

Allahabad High Court

Cr Foods (India) Private Limited vs Income Tax Officer-4(1) Agra & ... on 13 September, 2012

Bench: Sunil Ambwani, Aditya Nath Mittal

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No.32

Judgment reserved on 06.08.2012

Judgment delivered on 13.09.2012

Civil Misc. Writ Petition No.104 of 2007

CR Foods (India) Private Limited v.

Income Tax Officer-4 (1), Agra & Ors.

Hon'ble Sunil Ambwani, J.

Hon'ble Aditya Nath Mittal, J.

1. We have heard Shri R.P. Agarwal for the petitioner. Shri Govind Krishna appears for the respondents.

2. By this writ petition the petitioner has prayed for direction in the nature of certiorari calling for the record of the case and to quash the reassessment order dated 29.12.2006 passed by the Income Tax Officer, Ward-4 (1), Agra-respondent no.1 under Section 143 (3) / 147 of the Income Tax Act, 1961 (the Act) for the assessment year 1999-2000. The petitioner has also prayed for direction to respondent no.1 not to give effect to the order dated 29.12.2006, and to restrain the respondent no.1 from making recovery in pursuance to the said assessment order.

3. A preliminary objection has been taken by Shri Govind Krishna that the petitioner has right to appeal against the order under the Act and thus this writ petition in view of the statutory alternative

remedy is not maintainable.

4. It is submitted by Shri R.P. Agarwal that the petitioner company is registered under the Companies Act having its registered head office at Loha Mandi, Naraina, New Delhi and is filing its income tax return with the Assessing Officer, Ward-3 (1), New Delhi, which alone has jurisdiction in the matter of the petitioner. A notice was issued on 23.2.2004 by the Income Tax Officer, Ward-4 (1), Agra,-respondent no.1 seeking information in respect of assessment years 1998-99 to 2001-02, which was submitted by the petitioner in which it was also stated that the petitioner was assessed to tax at Ward No.3 (1), New Delhi.

5. On 30.3.2006 a notice under Section 148 was issued by the respondent no.1 for the assessment year 1999-2000 at the petitioner's address at 21/20, Chiman Lal Road, Freeganj, Agra. The notice was returned by the branch office of the petitioner on the ground that it was not addressed to its principal place of business at Delhi.

6. It is stated that notice was, thereafter, sent on the same day on 30.3.2006 to the petitioner at its address at Y-192, Loha Mandi, Naraina, New Delhi in respect of assessment year 1999-2000, which was received by the petitioner on 10.7.2006 . The petitioner filed objections to the notice to respondent no.1 challenging the jurisdiction annexing therewith photocopy of the returns for the assessment years 1999-2000 and assessment year 2005-06. The petitioner also stated that the notice is barred by limitation as it has been issued 6 years after the end of the relevant assessment year. It is alleged that the reply was directed to be transferred to Delhi immediately as it was time barring case.

7. It is stated that the notice was issued on 21.9.2006 by respondent no.1 under Section 142 to the branch office of the petitioner at Agra at 21/2-, Chimanlal Road, Freeganj, Agra with the PAN numbers of different persons fixing 29.9.2006. The petitioner's counsel filed his appearance, discussed the issue with respondent no.1 stating that the officer has no jurisdiction as the jurisdiction in the petitioner's case lies with the Assessing Officer, Ward-3 (1), New Delhi.

8. The respondent no.1, by her letter dated 4.10.2006 of the captioned subject: Transfer of case in respect of CR Foods (India) Pvt. Ltd., Y-192, Loha Mandi, Naraina, New Delhi, PAN AAACC5019N; informed the Asstt. Commissioner Income Tax (Company) Circle-5 (3), New Delhi, that on the basis of information received from Addl. DIT (Inv) Agra dated 10.12.2003 during search and seizure operation on 9.5.2002 in Ganga Ram Agrawal Group of cases consisting of Ganga Ram Agrawal, Om Prakash Agrawal; Shree Ram Niwas Agrawal and their family members and concerns, it came to the notice that the above parties provided cheque in lieu of cash receipts from the persons (debtors), who wanted to have entries of loans in their books of account. After a certain period when the person was not in the need of funds generated through entries of loans and wanted to reverse the entry, cheques were received by the above party by making withdrawals, of self, from the Bank accounts of the concern or received from any other person, who again was in a need of the entry of loans, money was returned to that person after deducting the commission. The party was only name lender and the amount of loan shown by the debtor (the assessee) is nothing but the assessee's own undisclosed income routed through the above party. In the present case the loan of Rs.1,32,45,426/-

as per details in the reasons recorded for the issue of notice u/s 148 was found as bogus, as it was assessee's own income from undisclosed sources. The respondent no.1 further wrote that since the case is time barring one, the bunch of papers i.e. Form of recording reasons for initiating proceedings under Section 148 (in original), notice under Section 148 duly served upon the assessee was enclosed. The reply of the assessee along with vakalatnama of his counsel and photocopy of the return filed for the assessment year 1999-2000 at New Delhi, and order sheet are transferred as jurisdiction of the case lies with the addressee. The request was made to take necessary action keeping in view that the case was time barring.

9. The office of the Deputy Commissioner of Income Tax, Circle-5 (1), Central Revenue Building, New Delhi by its letter dated 20.10.2006 returned the record to the Income Tax Officer, Ward-4 (1), Agra- the respondent no.1, with remarks in para 4 that in view of G.K.N. Driveshafts (India) Ltd. v. ITO, 259 ITR 19, the objections filed by the assessee should be disposed off before passing the assessment order. Since the assessee had raised objections on technical ground, his office is unable to pass any order. A note was appended at the bottom of page 1 in para 5 that the present jurisdiction over the case lies with ACIT, Circle-3 (1), New Delhi.

10. It is stated that on 25.10.2006, DCIT, Circle-5 (1), New Delhi with copies to Addl. CIT, Range-5 and Addl. CIT, Range-3, New Delhi sent a letter to the respondent no.1 referring to her letter dated 4.10.2006 that no such return of the assessment year 1999-2000 as referred to in the letter was enclosed in the envelope. In the absence of the assessee's return for the assessment year 1999-2000 the assessment proceedings cannot be carried out. The case was reopened basing on the information received from Addl. DCIT (Inv), Agra but no such information was enclosed/ forwarded. In para 3 of this letter dated 25.10.2006 the DCIT, Circle-5 (1) mentioned as follows:-

"3. The above mentioned case is not assessed with this Circle and hence this office is unable to assume any jurisdiction. It is further mentioned that present jurisdiction over the case lies with DCIT, Circle 3 (1), New Delhi.

In view of the above mentioned reasons, the bunch of papers received by this office in one folder is hereby returned to take necessary action at your end.

(Rashmita Jha) Dy. Commissioner Income Tax Circle 5 (1), New Delhi"

11. On 8.11.2006 the respondent no.1 again sent the documents with the covering letter to the ACIT, Circle-3 (1), New Delhi referring to notice under Section 148 for the assessment year 1999-2000 stating in paragraph 2 and 3 that the case was transferred to DCIT-5 (1), C.R. Building, New Delhi along with folder containing all relevant papers. The DCIT-5 (1), New Delhi vide his letter dated 25.10.2006, returned the folder with remarks that the above mentioned case is not assessed with that circle. She informed DCIT, Circle-3 (1), New Delhi that since the jurisdiction over the case lies with him, she is transferring the record in respect of the assessee to take necessary action as the case is time barring case. Thereafter narrating the findings of the search and seizure operations dated 9.5.2002 the respondent no.1 requested DCIT-3 (1), New Delhi as follows:-

"The present case is a time barring one. Therefore, the bunch of papers i.e. Form of recording reasons for initiating proceedings u/s 148 (in original), Notice u/s 148 duly served upon the assessee, Reply of the assessee along with Vakalatnama of his counsel and photocopy of the return filed for the Asstt. Year 1999-2000 at New Delhi and order sheet (One volume) are transferred to your Circle as the jurisdiction over this case lies with your. You are requested to please take necessary action keeping in view the facts that this is a time barring one.

Yours faithfully, (Rajender Kaur Kalra) Income Tax Officer 4 (1), Agra"

12. The DCIT, Circle-3 (1), New Delhi again returned the papers back to the respondent no.1 with request to do needful with covering letter dated 13/15.11.2006, putting the blame on her that she had simply forwarded the folder back to the undersigned, whereas she was required to decide the objections. She was advised by DCIT, Circle-3 (1) in para 1 of the letter that if she wants the case to be transferred for any reason, that can be done only by the order of CIT under Section 127, and not by simple transfer by post.

13. In the circumstances mentioned as above, the Income Tax Officer (Tech.) acting for Commissioner of Income Tax-II, Agra advised the respondent no.1 by his letter dated 23.11.2006 as follows:-

"To The Income-tax Officer;

4 (1), Agra.

Madam, Sub: Transfer of case in respect of CR Foods (India) Pvt. Y-192, Lohamandi, Narayana, New Delhi: PAN AAACC5019N-Regarding-

Please refer to the above.

In this connection I have been directed to enclose herewith the copy of letter of Dy. CIT, Circle 3 (1), New Delhi dated 13.11 with request you to please furnish your report immediately as the same is to be put up before the Ltd. CIT-11, Agra on 27.11.2006 as the time barring matter is involved and limitation is expiring on 31.12.2006.

Encl: As above.

Yours faithfully, (G.M. Qureshi) Income-Tax Officer (Tech) For Commissioner of Income-tax-II, Agra"

14. In the circumstances, the respondent no.1 sent a letter to the Commissioner of Income Tax-II, Agra on 23.11.2006 giving him entire details of the correspondence, and requesting that since the matter involved limitation, further instructions may be accorded to her. By way of precaution the Addl. Commissioner, Income Tax, Range-4, Agra again sent a letter on 1.12.2006 to the Deputy Commissioner of Income Tax, Circle-3 (1), New Delhi to take over the case as jurisdiction lies with

him. By way of abandon caution he also forwarded the letter to respondent no.1 along with photocopies of the complete case records with directions; "she is directed to pass a protective reassessment order so that there is no loss of revenue". In response to the letters issued by the Addl. Commissioner of Income Tax, Range-4, Agra, the Addl. Commissioner of Income Tax, Range-3, New Delhi and Deputy Commissioner of Income Tax, Circle-3 (1), New Delhi informed the Addl. Commissioner of Income Tax, Range-4, Agra and respondent no.1, again returning the record to take necessary action at her end.

15. In these circumstances, the respondent no.1 issued a notice to the petitioner with reference to notice under Section 148 to furnish explanation on four counts namely the information of all cash creditors/ loans, list of all bank accounts and all account book, subsidiary book etc. and appear before her on 21.12.2006. Notice under Section 142 (1) dated 8th December, 2006 was enclosed.

16. The petitioner appeared before the respondent no.1 on 21.12.2006 and once again raised the question of jurisdiction. In respect of the loan entries it was stated by the petitioner that mere confessional statement by them (Ganga Ram group of cases, who is lender of the assessee) that he was a mere name lender and that all his transactions of loan were bogus, without naming the assessee as one, who had obtained bogus loans would not be sufficient to hold that the assessee's income had escaped assessment.

17. At this stage the petitioner filed the writ petition and obtained interim order on 31.1.2007, directing that as an interim measure recovery proceedings pursuant to the impugned assessment order and demand notice shall remain stayed.

18. In the counter affidavit of Shri Ramesh Chandra Sharma, Income Tax Inspector, Ward-4 (1), Agra it is stated that the jurisdiction of the company cases vests with Range-4, Agra and having alphabets A-G vests with ITO-4 (1), Agra and thus action taken under Section 147/148 was validly taken. The notice was addressed at 21/2-, Chiman Lal Road, Freeganj, Agra, which ought to have been received, but instead it was refused. The notice under Section 148 was thereafter sent to the petitioner at its Delhi address, Y-192, Loha Mandi, Naraina, Delhi. In para 12 it is stated that no such letter of ITO dated 23.3.2004 was stated to have been written to the petitioner and in response therein letter dated 19.3.2004 available on the record claimed to have been received by the office of respondent no.1 on 22.3.2004 accompanying the fact that the petitioner was assessed to tax at Delhi in Ward No.3(1), New Delhi. There was no question of referring the matter under Section 124 as the respondent no.1 is the competent authority. She had taken the necessary approval from the concerned Addl. Commissioner of the Income Tax, Range-4, Agra on 28.3.2006. In para 24 it is stated that notice under Section 148 was sent to the petitioner's Delhi office only under the circumstances, when the notice was refused to be taken at the petitioner's Agra office. The petitioner used his address of Agra office for the purposes of taken entries, which falls within the jurisdiction of the Assessing Officer. Before framing the assessment order, under reference the Assessing Officer has taken into account the entire objections of the petitioner and framed assessment rebutting submissions of the petitioner.

19. During the course of hearing of the matter, in response to the question put up by the Court, the petitioner has filed supplementary affidavit of Shri Ashok Kumar Agrawal, Director of the petitioner company with its registered office at Room No.9, Y-3C, Lohamandi, Naraina, Delhi, for which he has annexed photocopies of the documents namely the intimation under Section 143 (1), assessment order under Section 143 (3), order of CIT (A), Delhi and the order of ITAT, Delhi in respect of assessment year 1991, and 1991-92 and the ITR acknowledgments of the year 1992-93 to 2011-12 and has given various wards at Delhi in which the petitioner has been assessed. In para 4 of the supplementary affidavit the petitioner has stated that in the year 1991 the company was assessed in Company Circle-1 (4); 1991-92 to 1996-97 DC Special Range-17; 1997-98 to 2000-01 in Circle 5 (3); 2001-02 to 2005-06 in Circle 3 (2); 2006-07 in Circle 3 (1) and from 2007-08 to 2011-12 in Circle 3 (4). In all these years the petitioners have been filing returns with losses and showing the income as Nil. In the assessment order for the year 1997-98 it is mentioned that the assessee continues to draw income from the floor mill. The trading and manufacturing results as declared were accepted as the assessee had filed necessary explanation. The net loss was assessed at Rs.2,98,698/- and was allowed to be carried forward to the next year. In the assessment year 2007-08 the assessment order passed by the ITO, Ward-3 (4), New Delhi shows that the assessee filed electronic return declaring income Nil on 30.10.2007, assessee's company engaged in the business of manufacturing and trading of wheat products like Aata, Maida and Suji. The bank statements were produced and examined and the account books were called for examination on test check basis. The assessee was assessed at an income of Nil. The petitioner has annexed Form No.18 with its registration on 19.10.2000 disclosing that the registered office of the company was changed from Y-192, Loha Mandi, Naraina, Delhi to Room No.9, Y-3C, Loha Mandi, Naraina, Agra w.e.f. 3rd October, 2000. The company has not disclosed taxable income in any of the years beginning from 1991 to 2011.

20. It is not denied that the petitioner carries on business of running floor mill, which is situate at Agra, and all business operations at Agra. In the entire income tax record assessed by the petitioner he has not shown any business operations to be carried out at Delhi, and has been returning loss for the last more than 20 years. His returns were accepted mechanically except in one or two assessment years, when assessment orders were passed without much discussion, and all returning losses.

21. In the search and seizure operations carried out in Ganga Ram Agrawal group of cases consisting of Shri Gantam Ram Agrawal; Shri Om Prakash Agrawal; Shir Ram Niwas Agrawal and their family members it was found that loans of Rs.1,32,45,426/- given to the assessee (M/s CR Foods (India) P. Ltd.), are bogus and was nothing but the assessee's own undisclosed income routed through the party namely Shri Ganga Ram group of persons. It was found that in the financial year 1998-99 the petitioner had taken loans from following persons:-

"M/s Ganga Ram Vinod Kumar Rs.34,04,225 Shree Ganga Ram Agarwal Rs.41,95,453 M/s Devi Sahai Vinod Kumar Rs.42,96,392 Shree Vinod Kumar Agarwal Rs.31,23,820 M/s Devi Sahai Shree Ram Rs.4,38,664 Shree Ram Agarwal Rs.7,86,872"

22. The notice under Section 148 was issued for the assessment year 1999-2000. The petitioner was careful not to annex the ITA acknowledgment/ intimation under Section 143 (1) for the year

1999-2000, along with supplementary affidavit. He has annexed ITR acknowledgment in respect of all the assessment years beginning from 1991 to 2011-12, except 1999-2000 in which he is shown to have taken loans in the account of Ganga Ram group of persons.

23. It is submitted by Shri R.P. Agarwal that ITO, Agra has exercised jurisdiction to make reassessment under Section 147, which was not vested in him under Section 124. The question of jurisdiction was raised but was decided by the ITO himself without any authority of law and without referring the matter to CCIT or CIT under Section 124 (4). The question of jurisdiction has been decided erroneously by the ITO. He could not have issued notice under Section 148. The notice could only be issued by the Assessing Officer, the ITO Delhi for the assessment year 1999-2000, and in any case notice under Section 148 was issued after expiry of 6 years, hence it was barred by time and was also issued without any valid transfer by JCIT/ ACIT under Section 151 (2). There was no return before the ITO, Agra and thus there was no question of issuing any notice under Section 143 (2) dated 8.12.2006 nor any assessment under Section 143 (2) could be made. At best assessment could be made under Section 144 by making best judgment assessment by following procedure, which was not followed. The petitioner has relied upon *Devi Das v. Union of India*, 1993 (200) ITR 701 (Bom.); *CIT v. Ganga Bani Mercantile & Finance P. Ltd.*, 2007 (293) ITR 441; *Raza Textiles Ltd. v. ITO*, AIR 1973 SC 1362; *Mayuri Mittal v. Union of India*, Writ Petition No.1439 of 2005 decided by this Court; *Shrinath Suresh Chand Ram Naresh v. CIT*, 2006 (280) ITR 396 (All); *CIT v. Shital Prasad Kharas Prasad*, 2006 (280) ITR 541 (All); *CIT v. Mascomptel India Ltd.*, 2012 (345) ITR 58 (Delhi); *R.K. Upadhyaya v. Shanbhai P Patel*, 1987 (166) ITR 163-SC; *DDA v. H.C. Khanna*, AIR 1993 SC 1488 and *CIT v. Rajeev Sharma*, 2011 (336) ITR 678 (All) in support of his submissions.

24. Section 124 provides for jurisdiction of Assessing Officer. Sub-section (1) applies where an AO has been directed to perform his functions in respect of specified areas under Section 120 (1) or (2) of the Act. When a question arise as to whether the Assessing Officer has jurisdiction to assess any person, the question is to be determined by the Director General or the Chief Commissioner or the Commissioner, or where it relates to the jurisdiction of different Director Generals or Chief Commissioners or Commissioners, by the Director General or Chief Commissioner or Commissioners concerned or if they are not in agreement by the Board of Such Director Generals or Chief Commissioners or Commissioners as the case may be notified in official gazette. Sub-section (3) places restrictions on the persons to call in question the jurisdiction of an Assessing Officer, where he has made a return under sub-section (1) of Section 139 after expiry of one month from the date on which he was served with the notice under sub-section (1) of Section 142, of sub-section (2) of Section 143 or after the completion of the assessment, whichever is earlier. under sub-section (3) (b) where he has made no such return after the expiry of time allowed by notice under Section 142 (1) or under Section 148 for the making of the return or by notice under the first proviso to Section 144 or show cause as to why assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier. Sub-section (4) provides that where the assessee calls in question the jurisdiction of the Assessing Officer, then Assessing Officer shall, being not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2).

25. Sub-section (5) of Section 124 provides that, notwithstanding anything contained in the Section or in any direction or order issued under Section 120 every Assessing Officer shall have all the

powers conferred by or under this Act on an Assessing Officer in respect of income accruing or arising or received within the area, if any over which he has been vested with the jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of Section 120.

26. Sub-section (5) of Section 124 thus provides for a concurrent jurisdiction to the AOs. In *Burger Paint v. ACIT, 2006 ITR 133* it was held that the AO of the area in which the person carries on business or resides shall have all the powers conferred by or under the Act in respect of any income accruing, arising or received within his area. Though the assessment of the total income must be made at the assessee's principal place of business, it would be open to the AO having jurisdiction over the branch office to assess income received by the branch office subject to the rule that two assessments cannot be made at different places upon the same person in respect of the same income.

27. The A.O. having jurisdiction at the assessee's principal place of business, would have the power to call for return of the assessee's total income, which includes income of all the branches of the business. He may call for the records pertaining to any branch office even if independent enquiries have been made and the accounts have been examined by the A.O. having jurisdiction at the branch office. It is open to the A.O. having jurisdiction at the branch office to frame an estimate of the profits of that branch and to send that estimate to the A.O. at the tax payer's principal place of business. The effect of sub-section (1) and (5) of Section 124, read together is that where two or more A.O. have territorial jurisdiction in respect of same income, they exercise concurrent jurisdiction in the matter of issuing notice to the assessee and where notices have been issued by any one officer, it is unnecessary for the other office to issue the same notice again.

28. In the present case we find that the petitioner had changed his registered office w.e.f. 4th November, 1989 from first floor and 6376 Naya Bans Delhi to Y-192, Loha Mandi, Naraina, New Delhi, and thereafter w.e.f. 3rd October, 2000 from Y-92 Loha Mandi, Naraina, Delhi to Room No.9, Y-3C, Loha Mandi, Naraina, Delhi. The principal place of business is at Agra, where he has a flour mill. In his affidavit filed in the High Court, Shri Ashok Kumar Agrawal has described himself to be working as Director of the petitioner company and has given his address as 6/26, Bhai Gali, Belanganj, Agra. He has not annexed the acknowledgment of return or assessment order of the year 1999-2000, with which we are concerned in the present case. It was in the search and seizure operations carried out in Ganga Ram Agrawal Group of cases, a report was sent by Addl. CIT (Inv), Agra on 10.12.2003 reporting the debts of the assessee in the books of accounts of the Agrawal Groups of persons referred to as above in respect of assessee from which it was derived and on which reasons were recorded by Addl. Commissioner of Income Tax, Range-4, Agra in the notice under Section 148 that the income of Rs.1,32,45,426/- of the assessee for the year 1999-2000 has escaped assessment. The limitation will expire on 31.12.2006. The respondent no.1 took extreme caution and care before assuming jurisdiction, which was concurrently vested in her. The petitioner admittedly has a branch office and principal place of business at Agra. The respondent no.1, as A.O., send the matter firstly to DCIT, Circle-5 (1), New Delhi and thereafter DCIT, Circle-3 (1), New Delhi. We are surprised to find as to why these officers at Delhi did not take over the jurisdiction. They simply returned the papers back to respondent no.1, firstly by advising her to pass order in view of G.K.N. Driveshafts (India) Ltd.'s case and thereafter returning the papers on the ground that the



assessment order of the year 1999-2000, was not accompanied with the letter. It appears that the Assessing Officer at Delhi were either trying to avoid or had some reasons not to assume jurisdiction over the matter.

29. The respondent no.1, before proceedings with the matter, requested for permission of the Commissioner of Income Tax-II, Agra to proceed with the matter. She was directed by the Addl. Commissioner, Income Tax, Range-4 Agra to frame protective assessment orders, so that there is no loss of revenue. The order dated 1.12.2006 giving such direction to her was sufficient to allow her to assume jurisdiction for making assessment.

30. We do not find any error of jurisdiction committed by the respondent no.1 in proceedings with the assessment of the income under Section 147/148 of the Act, which had escaped from the assessment of the petitioner-assessee in the assessment year 1999-2000.

31. The writ petition is dismissed. The interim order is discharged.

Dt.13.09.2012 SP/