

income-tax Officer Vs. Alkali and Chemical Corporation

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : May-14-1982

Reported in : (1983)3ITD80(Kol.)

Judge : Y Upadhyay, Vice, S Mehra

Appellant : income-tax Officer

Respondent : Alkali and Chemical Corporation

Judgement :

1. The appellant-revenue by their instant appeal challenge the first appellate order dated 13-11-1980, of Shri K.C. Chand, the learned Commissioner (Appeals), Calcutta, for the assessment year 1974-75, on the following grounds : 1. That the learned Commissioner of Income-tax (Appeals) has erred in law in holding that Section 40(c) applies only to a natural person and not to a juridical person and in that view was not justified in quashing the assessment.

2. That on the facts and in the circumstances of the case the learned Commissioner of Income-tax (Appeals) erred in holding that the Income-tax Officer had erroneously applied the provisions of Section 147 without giving his finding on the jurisdiction of the Income-tax Officer and in quashing the assessment.

2. The respondent-assessee is a resident limited company and the method of accounting is mercantile. The relevant accounting period is the year ending 30-9-1973.

3. The assessment originally framed was reopened by initiating reassessment proceedings under Section 147(6) of the Income-tax Act, 1961 ('the Act'). The learned TTO, Shri T.V. Verghese, considered that in computing the disallowable expenditure under Section 40(c) of the Act, the payments of Rs. 5,38,155, made to Imperial Chemical Industries Ltd., UK-the holding company-who has got substantial interest in the assessee-company, was not considered. He felt that the expression 'person' appearing in Section 40(c) shall have the meaning assigned to it in Section 2(31) of the Act. The reopening proceedings and the withdrawal of the relief were resisted by the assessee. The learned ITO, while hearing the objection of the assessee notwithstanding, considered that the payment in excess of Rs. 72,000 made to Imperial Chemical Industries Ltd. was not allowable. Consequently, an addition of Rs. 4,66,155 was made out of the sum of Rs. 5,38,155 after allowing deduction under Section 40(c) to the tune of Rs. 72,000. The assessment order under Section 143(3)/147(b)/144B of the Act, is dated 30-8-1980.

The said assessment order of the learned ITO was thereafter challenged by the

assessee and it appears to have been contended before the learned Commissioner (Appeals) that the assessee had objected to the reopening of the assessment under Section 147(6), since according to the assessee all primary facts were placed before the learned ITO during the original assessment proceedings. It was mentioned that the necessary details including payment of technical fees to the UK company were disclosed and that no income chargeable to tax had escaped assessment in consequence of any failure on the part of the assessee to disprove any material facts necessary for assessment. It was also contended before the learned Commissioner (Appeals) that the learned ITO erroneously treated the technical fees paid to the UK company as payment under Section 40(c), because payments made to corporate bodies were not covered by the provisions of the aforesaid section and that 'person' appearing in Section 40(c)(j) referred to 'individual' only and not to corporate bodies. Objections also appear to have been taken that information from audit party did not constitute any information within the meaning of Section 147(6) and furthermore, the original assessment order had already merged with the earlier order of the learned Commissioner (Appeals) dated 22-11-1978.

4. The learned Commissioner (Appeals) vacated the assessment order under reference with the following observations : I find that the aforesaid objection of the learned representative had considerable force. The provisions of Section 40(c) were applicable to a director of the company or a relative of the director and person having substantial interest in the company or a relative of such person. A person having substantial interest in the company could only be a natural person who could have a relative. A company or a firm could not have a relative obviously. So Section 40(c) only applied to a natural person. Only the meaningful rule of construction has to prevail as held by the Supreme Court in the cases reported in Bengal & Assam Investors Ltd. v. CIT [1966] 59 ITR 547 and CIT v. Distributors (Baroda) (P.) Ltd. [1972] 83 ITR 377.

Moreover, the decision of the Karnataka High Court in the case of T.T. (P.) Ltd. v. ITO [1980] 121 ITR 551 was directly on the issue.

Deriving support from the above decision I would hold that the ITO had erroneously applied the provisions of Section 147 of the Income-tax Act, 1961. The assessment is, therefore quashed.

5. Hence, the instant appeal by the revenue before us on the grounds referred to above.

6. On behalf of the appellant-revenue, Shri A.K. Jana, the learned departmental representative, supported the order of the learned ITO and further contended that the assessee being a subsidiary of the UK company, the provisions of Section 40(c) were rightly applied by the learned ITO and that the word 'person' appearing in Section 40(c) has got to be understood in terms of Section 2(31), in accordance to which a 'person' includes an artificial juridical person also. He specially invited our attention to Sub-clause (vii) of Section 2(31). On the basis of this contention, he submitted that it is not correct that Section 40(c) applies only to the natural person. Reference was also made to Section 2(32).

7. Shri Jana further contended that in the facts and circumstances of the assessee's case, the learned ITO was justified in initiating the reopening proceedings under Section 147(b) and that the reopening was not on the basis of the audit report as

wrongly mentioned in the impugned order. Reliance was placed on the ratios of the following cases : Jamnalal Nathni v. CIT [1982] 134 ITR 686 decided by their Lordships of the Madhya Pradesh High Court; CIT v. A. Raman & Co.

[1968] 67 ITR 11 decided by their Lordships of the Supreme Court for the proposition that as a result of information regarding evasion of tax initiation of reopening proceedings under Section 147(b), were justified.

8. On behalf of the respondent-assessee, Shri Victor Levi, supported the impugned order and further invited our attention to various pages of the assessee's paper book to assert that all material facts had already been placed before the learned ITO. He reiterated the arguments advanced before the first appellate authority and repeated that the reopening was on the basis of an audit report and that Section 40(c) does apply only to the natural person.

9. The contentions raised and submissions made on behalf of the rival parties have been heard and records carefully examined. First we take up the issue as to whether Section 40(c) applies only to a natural person or to an artificial juridical person also. A perusal of Section 40(c) shows that 'a relation of the director' also finds mention therein. It could not be shown on behalf of the appellant that an artificial juridical person also have a relation. The word 'relation' appears to be relatable to natural person only and, therefore, by implication the said Clause (c) of Section 40 applies to a natural person only. Sub-clauses (31) and (32) of Section 2 are no doubt illustrative as to what is understood by the word 'person' in the Act.

But the terminology of Section 40(c) where the word 'relation' appears, the person in our view automatically means for the purpose of Section 40(c), a natural person. For taking such a view of the matter, the clarification conveyed on behalf of the Government of India in Letter No. D.O.F. 236/344 of 1978 A & PAC II dated 9-2-1979, wherein it is conveyed that the provisions of Section 40(c) applied only to a natural person, is relevant. For such a view, we get further support from the view taken by their Lordships of the Karnataka High Court in the case of South Kanara Central Co-operative Wholesale Stores v. CIT [1978] 114 ITR 298, wherein a co-operative society was not considered to be 'individual'. The word 'parent' was appearing there whereas in Section 40(c) it is 'relation'. Since a co-operative society cannot have 'parent', naturally an artificial juridical person cannot have a relation.

10. In view of our preceding discussions, we are of the considered opinion that the provisions of Section 40(c) could not be applicable to the case before us.

11. Now we take up the next ground of the revenue's appeal pertaining to the initiation of proceedings under Section 147(b). It is clear from the assessee's letters dated 13-7-1976 and 3-8-1976, that all primary facts were placed before the learned ITO at the time of the assessment proceedings. There appears to be no information received by the learned ITO in consequence of which he may have reason to believe that income chargeable to tax had escaped assessment. In fact, it appears to be a pure and simple case of the change of opinion on the part of the learned ITO. No doubt, such a situation was put on behalf of the appellant by saying that the learned ITO thought of doing what he did on introspection. The distance between the introspection and change of opinion appears to be very thin. The learned ITO, therefore, had no conceivable justification to initiate the reopening proceedings under Section 147(b) in the case of the present assessee. The ratio in the case of

Jamnallal (supra) cannot be applied, since there the learned ITO received information whereas, in the case before us, the material already existing was reassessed or say re-examined. Two situations cannot, therefore, be equated. The ratio in the case of A. Raman & Co.

(supra) also helps the revenue in no way, because of the peculiar circumstances, due to change of opinion by the learned ITO (sic).

12. The learned ITO was neither justified to apply the provisions of Section 40(c) to an artificial juridical person nor to initiate reopening proceedings under Section 147(b), merely by changing the opinion or attempting to take different view of the matter. The learned Commissioner (Appeals) rightly vacated the learned ITO's findings and, thus, the impugned order admits of no interference and the same is, therefore, confirmed.

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