

(12) Mr. Kuldip Singh learned counsel for the petitioners, in view of the stand taken by the Government had not elaborated the point. It is not disputed that the final seniority list has not been prepared. The Government while preparing the seniority list will take into consideration the observations made in *A. K. Subraman's case* (supra).

(13) It is lastly argued by Mr Kuldip Singh that the seniority had not been determined by the Government correctly. He challenges the order of the Haryana Government Annexure P-5. As already stated, it is not disputed, that the final seniority list has not been prepared. In the absence of relevant facts, it will not be possible to deal with this matter in this case. The Government shall, however, fix the seniority after taking into consideration the observations made above. It will also be proper for the Government to hear the parties before finally determining their seniority.

(14) For the reasons recorded above the writ petition fails and the same is dismissed with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

S. C. Mital, J.—I agree.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital JJ.

JINDAL STRIPS LIMITED—*Petitioner.*

versus

INCOME TAX OFFICER, CENTRAL CIRCLE III, MAYUR
BHAWAN, NEW DELHI AND ANOTHER—*Respondents.*

Civil Writ Petition No. 1501 of 1977

December 6, 1978.

Income Tax Act (XLIII of 1961)—Sections 2(14), (22 A), 55A and 133 (6)—Section 55A—Whether meant exclusively for Part 'E' of Chapter IV dealing with 'capital gains'—Valuation of an asset accepted

Jindal Strips Limited v. Income Tax Officer, Central Circle III, Mayur Bhawan, New Delhi, etc. (S. C. Mital J.)

by Income-tax Officer and assessments completed—Proceedings initiated in pursuance of a search conducted on premises of the assessee—Income-tax Officer—Whether can seek assistance of valuation officer to ascertain value of such asset.

Held that it is true that Chapter IV of the Income Tax Act 1961 deals with "computation of total income" but the manner in which the Legislature, in its wisdom, has divided this chapter under distinct heads A to F cannot be easily lost sight of. Since section 55A of the Act occurs in Part "E-capital gains", it applies to capital gains alone.

(Para 7)

Held that since the Income tax Officer can directly require the assessee to furnish information with regard to valuation of an asset, he can also exercise his powers to get the same done with the assistance of a valuation officer. Detection of concealed income is a 'proceeding' within the meaning of section 133(6) of the Act and the Income-tax Officer can exercise all the powers vested in him by sections 131 to 135. In pursuance of a search, if it appears that large amounts of unaccounted money have been spent on an asset, the Income-tax Officer can make inquiry regarding the cost of such an asset. He can similarly seek assistance of the valuation officer for the purpose.

(Para 9)

Case referred by the Hon'ble D. B. of this Court consisting of Hon'ble Mr. Justice M. R. Sharma and Hon'ble Mr. Justice S. S. Sidhu, on 28th July, 1977 to a larger Bench for decision of an important question of law involved in the case. The Full Bench finally decided the case on merits on 6th December, 1978.

Petition Under Article 226 of the Constitution of India praying that the petitioner be granted the following reliefs:—

- (a) *Restrain respondent No. 2 from carrying out the direction as contained in Annexure 'P-2'*
- (b) *Require respondent No. 2 to withdraw the letter dated the 6th December, 1976, Annexure 'P-3'.*
- (c) *Restrain respondent No. 2 from insisting on the production of vouchers and various other documents with respect to the cost of construction completed in May, 1971 and/or.*
- (d) *Any other relief to which the petitioner be found entitled in the facts and circumstances of the case.*

It is further prayed that pending the decision of the petition the proceedings before respondent No. 2 be stayed and an interim relief be granted with notice to the respondents.

It is also prayed that the production of the certified copies of the annexures and five days notice to the respondents be dispensed with.

Bhagirath Dass, Advocate with B. K. Gupta, and Jaswant Jain, Advocates, for the Petitioners.

D. N. Awasthy, Advocate with B. K. Jhingan, Advocate, for the respondents.

S. C. Mital J.

(1) The question for determination before this Bench is, whether in the facts and circumstances of this case, reference by the Income-tax Officer to the Valuation Officer to ascertain the value of the mill in question at the relevant time, is valid ?

(2) The salient facts are that somewhere in 1970 and May 1971, M/s. Jindal Strips Limited, hereinafter referred to as the Company, constructed strip-skolp mill shed, hereinafter referred to as the mill, on its premises in Hissar. For the year ending 31st December, 1971 (Assessment Year 1972-73), the Company in its return valued the mill at Rs. 15,30,064.84 P. The valuation was accepted by the Income-tax Officer, who then dealt with the case, by his order dated 7th January, 1974. For the subsequent Assessment Years 1973-74, 1974-75, the above-said value of the mill was repeated, with due depreciation being shown. The Income-tax Officers concerned in their orders dated 16th February, 1976, and 2nd March, 1976, accepted the valuation. Thus, the assessment proceedings for the above-said three years are complete in all respects.

(3) For the Assessment Year 1975-76, the return filed by the Company on 29th August, 1976, was pending when on 26th November, 1976, the Income-tax Officer (Respondent No. 1) purporting to act under section 56-A of the Income-tax Act, hereinafter referred to as the Act, wrote to the Valuation Officer (Respondent No. 2) to evaluate the mill for the Assessment Year 1972-73. By his letter dated 6th December, 1976 (Annexure P. 3), the Valuation Officer asked the Company to supply, *inter alia*, complete set of the drawings of the

Jindal Strips Limited v. Income Tax Officer, Central Circle III, Mayur Bhawan, New Delhi, etc. (S. C. Mital J.)

property, balance sheet and profit and loss account from the date of inception of the Company till 31st December, 1972. With a view to evaluate the mill, on 1st March, 1977, the Valuation Officer visited the premises of the Company. The Company did not object to it. Thereafter, letters dated 9th and 15th March, 1978 (Annexures P. 5 and P. 6) were received by the Company from the Valuation Officer requiring the Company to produce vouchers of the expense incurred in the construction of the mill for the relevant period and certain other information for revaluating the same. At that stage, by its reply (Annexure P. 7), the Company objected to the authority of the Valuation Officer to ask for the above-said information on the ground that the assessment proceedings for the years 1972-73, 1973-74 and 1974-75 being complete, there was no occasion for the Company to comply with the demand of the Valuation Officer. Since he insisted upon compliance with the directions contained in the two letters mentioned above, the Company filed the present writ petition challenging the authority of the Income-tax Officer to seek the assistance of the Valuation Officer in the exercise of his powers under section 55-A of the Act. Before proceeding further, it may be mentioned that the proceedings for the Assessment Year 1975-76 concluded during the pendency of this writ petition. Learned counsel for the Company made a passing reference to the assessment order but did not consider it necessary, for the decision of the writ petition, to place a copy thereof on record.

(4) The department's case is that in June 1974, a search was conducted on the business and residential premises of all the concerns of the Jindal Group of Companies and Industries, including the petitioner Company. The collected material was duly processed by the Intelligence Wing. Final report thereof, *inter alia*, was that large amounts of unaccounted money appeared to have been spent on the construction of the mill. Accordingly, the Income-tax Officer was advised to make enquiry regarding the cost of construction of the mill. The Act makes ample provision and confers wide powers on the Income-tax authorities, engaged in the computation of the total income of an assessee, to detect concealed income. For this purpose, the Company was asked to furnish report of an approved Valuer as to the value of the mill. Since the valuation given by the said Valuer was found to be considerably below the valuation discovered by the Intelligence authorities, further probe was considered necessary to find out the exact cost of construction of the mill by

making reference to the Valuation Cell of the Income-tax Department. This is how the assistance of the Valuation Officer has been sought.

(5) In his letter (Annexure P. 2), the Income-tax Officer, asking the Valuation Officer to ascertain the value of the mill at the relevant time, has made mention of section 55-A of the Act. As said above, the Valuation Officer took action on the strength of Annexure P. 2. Learned counsel for the Company contends that wherever the assistance of Valuation Officer is considered necessary, the Act has provision. Reference in this regard was made to section 269-L of the Act, which admittedly has no application to the present case. As regards section 55-A of the Act, the learned counsel argues that it does not in terms apply to this case. Relevant part of section 55-A of the Act reads:—

“With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Income-tax Officer may refer the valuation of the capital asset to a Valuation Officer—

- (a) In a case where the value of the asset as claimed by the assessee is in accordance with estimate made by a registered valuer, if the Income-tax Officer is of the opinion that the value so claimed is less than its fair market value ;
- (b) in any other case, if the Income-tax Officer is of opinion—
 - (i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf; or
 - (ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

Emphasis has been laid on the words “for the purposes of this Chapter” used in section 55-A. This section occurs in Chapter IV of the Act which is in the following parts:—

A—Salaries — Sections 15 to 17.

B—Interest on Securities—Sections 18 to 21.

Jindal Strips Limited v. Income Tax Officer, Central Circle III, Mayur Bhawan, New Delhi, etc. (S. C. Mital J.)

C—Income from House Property — Sections 22 to 27,

D—Profits and gains of business or profession — Sections 28 to 44D.

E—Capital gains—Sections 45 to 55A,

F—Income from other sources—Sections 56 to 59.

(6) The contention of the learned counsel for the Company further is that Section 55-A is exclusively meant for Part “E” of Chapter IV dealing with “capital gains”. The other provisions of the Act having bearing upon the contention of the learned counsel for the Company are discussed hereinafter. Section 2(14) of the Act lays down:—

“capital asset” means property of any kind held by an assessee, whether or not connected with his business or profession.....”

The definition excludes certain things which are not relevant for our purpose, because it has not been urged before us that the mill in question does not fall within the definition of “capital asset”. Now it is pertinent to reproduce the definition of “fair market value”.— *vide* section 2(22A) which in relation to a capital asset, means:—

- (i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date; and
- (ii) where the price referred to in sub-section (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act;

Part “E” of Chapter IV of the Act dealing with “capital gains” starts with section 45 which provides that any profits or gains arising from the transfer of a capital asset effected in the previous year, shall, save as otherwise provided in sections 53, 54, 54B, 54D and 54E be chargeable to income-tax under the head “capital gains” and shall be deemed to be the income of the previous year in which the transfer took place. Section 46 deals with capital gains or distribution of assets by companies in liquidation. Section 47 enumerates

transactions not falling within the purview of section 45. The mode of computing income chargeable under the head "capital gains" is given in section 48. Acquisition of capital asset (section 49); computing of the cost of acquisition in the case of depreciable assets (section 50); advance money received (section 51); consideration for transfer in cases of under statement (section 52); capital gains exempt from tax (section 53); profit on sale of property used for residence (section 54) etc. are other matters contained in part "E" of Chapter IV of the Act. In this context, the contention of the learned counsel for the Company is that the scope of section 55-A, as evident from its terms, is confined to ascertainment of the fair market value of capital asset which has been subject-matter of transfer.

(7) Learned counsel for the department has argued that Chapter IV deals with "computation of total income". That is so, but the manner in which the Legislature, in its wisdom, has divided this chapter under distinct heads A to F cannot be easily lost sight of. Since section 55A occurs in Part "E—capital gains", it thus appears to apply to capital gains alone. In any case, our attention has not been drawn to any such terms of section 55-A or to any of the provisions of the other parts of Chapter IV, so as to show that section 55-A, wherein the words "under this Chapter" occur, has relevance to any transaction other than "capital gains". For the foregoing reasons, it seems difficult to overrule the contention of the learned counsel for the Company that section 55-A of the Act does not in terms apply to the facts and circumstances of this case.

(8) With respect to the powers of the Income-tax Officer, learned counsel for the Department places strong reliance on section 133(6) of the Act laying down:—

"The Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner may, for the purposes of this Act—

* * * *

(6) require any person, including a banking company to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant

Jindal Strips Limited v. Income Tax Officer, Central Circle III, Mayur Bhawan, New Delhi, etc. (S. C. Mital J.)

Commissioner, giving information in relation to such points or matters as, in the opinion of the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, will be useful for, or relevant to, any proceeding under the Act.”

(9) It has not been disputed before us that if the Income-tax Officer directly requires the petitioner-Company to furnish the information sought for by the Valuation Officer, the Income-tax Officer will be within the exercise of his powers. Accordingly, learned counsel for the Department deduced that whatever an Income-tax Officer can do directly in the exercise of his powers can be got done with the assistance of a Valuation Officer. Emphasis is then laid on the words “any proceeding under the Act” occurring in section 133(6) of the Act. It would be seen that detection of concealed income is such a proceeding. Sections 131 to 135 of the Act lay down the powers of the Income-tax authorities. Section 131 confers powers regarding discovery or production of evidence etc. on Income-tax Officer and other authorities. The power of search and seizure is provided for by section 132. Then comes section 132-A conferring power to requisition books of account etc. Power to call for information is conferred by section 138 and power of survey by section 133-A. It is pertinent to point out here that “proceeding” is defined by Explanation (b) to section 133A as under:—

“The proceeding means any proceeding under the Act in respect of any year which may be pending on the date on which the powers under the section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.”

Section 134 confers on the Income-tax Officer and the authorities specified therein the power to inspect registers of Companies. That being so, it has not been argued before us that the search of Jindal Group of Companies, including the petitioner-Company, was not “a proceeding under the Act”. As said above, in consequence of the search, the Intelligence Wing of the Department processed the case and reported to the Income-tax Officer, *inter alia* that large amounts of unaccounted money appeared to have been spent on the construction of the mill. The Income-tax Officer was accordingly advised to

make an enquiry regarding the cost of construction of the mill. It is in this context that the assistance of the Valuation Officer has figured. Significance thereof lies in the fact that for ascertaining the true value of the mill, the Income-tax Officer has chosen to have the advantage of the technical knowledge of the Valuation Officer (Respondent No. 2), who is no other than the Superintending Engineer (Valuation) of the Income-tax Department. That the Income-tax Officer is entirely seized of the matter needs no emphasis. In the nature of things, the report of the Valuation Officer would not bind the Income-tax Officer and the Company can have its say in the matter. Mentioning of section 55-A of the Income-tax Act, in letter Annexure P. 2 by the Income-tax Officer to the Valuation Officer, is of no consequence, in that, when the proceedings are otherwise in accordance with law, mentioning of a wrong section will not vitiate them.

(10) The other aspect of the matter referred to by the learned counsel for the department is that the information sought for by the Valuation Officer from the Company is in the interest of the latter. Learned counsel further stresses that the Income-tax Officer has been quite fair to the Company in not launching proceedings under section 147 of the Act straightaway. Instead, he has chosen a very fair course to associate the Company in ascertaining the value of the mill and it may be that if the Company furnishes the required information, need for reopening the assessments starting from 1972-73 may not arise.

(11) In view of the discussion above, the question formulated, in the beginning of the judgement, is answered in the affirmative. The writ petition fails and the same is hereby dismissed. The parties are, however, left to bear their own costs

S. S. Sandhawalia, C.J.—*I agree.*

Prem Chand Jain, J.—*I also agree*

N. K. S.