

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 616 OF 2008

ASSISTANT COMMISSIONER OF INCOME TAX,  
KOTTAYAM & ANR. ... Appellants

VERSUS

M/S TRAVANCORE CEMENTS LIMITED ... Respondent

O R D E R

The respondent herein is a company engaged in the business of manufacture of cement and cement paints. In respect of the Assessment Year 2000-2001, it filed its original return on 26.11.2000 declaring a total income of Rs.2,37,56,900/-. Thereafter, however, a revised return was filed on 05.01.2001 in which total income shown was Rs.1,91,32,250/-. This return was filed along with Audit Report under Section 44AB of the Income Tax Act (hereinafter referred to as the Act). The said revised return was not taken up for scrutiny under section 143(3) of the Act. The date for completing the regular assessment under Section 143(3) of the Act expired on 31.03.2003. On that basis, the revised return filed by the respondent-assessee was accepted and Assessment Order passed as such under Section 143(1) of the Act. On 28.03.2005, notice was issued by the Additional Commissioner of Income Tax under Section 147 read with Section 148 of the Act alleging therein that he had reasons

to believe that income chargeable to tax for the Assessment Year 2000-2001 had escaped the assessment within the meaning of Section 147 of the Act.

Thereafter vide communication dated 17.10.2005, the respondent was provided with the reasons which were recorded for reopening of the case and the same are as under: -

"Excise duty (16%) has not been included in valuation of closing stock"

Pursuant to the aforesaid notice, the Respondent filed return showing the income as shown in the return which was filed on 05.01.2001. This return was processed which prompted the Assessing Officer to issue another communication dated 31.10.2005 and as per it, the respondent was required to furnish the following details: -

- "1. Proof of addition to fixed assets and proof of installation.
2. It is proposed to add back Rs.46,13,711/- being provision for shortage of income shell stock, as this is in the nature of a mere provision and was not ascertained in the year end 31.3.2000. Objections, if any, may be filed.
3. Objections if any to the inclusion of excise duty @ 16% in calculation of closing stock.
4. Break-up of interest paid.
5. Ledger with narration and supporting bills/vouchers regarding repairs to building and repairs to machinery."

As can be seen from the above, though in the reasons to believe furnished earlier it was stated that income had escaped the assessment only qua Item No. 3 mentioned above. However, by this notice, information regarding Item No. 4 and other items were also sought.

The assessee, on the receipt of this letter, took the position that it was not permissible for the Assessing Officer to broaden the scope of notice issued earlier by including other items as well in respect whereof the income was allegedly escaped as per the Assessing Officer. For this reason, the respondent filed objections as aforesaid as well as the reasons recorded earlier vide his letter dated 14.11.2005. After considering those objections, the Assessing Officer rejected the same by his orders dated 18.11.2005.

After receiving the aforesaid rejection order, the respondent approached the High Court by filing the Writ Petition under Article 226 of the Constitution with the following prayers: -

"(i) call for the records relating to Exhibit P12 and quash the same by the issue of a writ of certiorari or such other appropriate writ, direction or order.

(ii) stay further proceedings pursuant to Exhibit P12 until final disposal of this Writ Petition; and

(iii) pass such other order as are deemed just and necessary in the facts and circumstances of the case.

Interim relief prayed under Rule 150 of the Rules of the High Court of Kerala, 1971.

For the reasons stated in the writ petition and in the accompanying affidavit it is humbly prayed that this Hon'ble Court may be pleased to stay all other proceedings pursuant to Exhibit P12 pending final disposal of the writ petition."

We may mention that except Exhibit P12 which is mentioned in the prayer clause, was the order dated

18.11.2005 by which objections of the respondent to reasons recorded originally as well as in the letter dated 14.11.2005 were rejected.

The High Court after hearing the counsel for the parties allowed the Writ Petition primarily on the ground that when the "reasons to believe" contained in order dated 17.10.2005 pertained only to excise duty which had not been included in valuation of closing stock and the assessment was sought to be reopened only in that behalf, it was not permissible for the Assessing officer to include other items without following the process of issuing notice under Section 148 of the Act in that behalf as well.

It is clear from the question which was posed by the High Court and answered by it, which is as under: -

"The moot question is whether the assessing authority without following the procedure under sub-section (2) of Section 148 assess or reassess any income chargeable to tax which virtually has no connection with the reasons already disclosed in the notice issued under Section 148(2)."

It would be pertinent to mention at this stage that insofar as the original notice dated 28.03.2005 proposing to reassess the income for the Assessment Year in question as well as communication dated 17.10.2005 furnishing reasons to believe is concerned, the High Court did not find any infirmity therein and on the contrary, specifically uphold the validity thereof.

It would also be relevant to mention at this stage that another Division Bench of Kerala High Court itself had doubted the correctness of the impugned judgment and referred the matter to the Full Bench and the Full Bench of Kerala High Court in the case of '*Commissioner of Income Tax v. Best Wood Industries and Saw Mills*' [(2011) 331 ITR 63] had specifically over-ruled the said judgment.

It is held that the provisions of Section 147 of the Act enabled the Assessing Officer to not only assess or re-assess such income which had escaped the assessment and in respect of which notice under Section 147 was given, it also empowers the Assessing Officer to assess/ re-assess any other income chargeable to tax which had escaped the assessment and which comes to the notice subsequently in the course of proceedings under this Section.

We are of the opinion that the impugned judgment is rightly set aside by the Full Bench as is clear from the plain language of Section 147: -

"147. *Income escaping assessment.*-If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year);"

In fact there is no scope for controversy solved whatsoever after addition of *Explanation 3* to Section 147 inserted by Finance (No. 2) Act, 2009 retrospectively w.e.f.01.04.1989. This explanation is to the following effect: -

*Explanation 3.* -For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

The aforesaid *Explanation* clinches the issue and makes the position abundantly clear which was even otherwise obvious from the plain reading of Section 147.

We, thus, allow this appeal and set aside the impugned judgment of the High Court.

Though, we have straightened the position of law, during the pendency of the writ petition filed by the respondent, the High Court had permitted the Assessing Officer to complete the assessment. On that basis, Assessment Order was passed on 02.06.2006. The only addition which is made pertains to the shortage in lime shell stock amounting to Rs.46,13,711/-. Since the writ petition of the respondent itself was allowed, the respondent assessee had no occasion to challenge this Assessment Order.

It will be open now to the respondent to challenge the

order by filing appeal before the competent forum, if so  
advised.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ROHINTON FALI NARIMAN ]

New Delhi;  
November 18, 2015.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 616/2008

ASSTT.COMMR.OF INCOME TAX,KOTTAYAM &amp;ANR.

Appellant(s)

VERSUS

M/S TRAVANCORE CEMENTS LIMITED

Respondent(s)

(With appln. (s) for substituted service)

Date : 18/11/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Guru Krishna Kumar, Sr. Adv.

Mr. Rupesh Kumar, Adv.

Mr. K. L. Janjani, Adv.

Ms. Shweta Garg, Adv.

Mr. Jitin Singhal, Adv.

Mr. Pratik Raoka, Adv.

Ms. Anil Katiyar, Adv.

Mr. B. V. Balaram Das, Adv.

For Respondent(s)

Mr. M. P. Vinod, Adv.

Mr. Dileep Pillai, Adv.

Mr. Ajay K. Jain, Adv.

Mr. Atul Shankar Vinod, Adv.

Mr. Vikash Pathak, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

(Nidhi Ahuja)  
COURT MASTER(Rajinder Kaur)  
COURT MASTER

[Signed order is placed on the file.]