IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).6717-6720 OF 2009

M/S. BANSAL MODERN RICE MILL & ANR. ETC. — **APPELLANT(S)**

VERSUS

STATE OF U.P. & ORS. — **RESPONDENT(S)**

WITH

CIVIL APPEAL NO(S).9132/2014

CIVIL APPEAL NO(S).9189/2014

CIVIL APPEAL NO(S).9190/2014

CIVIL APPEAL NO(S).9194/2014

CIVIL APPEAL NO(S).3627-3633/2016

CIVIL APPEAL NO(S).10842/2016

CIVIL APPEAL NO(S).10841/2016

CIVIL APPEAL NO(S).6698/2019
ARISING OUT OF SPECIAL LEAVE PETITION(C) NO(S).33993/2017

CIVIL APPEAL NO(S).6699/2019
ARISING OUT OF SPECIAL LEAVE PETITION(C) NO(S).34182/2017

CIVIL APPEAL NO(S).6700/2019
ARISING OUT OF SPECIAL LEAVE PETITION(C) NO(S).4715/2018

O R D E R

CIVIL APPEAL NO(S).6717-6720 OF 2009

In view of the decision of this Court in *State of Uttar Pradesh & Others vs. Aryaverth*

Chawal Udyog **& Others reported in (2015) 17 SCC 324, the issue raised in these appeals does not survive for consideration as the reassessment notice(s) have already been quashed.**

The appeals and pending applications are accordingly disposed of.

CIVIL APPEAL NO(S).9132/2014

Counsel for the appellant submits that the issue raised in this appeal is answered by this Court in ***State of Uttar Pradesh & Others vs. Aryaverth Chawal Udyog & Others reported in (2015) 17 SCC 324.***

Counsel for the respondent(s), however, submits that the issue answered in the reported decision is limited to the circumstances in which reassessment notice can be issued. No other aspect including the interpretation of Section 15(c) of the Central Sales Tax Act, 1956 (for short, 'the Act'), has been dealt with therein. We agree with this submission.

In the result, action founded on the notice dated 11.11.2008 cannot proceed further but it would be open to the Department to pursue action regarding the claim arising from or under

Section 15(c) of the Act, if permissible in law.

The appeal and pending applications are accordingly disposed of.

<u>CIVIL APPEAL NO(S).9189/2014, 9190/2014,9194/2014, CIVIL APPEAL @ OUT OF SLP(C)NO(S).33993/2017 & 34182/2017</u>

Leave granted.

Heard counsel for the parties.

From the impugned judgments(s), it is noticed that the High Court proceeded to answer the controversy on the premise which, however, now stands answered by this Court in *State of Uttar Pradesh & Others vs. Aryaverth Chawal Udyog & Others reported in (2015) 17 SCC 324.*

The principle stated by the High Court has not commended to this Court. The view taken by this Court, however, is that reassessment notice(s) can be resorted to only in the circumstances, as noted in paragraphs 28 to 30 of the said reported judgment. The same read thus :-

> **28. This Court has consistently held that such material on which the assessing Authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of action taken by the assessing Authority in pursuance of such belief. In case of absence of such material, this Court in clear terms has**

held the action taken by assessing Authority on such “reason to believe” as arbitrary and bad in law.

In case of the same material being present before the assessing Authority during both, the assessment proceedings and the issuance of notice for re-assessment proceedings, it cannot be said by the assessing Authority that “reason to believe” for initiating reassessment is an error discovered in the earlier view taken by it during original assessment proceedings. (See: Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, (1980) 4 SCC 71).

29. The standard of reason exercised by the assessing Authority is laid down as that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. The necessary sequitur is that a mere change of opinion while perusing the same material cannot be a “reason to believe” that a case of escaped assessment exists requiring assessment proceedings to be reopened. (See: Binani Industries Ltd. v. CCT,(2007) 15 SCC 435; A.L.A.Firm v. CIT, (1991) 2 SCC 558). If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to “change of opinion”.

If an assessing Authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous; it is not a valid reason under the law for re-assessment. Thus, reason to believe cannot be said to be the subjective satisfaction of the assessing Authority but means an objective view on the disclosed information in the particular case and must be based on firm and

> concrete facts that some income has escaped assessment.
>
> 30. In case of there being a change of opinion, there must necessarily be a nexus that requires to be established between the “change of opinion” and the material present before the assessing Authority. Discovery of an inadvertent mistake or non-application of mind during assessment would not be a justified ground to reinitiate proceedings under Section 21(1) of the Act on the basis of change in subjective opinion (CIT v. Dinesh Chandra H. Shah, (1972) 3 SCC 231; CIT v. Nawab Mir Barkat Ali Khan Bahadur, (1975) 4 SCC 360).

In other words, the view taken by the High Court has not found favour with this Court in afore-quoted reported decision.

As a result, the impugned judgment(s) are set aside and the proceedings are remanded to the High Court for reconsideration on merits in accordance with law and in light of the reported decision in Aryaverth Chawal Udyog (supra).

We make it clear that the High Court may consider all aspects of the matter(s) and answer all questions which may arise for consideration and available to both sides.

While parting with these matters, we may record that separate reassessment notice has been issued for each assessment year, therefore, the efficacy of such notice(s) may have to be considered independently assessment year-wise.

The appeals and pending applications are accordingly disposed of.

CIVIL APPEAL NO(S).3627-3633/2016, 10842/2016, 10841/2016 and CIVIL APPEAL NO. @ SPECIAL LEAVE PETITION(C) NO(S).4715/2018

Leave granted.

We have heard counsel for the parties.

The High Court in the impugned judgment(s) has proceeded to record that the reassessment notice(s) issued to the appellant(s)/assessee(s) is replete with reasons to believe.

The view so taken by the High Court, however, has been assailed by the appellant(s) on the argument that the crucial aspect has been clearly glossed over by the High Court viz., that the material referred to in the reassessment notice was already before the assessing officer as a consequence of search conducted prior to the assessment order. If so, the intended action would be in the nature of change of opinion and not germane to invoke reassessment. Reliance has been

placed on a recent decision of this Court in *State of Uttar Pradesh & Others vs. Aryaverth Chawal Udyog & Others reported in (2015) 17 SCC 324*. In light of this decision, the High Court may have to consider the matter(s) afresh.

We agree with this submission despite the vehement opposition by the counsel for the respondent-State that no further enquiry into the matter was necessary.

In our opinion, the High Court has not dealt with the argument canvassed before us by the appellant(s) that if the material referred to in the reassessment notice was already available to the Assessing Officer before passing the assessment order, it would be a case of change of opinion, which, indeed, cannot be a ground to invoke reassessment action - as is expounded by this Court in paragraphs 28 to 30 of the decision in *State of Uttar Pradesh & Others vs. Aryaverth Chawal Udyog & Others reported in (2015) 17 SCC 324.*

As a result, we set aside the impugned judgment(s) and remand the matters to the High Court for consideration of the writ petitions

afresh on their own merits in accordance with law and in light of the exposition in the said reported decision.

We leave all contentions available to the parties open.

While parting with these matters, we may record that separate reassessment notice has been issued for each assessment year, therefore, the efficacy of such notice(s) may have to be considered independently assessment year-wise.

The appeals and pending applications are accordingly disposed of.

.....................,J.
(A.M. KHANWILKAR)

.....................,J.
(DINESH MAHESHWARI)

NEW DELHI
AUGUST 28, 2019.

ITEM NO.102 COURT NO.8 SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6717-6720/2009

M/S. BANSAL MODERN RICE MILL & ANR ETC. Appellant(s)

VERSUS

STATE OF U.P. & ORS. Respondent(s)

WITH
C.A. No. 9132/2014 (III-A)

C.A. No. 9189/2014 (III-A)

C.A. No. 9190/2014 (III-A)

C.A. No. 9194/2014 (III-A)

C.A. No. 3627-3633/2016 (X)

C.A. No. 10842/2016 (X)

C.A. No. 10841/2016 (X)

SLP(C) No. 33993/2017 (XI)

SLP(C) No. 34182/2017 (XI)

SLP(C) No. 4715/2018 (X)

Date : 28-08-2019 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s) Mr. Ramesh P. Batt, Sr. Adv.
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Ms. Tanuj Bagga Sharma, Adv.
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For Respondent(s) Ms. Aishwarya Bhati, Sr. Adv.
Mr. Bhakti Vardhan Singh, AOR
Mr. Nithin, Adv.
Ms. Chitrangada, Adv.
Ms. Celesty Agarwal, Adv.

Mr. Vivek Singh, AOR

Mr. Vikas Negi, Adv.
Mr. Jaswant Singh Rawat, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals and pending applications are disposed of in terms of the signed order.

(NEETU KHAJURIA) COURT MASTER	(VIDYA NEGI) COURT MASTER

(Signed order is placed on the file.)