars are not disclosed in as much as the reasons pertain to the same record and not to any new material which has come to the notice of the Assessing Officer.

(iii) Lastly, it is stated that the reasons given for seeking re-opening of the assessment taking an average sale price for the entire year is on the face of it absurd because the sale price of rice/pulses is not constant during the year and therefore the basis adopted by the Assessing Officer to take average price of the closing stock and multiply this average price to the sales quantity for arriving at a figure of alleged sales is a perverse and an absurd exercise having no rational basis. He further contended that assuming that this rationale and logic of the Assessing Officer was valid, it was a method which could have been adopted surely even during the regular assessment proceedings for the relevant years in which orders u/s 143(3) were passed and which was not done, and therefore, there cannot be a re-assessment merely because the Assessing Officer failed to do what he ought to have done from obvious facts and material which were available before him. So far as the reasons given for the year 1998-99 of the average price of paddy/rice the same argument has been urged by the counsel. With respect to the reasons for the assessment years 1999-2000 and 2000-01, learned senior counsel contended that these aspects were very much considered



by the Assessing Officer before passing the assessment order under Section 143(3) of the Act. He took us through the various letters written to the Assessment Officer during the relevant assessment years pertaining to the claim of deductions under Section 80HHC and 80IA as also the fact that now it is well settled law that even if there is delay in payment of contribution towards PF and ESI scheme, if the same are deposited alongwith returns for the relevant assessment year, then, there is no default on the part of the assessee for claiming the deductions for payment made under PF and ESI scheme. We may at this stage note that the counsel for the Revenue did not dispute this proposition of law. Mr. C.S. Aggarwal, learned counsel further argued that in view of the admitted fact that payments were made before the due date of filing returns and were thus permissible deductions under Sections 43B of the Act. The counsel further urged that it is not as if that issue has come up for the first time before the Assessing Officer and in a similar manner in the preceding year the Assessing Officer has considered the allowability with respect to these claims made with regard to PF/ESI. Finally, the counsel has contended that the Tax Auditor's report is the basic document which was before Assessing Officer and which contained all the necessary details and such details having been duly furnished in the Tax Audit Report surely were duly verified by the Assessing Officer, more so because deductions under Sections 80HHC and 80IA were duly considered for their applicability by the Assessing Officer in the relevant assessment years.



5. The learned counsel for the revenue, however, has contended that mere because the entire material was filed before the Assessing Officer, it was not possible for the Assessing Officer to have looked at all the documents and there is no presumption that he has looked into all the documents, consequently when the Assessing Officer on the basis of the record filed realises his mistake, it is open to him to seek re-assessment under Sections 147/148 of the Act. He has also urged that the reasons recorded are valid reasons which show reason to believe.

6. We feel that the Writ Petitions have to succeed because the contentions as raised on behalf of the counsel for the petitioner are well founded. The only reason which has been given seeking re-opening of the assessment for the years 1997-98 and 1998-99 is that suppression of sales have taken place on account of the fact that when average price of the closing stock is multiplied with the quantity of the sales in the year then the value of the sales would be at a higher figure than that as declared by the assessee. Clearly, there is no new material which is alleged to have come to the notice of the Assessing Officer which has caused him to seek re-opening of the assessment. Admittedly, the reasons given for seeking re-opening of the assessment contains the expression 'perusal of the case record reveals' clearly showing that it is on the basis of the same assessment record as was filed by the assessee, during the relevant assessment years and also scrutinized by the Assessing Officer before passing the orders under Section 143(3) is the basis for seeking re-opening of the assessment.



Further the new logic, rationale and opinion which has been formed by the Assessing Officer for seeking re-opening of the assessment is nothing but a change of opinion and a new approach to the existing facts and material which the Assessing Officer could well have done during the regular assessment proceedings of the relevant assessment years. Not only this, the rationale/logic/reasons given that sale price of stocks during the entire assessment year would remain constant is something which indeed confounds us. It cannot stand to reason that the price of sale of paddy/rice/pulses remained constant throughout the year so that on the basis of an average price of the closing stock the sale price for the entire year comprising of 12 months, 48 weeks and 365 days can be ascertained in that the same would have remained fixed throughout this period. Even assuming that this logic is correct, it was surely an exercise which the Assessing Officer could have done on the basis of materials which he is now presently seeking to do because the same very materials were available to him in the relevant assessment years and merely because the Assessing Officer feels that he has failed to do what he ought to have done cannot be a valid ground for seeking initiation of re-assessment under Sections 147/148 of the Act.

So far as the issue of claiming depreciation on tarpaulin is concerned the learned senior counsel has referred to the correspondence specifically entered into in this behalf in the relevant assessment year 1999-2000 and particularly the letter dated 22.2.2002 which specifically mentions a note



with respect to the claim of depreciation on tarpaulin. The said note on t claim for depreciation for tarpaulin clearly gives the reason that life of these tarpaulin covers are subject to elements such as dust, rain and sun and consequently 100% depreciation is claimed because they get torn on account of frequent use. With regard to the assessment year 2000-01, the learned senior counsel for the petitioner has referred to a specific letter dated 22.3.2002 whereby a specific note with regard to delay in payment of provident fund was given to the Assessing Officer. All the aforesaid arguments and the documents relied upon by the learned counsel for the petitioner along with reasons given for seeking reopening of the assessment under Sections 147/148 of the Act make it more than abundantly clear that in all the aforesaid assessment years the reasons refer not to any concealment of facts whatsoever but in fact reasons given have simply relied upon the record which was already available before the Assessing Officer while completing the assessment proceedings under Section 143(3) of the Act. Not only this, it is quite clear that the very aspect of deduction u/s 80 HHC and Section 80 IA means that entries with respect to claims of deductions towards expenditure whether towards PF/ESI or the valuation of the stock was very much considered by the Assessing Officer for considering the claim of the assessee under Section 80 HHC and Section 80IA in the relevant assessment years. It is not therefore as if any new material has come on record or that there was bulk material and in respect of which some material could not have been considered by Assessing Officer. Surely an obvious thing would have been and



in fact has been duly considered by the Assessing Officer such as valuation stock and allowing of the claim of expenditure/contribution towards PF and ESI. Once all these aspects were considered and also ought to have been considered from the obvious material available on record which was duly done by and brought to the notice of the Assessing Officer, we do not feel that there is any scope for reassessment proceedings under Section 147 of the Act by issuing of notice under Section 148 thereof.

7. We may for the purposes of the record state that it was sought to be canvassed for certain years by the counsel for the petitioner with regard to the date of issuing of the notice under Sections 147/148 of the Act and the date of the reasons recorded for re-opening of the assessment and the date of seeking permission to re-open the assessment by the Assessing Officer from the higher authorities that the reasons for re-opening of the assessment were subsequent to the date of the notice issued for re-opening of the assessment and therefore the notices issued under Sections 147/148 must fail as reasons have been recorded subsequently. We are not going into this aspect of the matter because we have agreed with the writ petitioner and granted relief on other grounds as stated above that there was no valid basis for seeking re-assessment under Sections 147/148 of the Act.

8. Therefore, we allow the present Writ Petition and quash the impugned notices dated 25.3.2004, 30.3.2005 and 8.3.2004 under Section 148 of the Act and also direct that the respondents are prohibited from framing any re-



assessment under the provisions of Sections 147/148 of the Act on the basis
the reasons recorded as above stated and the impugned notice. The petitions are
allowed with costs quantified at Rs. 25,000/- for each Writ Petition.

VALMIKI J.MEHTA, J

A.K. SIKRI, J

December 11, 2009

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