

(2013) 02 DEL CK 0044
In the Delhi High Court
Case No : ITA 271 of 2012

CIT

APPELLANT

Vs

Viniyas Finance and Investment Pvt. Ltd.

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Citation : (2013) 357 ITR 646

Hon'ble Judges : R.V. Easwar, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Karan Khanna, the Revenue Department of Income Tax with Ms. Asmita Kumar, for the Appellant; S. Krishnan, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This appeal u/s 260A of the Income Tax Act, 1961 has been filed by the Revenue being aggrieved by the order dated 18.11.2011 in ITA No. 4652/DEL/2009 pertaining to the assessment year 2002-03. These proceedings were initiated on the basis of a notice u/s 148 of the said Act issued by the Assessing Officer to the respondent-assessee for re-opening of the assessment pertaining to the said assessment year 2002-03. The said notice was issued on 30.07.2007 beyond the period of four years and, therefore, the respondent-assessee had raised the issue as to whether the Assessing Officer had jurisdiction at all to issue the said notice inasmuch as the provisions of Proviso to Section 147 would become applicable. One of the pre-conditions for invoking Proviso is that there must be failure on the part of the assessee to disclose fully and truly all material facts necessary for the purpose of assessment. It was the case of the respondent-assessee that this precondition had not been satisfied and, in fact, there was no mention of any failure to disclose the material facts in the reasons which have been recorded. However, the Assessing Officer went ahead with the re-assessment and completed the same on 30.12.2008 whereby he made an addition of Rs. 77 lakhs on account of said amount having allegedly escaped assessment in the first round when the assessment was originally framed u/s 143(3) of the said Act on 22.12.2004. The

respondent-assessee was aggrieved by the said addition, and, therefore, filed an appeal before the Commissioner of Income Tax (Appeals). The appeal was preferred both on the question of jurisdiction as well as on merits. Insofar as the plea of jurisdiction taken by the respondent-assessee was concerned, the Commissioner of income tax (appeals) did not agree with the submissions of the respondent-assessee and held that re-opening of the assessment was valid u/s 147 of the said Act. However, on merits the Commissioner of Income Tax (Appeals) held in favour of the respondent-assessment and deleted the entire amount of Rs. 77 lakhs.

2. The Revenue, being aggrieved by the decision on merits by the Commissioner of Income Tax (Appeals) preferred the said appeal ITA No. 4652 (Del) of 2009 before the Tribunal on the question of deletion of the addition of Rs. 77 lakhs. The respondent-assessee preferred cross-objection with regard to the jurisdictional issue. The cross-objection was numbered as COA 29/Del/2010. The Tribunal has disposed of the said appeal and the cross-objection by the common impugned order dated 18.11.2011. The Tribunal accepted the cross-objection of the respondent-assessee on the point of jurisdiction and held the issuance of notice u/s 148 of the said Act to be bad on account of the fact that there was no failure to disclose fully and truly all material facts for the purposes of assessment on the part of the respondent-assessee. Insofar as the question of merits was concerned, the Tribunal did not examine the same inasmuch as it had held the re-opening itself to be bad.

3. On going through the decision of the Tribunal we find that the Tribunal was impressed by the fact that in the reasons there should have been recorded that there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for the assessment. The Tribunal followed the decisions of this Court in *Wel Intertrade Private Limited (formerly Wel Intertrade Limited) and Another Vs. Income Tax Officer*, and *Haryana Acrylic Manufacturing Company Vs. The Commissioner of Income Tax IV and Another*, wherein this Court held that in situations where the reasons did not even contain and allegations that the escapement of the income had been occasioned by failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, the assessing officer would be barred from re-opening of the assessment already done at an earlier stage. In *Wel Inter Trade P. Ltd. & Anr.* (supra) this Court has observed as under:-

A plain reading of the said proviso makes it more than clear that where the provisions of section 147 are being invoked after the period of four years from the end of the relevant assessment year, in addition to the Assessing Officer having reason to believe that any income chargeable to tax has escaped assessment, it must also be established as a fact that such escapement of assessment has been occasioned by either the assessee falling to make a return u/s 139 etc., or by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment

year. In the present case, the question of making of a return is not in issue and the only question is with regard to the second portion of the proviso, which relates to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Insofar as this pre-condition is concerned, there is not a whisper of it in the reasons recorded by the Assessing Officer. In fact, as indicated above, the Assessing Officer could not have made this a ground because the Assessing Officer had required the petitioner to furnish details with regard to loss occasioned by foreign exchange fluctuation which the petitioner did not by virtue of the reply dated 5.2.2002. Since the petitioner had fully and truly disclosed all the material facts necessary for the assessment, the precondition for invoking the proviso to section 147 of the said Act had not been satisfied.

10. In this connection, it may be relevant to note one decision, although there are several others. The said decision is that of the Punjab and Haryana High Court in the case of Duli Chand Singhania Vs. Assistant Commissioner of Income Tax, . In the said decision, the High Court of Punjab and Haryana was faced with a similar situation. The court noted that there was not even a whisper of an allegation that the escapement in income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The court observed that absence of this find, which is the sine qua non for assuming jurisdiction u/s 147 of the Act in a case falling under the proviso thereto, makes the action taken by the Assessing Officer wholly without jurisdiction. We agree with these observations of the Punjab and Haryana High Court and are of the view that in the present case also, the Assessing Officer has acted wholly without jurisdiction. The invocation of section 147, the issuance of the notice u/s 148 and the subsequent order on the objections are all without jurisdiction. The impugned notice as well as the proceedings pursuant thereto are quashed....

4. We have considered these submissions and we are inclined to agree with the learned counsel for the petitioner. The proviso to section 147 reads as under:

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the 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 assessment to make a return u/s 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for the assessment year.

5. In the present case the purported reasons to believe that income had escaped assessment were as under:-

Reasons of the belief that income has escaped Assessment.

In this case the assessment for the asstt. Year 2002-03 was made u/s. 14(3) on

22.12.2004. A special information has been received from Director of Income Tax (investigation)-I, New Delhi vide letter dated 05.02.2007 that the assessee company has received a sum of Rs. 77,00,000/- from the companies as detailed below:-

According to the special information received, the entries are in the nature of accommodation entries and in the reality it is the assessee's own unaccounted money which has been shown in the books of accounts as a receipt from aforesaid companies.

In view of the above, I have reason to believe that income to the extent of Rs. 77,00,000/- has escaped assessment.

6. On going through the purported reasons we find that there is no mention of the respondent-assessee not having made a full and true disclosure of the material facts necessary for assessment. On the contrary the purported reasons indicate that the amounts mentioned therein had been shown in the books of accounts as receipts from the companies mentioned therein. We also note that at serial No. 5 of the list of companies from which amounts have been allegedly received, the name of the assessee has been shown. This means that the assessee received the received money from itself, which can hardly be an allegation in this case.

7. For the foregoing reasons we feel that the Tribunal has approached the matter in the correct perspective and has held the issuance of the notice u/s 148 dated 30.7.2007 to be bad in law and so, too, all the proceedings pursuant thereto. There is no reason for us to interfere with the impugned order inasmuch as no substantial question of law arises for our consideration. The appeal is dismissed.