

(2012) 10 DEL CK 0274
In the Delhi High Court
Case No : ITA 266 of 2011

CIT

APPELLANT

Vs

Supreme Polypropylene Pvt. Ltd.

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 147(a), 147(b), 148

Citation : (2012) 10 AD 36

Hon'ble Judges : S. Ravindra Bhat, J; R.V. Easwar, J

Bench : Division Bench

Advocate : Rashmi Chopra, for the Appellant; C.S. Aggarwal, Senior Standing Counsel and Sh. Prakash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

1. The Revenue claims to be aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) dated 26.02.2010 in ITA 4622/Del/2009 whereby it set-aside the reassessment proceedings. The question of law sought to be urged is whether the Tribunal fell into error while holding that the jurisdiction u/s 147 to issue reassessment notice and complete the same, was not justified under the circumstances of the case. The brief facts are that the assessee filed its return originally for the year 2001-02 on 29.10.2001, declaring a loss of approximately Rs. 11,000/-. The assessment was completed and confirmed on 19.03.2004, u/s 143(3) of the Act. On 31.03.2008, acting on the basis of material which the AO claimed, was furnished to him, notice u/s 148 was issued to the assessee, proposing to reopen the assessment. The AO recorded the following reasons why according to him, the assessee had not made full disclosure and its income had escaped assessment:

Addl. Director of Investigation VI, New Delhi, had sent a list containing the details of transactions and particulars of beneficiaries and operators of

accommodation entries in Delhi. A perusal of the list shows that M/s. Supreme Buttons Manufacturer Pvt. Ltd., whose jurisdiction lies with the undersigned has provided a huge number of entries to other beneficiaries from its account number 3072 with Vijaya Bank, Ansari Road, Daryaganj, Delhi. This company is an associate of Sh. Sanjay Mohan Aggarwal who as per the DIT (Inv.) Report, is the oldest and most savvy entry operator of Delhi. The amount of entries given runs into crores of Rupees. These entries in the Bank Account represent unexplained cash deposited in the bank Accounts of the Assessee Company against which cheques have been issued to beneficiaries after charging commission from them. The commission income received in cash is not declared accounted for in the Returns of Income. The quantum of commission income escaping assessment, though will finally be determined after analysis of complete statements of the Bank Accounts of the Company, is certainly believing to be more than Rs. 1 lakhs because as per the DIT (Inv) Report, the amount of entries given runs into several crores of Rupees during the F.Y. 2000-01 relevant to Assessment Year 2001-02.

In view of the above credible information received from the DIT (Inv.), I have reasons to believe that the income of my assessee who stands as a beneficiary from the entry provider, which is chargeable to tax has escaped assessment per the provisions of Section 147(a), (b) and (c) of the Income Tax Act, 1961.

I am, therefore, satisfied that the said income on accommodation entries as mentioned above has escaped assessment and accordingly after recording the above said reasons as laid down under the provisions of Section 148(2) of the Income Tax Act, propose to issue a notice to the above mentioned assessee u/s 148(1) of the IT Act, 1961.

2. The reassessment proceedings culminated in the assessment order dated 29.12.2008 whereby the amount of Rs. 4,98,47,560/- was added u/s 568. The assessee approached the appellate Commissioner who was of the opinion that there was no infirmity with the reassessment order. He rejected the appeal by order dated 18.08.2009. In these circumstances, the assessee approached the ITAT.

3. It was urged that the ITAT fell into error in setting-aside the reassessment proceedings and did not appreciate that the investigation report which the assessing officer had the benefit or advantage of after the reassessment proceedings were completed, contained sufficient materials which disclosed that during the original assessment, the assessee had not in fact fully and truly disclosed its entire income and that material part of it had escaped assessment. It was also contended that the "reasons to believe" recorded by the AO on 31.03.2008 were sufficient in the sense required by law as the material in the form of list had been made available to the concerned official, which was noticed by him in the "reasons to believe" recorded by him on that date.

4. The Tribunal in its impugned order, had reasoned as follows:

10. In the instant case, the income was first assessable in Assessment Year 2001-02 and, therefore, the assessment could have been reopened upto 31.03.2006 under the main provisions of Section 147. However, for reopening of the assessment beyond the period of four years, the proviso to Section 147 is pressed into operation according to which there should be failure on the part of the assessee to disclose all material facts necessary for his assessment. In the instant case, as pointed out by Ld. Counsel for the assessee that the Assessing Officer had called for the information vide his letter dated 20.12.2002 including the share capital introduced by the assessee. The assessee has given reply vide his letter dated 16.01.2003. Therefore, the entire information was available with the Assessing Officer when original assessment was made on 19.03.2004. The assessing Officer on receipt of information from Investigation Wing had recorded reasons for reopening of assessment. From the reasons recorded as reproduced above, one may find that it does not contain any information based on which it could be said that there was a failure on the part of the assessee to disclose fully and truly material facts necessary for his assessment. In the absence of recording such facts, the reopening of assessment is bad in law. Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. (P) Ltd. v. CIT (Supra) has held that where there was no whisper what to speak of any allegation that the assessee had failed to disclose fully and truly all material facts necessary for his assessment and that because of this failure there had been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen the assessment beyond four years period. The escapement of income from assessment must also be considered by the failure on the part of the assessee to disclose material facts fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to Section 147. Hon'ble Delhi High Court has held that if this condition is not satisfied, the bar would operate and no action u/s 147 could be taken. Similar view has been taken by the Hon'ble Delhi High Court in the case of CIT v. Wel Intertrade Private Ltd. (supra). Therefore, in the absence of any recording of reasons that there was failure on the part of the assessee to disclose fully and necessary facts for his assessment, the assumption of jurisdiction is bad in law. Moreover, the Assessing Officer has recorded reasons without giving any amount of income escaped. The Assessing Officer has assumed that income by way of commission must have exceeded Rs. 1 lac which has not been disclosed. The reasons recorded are vague. Moreover, the Assessing Officer has also stated in the reasons recorded that commission income has escaped assessment within the provisions of Section 147(a), (b) and (c) of the Act. With effect from 01.04.1989, there is no provision in the Income Tax Act as in Section 147(a) or 147(b). However, Explanation 2 to Section 147 specifies the conditions under which income chargeable to tax shall be deemed to have escaped assessment. In the instant case, the assessment was framed u/s 143(3), therefore, if at all, clause (c) of Explanation 2 will be applicable according to which the income chargeable to tax shall be deemed to have escaped assessment if income chargeable to tax has been under assessed; or such income has been assessed

at a low rate; or such income has been made subject to excessive relief under this Act; or excessive loss/depreciation allowance or any other allowance under this Act has been computed. No such case has been made out by the Assessing Officer while recording of reasons for reopening of assessment. Hence, the recording of reason that income has escaped u/s 147(a), (b) and (c) amounts to non-application of mind on the part of the Assessing Officer.

11. In view of above facts, we are of the opinion that Assessing Officer has failed to record reasons that there was failure on the part of the assessee to disclose fully and truly all necessary facts for completion of his assessment. The reasons recorded are vague in nature. Therefore, in our considered opinion, the reopening of assessment is bad in law in view of decision of Hon"ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. (P) Ltd. (supra) and other decisions relied upon by the Id. A.R. of the Assessee as there is no whisper or allegation that there has been failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. Accordingly, the assessment made by the Assessing Officer is annulled.

5. This Court notices from the extract of the "reasons to believe" reproduced in the earlier part of the order that the AO adverted to a list, on the basis of which he was of the opinion that there was no full and true disclosure of all sources of income by the assessee. There are no details of that list. Even the list is not part of the assessment record which this Court had the benefit of considering. More shockingly, the assessment file did not even contain the forwarding letter, much less mention of the date of that list or the date of that letter which allegedly forwarded that list. The complete absence of these facts and any whisper as to even a single detail of that list coupled with the vague mention of a list, which mentions some other material adverted to in other assessment proceedings, in the opinion of this Court certainly cannot be said to constitute sufficient "reasons to believe" to warrant a notice u/s 148 during the extended period within the meaning contemplated by law. For the above reasons, the Court does not find any infirmity with the impugned order of the ITAT. The appeal is accordingly dismissed.