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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 15th May, 2012.

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+ W.P.(C) 1623/1990

M/S MODIPON LTD. Petitioner
Through: Mr. Santosh K. Aggarwal, Adv.
versus

THE ASST. COMMISSIONER OF INCOME TAX
.... Respondent
Through Mr.Sanjeev Sabharwal,
Sr.Standing Counsel

67

+ W.P.(C) 1624/1990

M/S MODIPON LTD. Petitioner
Through: Mr. Santosh K. Aggarwal, Adv.
versus

THE ASST. COMMISSIONER OF INCOME TAX &
ORS. Respondent
Through Mr.Sanjeev Sabharwal,
Sr.Standing Counsel

68

+ W.P.(C) 2215/1991

M/S MODIPON LTD. Petitioner
Through: Mr. Santosh K. Aggarwal, Adv.
versus



THE DY. COMMISSIONER OF INCOME TAX &
ANR.

.... Respondent

Through Mr.Sanjeev Sabharwal,
Sr.Standing Counsel

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

Modipon Ltd. has filed writ petition No.1623/1990 impugning reassessment notice for the assessment years 1984-85 and 1985-86 both dated 19th July, 1989. In the writ petition No.1624/1990 Modipon Ltd. has impugned reassessment notice for the assessment year 1984-85 and 1985-86 issued to them as successors of Indofil Chemicals Ltd. These two notices are dated 18th October, 1989. In the third writ petition No.2215/1991, Modipon Ltd. has challenged reassessment notice dated 4th March, 1991 for the assessment year 1986-87. This notice was issued to Modipon Ltd. as a successor of Indofil Chemical Ltd.

2. The reasons to believe for issue of the said notices are not been placed on record. However, there is a letter dated 1st September, 1989 written by the Assessing Officer to the petitioner indicating and stating why the assessment proceedings have been initiated. The said



letter is reproduced for the sake of convenience:-

“2. The re-assessment proceedings for the assessment years 1984-85 and 1985-86 have been initiated u/s 147 (a) of the Income-tax Act on account of omission and failure to disclose fully and truly all material facts necessary for determining the income chargeable to tax for these assessment years.

3. These omissions and failures include inter alia the fact that no amalgamation between M/s Modipon Ltd. and M/s Indofil Chemicals ltd. had taken place in the accounting years ended on 30.6.1983 and 30.6.1984 which were relevant to the assessment years 1984-85 and 1985-86 as defined in Section 2 (1A) of the Act.

4. Some of the relevant facts which have been discussed in the assessment order for the assessment year 1986-87 have been taken into consideration while recording the reasons for initiating the re-assessment proceedings.

5. There is no provision in section 147 or 148 of the Act for supplying copies of the reasons, gist of which has already been stated above.

6. Your request for extension of three months for filing the returns of income for the assessment years 1984-85 and 1985-86 cannot be acceded to since no reasonable cause has been made out in your letter date 22.8.1989.”

3. We may notice that the Assessing Officer had earlier computed



and completed the assessment proceedings under Section 143(3) of Income Tax Act, 1961 [‘Act’ for short] in respect of the assessment years 1984-85 and 1985-86 in the case of Modipon Ltd. The assessment orders passed in the original proceedings dated 27th March, 1987 and 29th March, 1988, are placed on record.

4. In the assessment order dated 27th March, 1987, for the assessment year 1984-85, the Assessing Officer has referred to the fact that Indofil Chemicals Ltd. had amalgamated with the petitioner company after Courts approval. It is further recorded that the business income/earnings of Indofil Chemicals Ltd. was treated as income/earnings of chemical division of the Modipon Ltd. Consolidated accounts including the income of the chemical division, which was earlier the business of Indofil Chemicals Ltd., was the basis of the assessment order.

5. The assessment order dated 29th March, 1988 for the assessment year 1985-86, records that in the return of income filed on 31st July, 1985 the petitioner had included income of chemical division i.e. income/earnings of Indofil Chemicals Ltd. which was amalgamated with the petitioner from 1st July, 1982. Consolidated profit and loss accounts and balance sheet had been filed.

6. Indofil Chemicals Ltd. had filed return of income for assessment years 1984-85 and 1985-86 on 27th July, 1984 and 28th



June, 1985 declaring income of Rs.2,08,91,810/- and 2,03,38,390/-, respectively. The said assessments were completed on 30th March, 1987 and 29th March, 1988 at nil income as by then, the scheme of amalgamation had been approved by the courts.

7. The scheme of amalgamation required approval of the Bombay High Court as Indofil Chemicals Ltd. had its registered office in Mumbai. On 16th September, 1985, the scheme of amalgamation was approved by the Bombay High Court. The scheme of amalgamation in the case of the petitioner (Modipon Ltd.) was approved by the Allahabad High Court on 9th July, 1985. The Government of India, Ministry of Industries and Company Affairs, Department of Company Affaires had earlier approved the scheme of amalgamation after calling for the report from Central Board of Direct Taxes on 17th January, 1985. This was necessary in view of Section 23(2) of the Monopolies and Restrictive Trade Practices Act, 1969.

8. As per the scheme of amalgamation the effective date was 1st July, 1982. On the basis of the effective date, the petitioner had filed revised computation of profit and loss accounts including the profit and loss and balance sheet of Indofil Chemicals Ltd. in the returns filed by the petitioner, i.e. Modipon Ltd. It is on this basis that the original assessment orders were passed in the case of the petitioner



as well as Indofil Chemicals Ltd.

9. In the assessment years 1986-87, the Assessing Officer in the case of Modipon Ltd. took a different view and held that it was not the effective date but the appointed date which would determine and decide when Indofil Chemicals Ltd. had amalgamated with Modipon Ltd. Accordingly, the Assessing Officer held that the amalgamation of the two companies, i.e. petitioner-Modipon Ltd. and Indofil Chemicals Ltd., had taken place after 31st March, 1986 in view of Section 2(1A) of the Act [now 2(1B)]. He held that till the assessment year 1986-87 both Modipon Ltd. and Indofil Chemicals Ltd., were separate assesses. Accordingly, their income/earnings should be taxed. CIT(Appeals) affirmed the view of the Assessing Officer. However, on further appeal the petitioner succeeded before the Tribunal vide order dated 10th May, 1995. It was held that the amalgamation was effective from 1st July, 1982 and accordingly income of Indofil Chemicals Ltd. was assessable in the hands of the petitioner (Modipon Ltd.) on the basis of the scheme of amalgamation which was effective from 1st July, 1982. An application under Section 256(1) of the Act was filed by the Revenue but was rejected. Thereafter the Revenue did not file an application for reference under Section 256(2) of the Act. As a result



the order passed by the Tribunal dated 10th May, 1995 for the assessment year 1986-87 has become final.

10. In these circumstances, we feel that the petitioner is entitled to succeed in the present writ petitions and the reassessment notices issued and made subject matter of challenge in these writ petitions, are accordingly set aside and quashed. The writ petitions are disposed of. There shall be no order as to costs.

SANJIV KHANNA, J

R.V.EASWAR, J

MAY 15, 2012
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