

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION (M/S) No. 2704 of 2011

M/s. Louis Dreyfus Armateures SAS

.....Petitioner

Versus

The Commissioner of Income Tax and another.

.....Respondents.

Hon'ble Sudhanshu Dhulia, J.

1. Heard Mr. Nageshwar Rao, Mr. Manoneet Dalal and Mr. Chetan Joshi, Advocates for the petitioner and Mr. H.M. Bhatia, Advocate, present for the Income Tax Department/respondents.

2. This writ petition has been filed by the petitioner challenging Notice dated 28.03.2011 under section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and impugned order dated 08.11.2011 issued by respondent No.2 for the Assessment Year 2004-2005. Income Tax Department has also assigned the reasons for making reassessment and consequent to that the objections were filed by the petitioner before the Income Tax authority. Thereafter, a detail order was passed dealing with all objections; ultimately reassessment proceedings were initiated against the petitioner. Aggrieved by this order, petitioner came before this Court by filing present writ petition.

3. The principal ground for challenge is that reassessment can only be done by the Assessing Authority on limited grounds. Moreover, no action can be taken regarding reassessment after on expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee himself when he has

not disclosed fully and truly all material facts necessary for his assessment.

4. It is admitted case that reassessment proceedings in the present case were initiated after on expiry of four years.

5. Learned counsel for the petitioner submits that the same issue was involved in a bunch of writ petitions, earlier a learned Single Judge of this Court has discussed the scope of sections 147 and 148 of the Act and came to the conclusion that such reassessment proceedings were being initiated on the same material which was already on the record, and the reassessment proceedings are merely a change of opinion, which is not permissible in law, and it was also observed that the notice was issued after the expiry of the period of four years and, in the absence of any failure on the part of the petitioner to disclose fully and truly all materials facts necessary for the assessment, the proceedings were barred by limitation in view of the proviso to Section 147 of the Act. The order referred to above is dated 20.08.2011 passed by a learned Single Judge of this Court in WPMS No.2197 of 2010.

6. Aggrieved by the judgment and order of learned Single Judge of this Court, Income Tax Department preferred Special Appeals before Division Bench of this Court, which were dismissed by passing following order:

“3. Whereas section 44BB deals with a non-resident assessee providing, amongst others, services or facilities in connection with prospecting for, or extraction or production of, mineral oils, the sections mentioned in the proviso, referred to above, deal with fees received by non-resident assesseees for providing, amongst others, services

or facilities. Therefore, by adding the proviso with effect from 1st April, 2011, a clear cut distinction has been made between those non-resident assesseees, who are engaged in the business of providing, amongst others, services or facilities in connection with prospecting for, or extraction or production of, mineral oils and other kind of non-resident assesseees, who get fees for providing services or facilities. The Assessing Officer felt that, by reason of insertion of the said proviso, he can look into those completed assessments for the accounting years, which stood closed prior to 1st April, 2011 and, accordingly, exercised power under Section 148 of the Income Tax Act. By the judgment under appeal, the learned Judge has pointed out that there was no just reason for doing the same, inasmuch as, the distinction referred to above, according to the Income Tax Act, applies only since 1st April, 2011.

4. We, accordingly, refuse to admit the appeals. They are dismissed.”

This aspect has therefore, attained a finality so far as this High Court is concerned.

7. Learned counsel for Income Tax Department Mr. H.M. Bhatia fairly submits that the dispute involved in the present writ petition is squarely covered by the order dated 20.08.2011 passed by a learned Single Judge of this Court in WPMS No.2197 of 2010 upheld the above order in Special Appeal.

8. In view of the above, the writ petition succeeds. The notice under section 148 dated 28.03.2011 and order dated 08.11.2011 are hereby quashed.

9. No order as to costs.

(Sudhanshu Dhulia, J.)

30.09.2013

JKJ