

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 178 OF 2005

M/s. Sanghvi Woods Ltd.

....Petitioner

V/s.

R. Andiappan Asst. Commissioner of Income
Tax Mumbai and Ors.

...Respondents

Mr. P.J. Pardiwalla, Senior Advocate a/w Mr. Madhur Agrawal i/b Mr. Atul K. Jasani for Petitioner.

None for Respondents.

**CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 2nd DECEMBER, 2021**

PC. :

1. Petitioner is impugning a notice dated 30th March, 2004 issued under Section 148 of the Income Tax Act, 1961 (the Act) proposing to reopen petitioner's assessment proceedings for the Assessment Year 1997-98.

2. The petition was admitted on 7th March, 2005 and ad-interim relief in terms of prayer clause (d) which was granted on 1st February, 2005 was continued. On 1st February, 2005 and 7th March, 2005 respondents were represented by Mr. R.V. Desai, Senior Counsel. Service was waived by the counsel. Affidavit in reply has also been filed by Respondent No.1. As has been happening in most of these ancient matters, respondents are unrepresented to assist the court. Therefore we had to hear the matter only

with the assistance of petitioner's counsel. Perhaps respondents' officers are not interested in protecting the interest of Revenue for whatever reasons.

3. Petitioner had filed its return of income for the Assessment Year 1997-98 on 28th November, 1997 in which it declared income of Rs.90,67,500/-. Petitioner had annexed computation of its taxable income, tax audit report under Section 44AB of the Act and copy of annual accounts to the return of income. In its return of income it claimed deduction under Section 80 IA of Rs.15,02,853/- in respect of profits derived from its Umbergaon Unit. Petitioner's return was originally processed under Section 143 (1) of the Act on 16th December, 1999 without any adjustment. Later a notice under Section 148 of the Act was issued on 5th September, 2000 for reopening for the Assessment Year 1997-98. One of the reasons for reopening being interest of Rs.80,69,288/- shown under Head Office ought to have been apportioned to all the units including Umbergaon Unit which has resulted in reduction of profit of Umbergaon Unit and consequential deduction under Section 80 IA of the Act would also be reduced. Petitioner's assessment was thus taken up for scrutiny and through the scrutiny of assessment Respondent No.1 called for various information. Petitioner complied with requirements of Respondent No.1 and taken a stand that the deduction under Section 80 IA of the Act had been claimed after apportionment of expenditure. The assessment for the Assessment Year 1997-98 was thereafter completed under Section 143 (3) read with Section

147 of the Act by order dated 28th March, 2002 determining petitioner's total income at Rs.1,02,02,250/-. Respondent No.1 allowed the deduction under Section 80 IA of the Act at Rs.3,67,800/- against petitioner's claim of Rs.15,02,852/-. Petitioner impugned this assessment order before the Commissioner of Income Tax (Appeals) who by an order dated 27th December, 2002 allowed the deduction of Rs.15,02,852/- under Section 80 IA of the Act as originally claimed by petitioner.

4. In the meanwhile, there was search action under Section 132(1) of the Act carried out at the business premises of petitioner on 7th November, 2001. Consequently, an order dated 30th January, 2004 was passed under Section 158BC read with Section 143 (3) of the Act for the block period 1st April, 1995 to 5th January, 2002 holding that petitioner had not satisfied the conditions laid down in Sections 80I, 80-HHA and 80IA of the Act and thus disallowing deductions claimed under these sections. During block assessment proceedings petitioner had contended that the issue regarding eligibility of deduction under Section 80HH/HHA/IA of the Act were governed by the regular provisions. Therefore, deduction that petitioner had claimed under Section 80IA of Rs.15,02,852/- had been disallowed in this block assessment order dated 30th January, 2004.

5. On 30th March, 2004 Respondent No.1 issued a notice under Section 148 of the Act which is impugned in this petition alleging that petitioner's income chargeable to tax for the Assessment Year 1997-98 had

escaped assessment and called upon petitioner to file a return of its income within 30 days.

6. Mr. Pardiwalla brought to our notice the reasons for reopening issued and the reasons read as under :

“The Assessee himself has admitted during the course of Block assessment proceedings that the issue regarding the eligibility of deduction u/s 80HH/HHA/I/IA etc. are governed by the regular provision of the Act, not by the chapter XVIB of the IT Act. The claim under section 80HH/ HHA/I/IA etc. has not been examined properly in the regular assessment completed in this case. In this circumstances, there is a reason to believe that the income chargeable to tax has escaped assessment for A.Y. 1997-98 due to excessive claim and allowance of deduction under the above said provisions of act. Therefore, it appears to be a fit case for issue of notice under section 148 of I.T. Act. The Honourable Commissioner may accord the approval under section 151 (1) of I.T. Act, if found in order”.

7. Therefore, it is respondents case that the deduction which petitioner had claimed under Section 80HH/HHA/I/IA has not been examined properly in the regular assessment. Admittedly, in this case notice has been issued after expiry of four years from the date of relevant assessment year. The proviso of Section 147 of the Act shall therefore apply.

Under Section 147 of the Act the assessment under Sub Section (3) of Section 143 of the Act can be reopened after a period of four years only if the assessee has failed to disclose fully and truly all material facts necessary for his assessment in that Assessment Year. The reasons as quoted above does not indicate initially what was the material fact that has not been disclosed fully and truly by petitioner. Therefore, on this ground alone, notice dated 30th March, 2004 has to be set aside.

8. Moreover, in the assessment order dated 30th January, 2004 the deduction claimed by petitioner have been disallowed and therefore question of any income escaping assessment also will not arise. Therefore, on the date when the impugned notice dated 30th March, 2004 was issued the Assessing Officer could not have any reason to believe that income chargeable to tax has escaped assessment under Section 148 of the Act. As noted earlier in the block assessment order dated 30th January, 2004 the deduction claimed under Section 80I, 80 HA and 80 IA of the Act had been disallowed.

9. Moreover, under Section 158 BA (2) of the Act, there is a statutory bar prohibiting Respondent/Revenue from subjecting to tax income under regular assessment as the same has already been subjected to tax as block assessment under Chapter XVIB of the Act. We find support in the unreported order of this court in Writ Petition No.1227 of 2006 dated 1st October, 2014 where paragraph no.7 and 9 reads as under :

7) *Moreover, Chapter XIV-B of the Act deals with special procedure for assessment of search cases. Section 158BA of the Act therein specially deals with assessment of undisclosed income found during search. The explanation to Section 158BA(2) of the Act clearly states that income assessed in block assessment under Chapter XIV-B of the Act shall not be included in the regular assessment for any previous year which has been included in block assessment. The block assessment order covers the period AY 1996-97 to 2001-02. Therefore, there is statutory bar prohibiting the respondent revenue from subjecting to tax income under regular assessment as the same has already been subjected to tax as block assessment under Chapter XVIB of the Act.*

9) *The view taken by us above is also supported by the decision of this Court in **CIT vs. H.N. Shindore 113 ITR 679** wherein revised assessment orders for A.Y. 1943-44 to 1946-47 were passed on 31 January 1953 on the basis of the report of the Investigation Commission. Thereafter, on 20 March 1956 notices were issued under Section 34(1A) of the Income Tax Act, 1922 (similar to Section 148 of the Act) seeking to reopen assessment for AY 1943-44 to 1946-47. This Court quashed the notices on the ground that on 20 March 1956 when the notices for reopening were issued, the Assessing Officer could not have had reason to believe that income chargeable to tax has escaped assessment, as the said income had already been assessed to tax on 31 January 1953, consequent to the report of the Investigation Commission. In the present case also the date when the impugned notices were issued, the block Assessment Order in favour of the Revenue bringing to tax the income alleged to have escaped assessment is in force.*

10. In the circumstances and for reasons noted above, Rule is made absolute in the above terms with no order as to costs.

11. Petition disposed.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)