* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 01.12.2016

\+ **W.P.(C) 2385/2015**

ARAVALI INFRAPOWER LTD. ……Petitioner

Through: Ms. Meenakshi Arora, Sr. Advocate with Sh. Shaubhagya Aggarwal, Sh. Deepak Shukla and Sh. Alok Singh, Advocates.

Versus

DEPUTY COMMISSIONER OF INCOME TAX..…..Respondent

Through: Sh. Sanjay Kumar, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner is aggrieved by a notice issued by the Assessing Officer (AO) under Sections 147/148 of the Income Tax Act, 1961 [hereafter "the Act"]. The "Reasons to Believe" were later furnished in the form of a document to the assessee/petitioner; they appear to have been recorded on 19.11.2013. The relevant part of the said document outlining why reassessment was proposed reads as follows:

> *"XXXXXX XXXXXX XXXX*
> *A survey was conducted on the corporate office of M/s Aravali lnfrapower Ltd. at G-29, 3rd floor, Vardhman Towers, Near PVR Sonia, Vikas Puri I New Delhi on 06.09.2011. The issues involved were bogus land development expenses and bogus share capital. During the course of survey at G-29, 3rd floor, Vardhman Towers, Near PVR Sonia, Vikas Puri I New Delhi certain incriminating documents were found and impounded. The Aravali group has shown issue of shares to various*

companies and raised capital from these companies. These companies (listed below) do not have regular sources of income to invest such large amounts of capital. It has been gathered from enquiries that the various allottees referred below which have been allotted shares of the group companies are not actively involved in any substantial business activity.

S. No.	*Name of the allottee which has invested in Aravalli group companies*	*Amount invested as share capital*	*FY*	*Name of the Aravalli Group Company whose shares have been allotted*
1.	*Shree Raj Shaymji Footwears P. Ltd.*	*8,90,00,000*	*2007-08*	*Aravali Infrapower Ltd.*
2.	*Sigma Real Tech P. Ltd.*	*1,95,00,000*	*2007-08*	*Aravali Infrapower Ltd.*
3.	*Spark Computech P. Ltd.*	*1,50,00,000*	*2007-08*	*Aravali Infrapower Ltd.*
		12,35,00,000		

The fact was confronted to Sh. Rakesh Jolly, Managing Director M/s Aravali lnfrapower Ltd. during the post survey proceedings. He replied that the shares were allotted to these companies/persons against the money received through banking channel and all the necessary formalities for issue of shares as required under the Companies Act were completed. At the time of issue of shares the concerned companies have given the various details in the share application form which includes the addresses, payment details as well as income tax particulars. Since the shares were allotted in the preceding years and all the necessary details were furnished by these parties at that time.

Summons were issued to the directors of the above mentioned companies. These summons were returned. An Inspector was deputed to physically verify the addresses of the registered offices of the above mentioned companies. The result of the enquiries is as follows:

S. No.	Name of the allottee which has invested in Aravalli group companies	Address	Findings
1.	Shree Raj Shaymji Footwears P. Ltd.	A-1/321, Paschim Vihar, New Delhi	The premises is a residence of Sh. R.K. Gupta and Sh. Sahil Gupta.
2.	Sigma Real Tech P. Ltd.	M-20, Dewan House, Ajay Enclave, Subhash Nagar, New Delhi	The premises was locked.
3.	Spark Computech P. Ltd.	M-20, Dewan House, Ajay Enclave, Subhash Nagar, New Delhi	The premises was locked.

As the above said companies did not exist at their given addresses, the assessee vide question no. 5 of the statement recorded on 06.01.2012 was asked to provide other addresses of the companies, if any, from which it had received share capital. The assessee replied that they do not have any other addresses on record of these companies. From the above, it is clear that the assessee is not able to prove the genuineness of the transactions entered into with companies from whom it has received share capital and the identity and creditworthiness of such companies.

From the above, it is clear that the assessee is not able to prove the genuineness of the transactions entered into with companies from whom it has received share capital and the identity, and creditworthiness of such companies and it clearly established that an amount of Rs. 12,35,00,000/- escaped taxation.

In the wake of the investigations done by the investigation wing, which a integral part of the department and facts of the case, I have a strong reason to believe that income of

Rs.12.35,00,000/- as detailed above has escaped assessment in the case of assessee relevant to AY 2008-09 and, hence, clearly attracts the provisions of clause (b) of Explanation 2 to Section 147 of the IT Act..

Since, the credible information has been received from investigation wing that an amount of Rs. 12,35,00,000/-has escaped assessment within the meaning of section 147 of the Act. The assessee has not disclosed fully and truly all material facts before the A.O. resulting in under assessment of income of Rs. 12,35,00,000/- by reason of failure on part of the assessee.

Hence, the sum of Rs. 12,35,00,000/-has escaped assessment within the meaning of clause c(i) of Explanation 2 below 2nd proviso appended to section 147 of the IT Act.

In view of the above, I have reason to believe that income to the tune of Rs.12,35,00,000/- as discussed above, has escaped assessment within the meaning of Section 147 of the IT Act and it is a fit case for initiating proceedings u/s 147/148 of the IT Act.

XXXXXX XXXXXX XXXXXX"

2. The petitioner argues that the reassessment notice is illegal and ought to be quashed. It has reiterated the grounds urged in the petition. Ms. Meenakshi Arora, learned senior counsel for the petitioner submits that the essential prerequisites for valid notice under Sections 147/148 of the Act were not satisfied in this case. Elaborating, she argued that at the time of the assessment for AY 2008-09, the concerned Assessing Officer (AO) had made specific queries with respect to what is now sought to be re-opened. A pointed reference was made to the letter of the AO dated 21.12.2009 which had elicited information with respect to various matters. The relevant facts sought in that notice are extracted below:

> *"10. Details of addition to share capital – party wise, share premium, share application money and unsecured loan received (party wise), during the financial year 2007-08 with complete name, address of the parties with PAN and ward/circle proving genuineness of the same. Also the confirmations from these parties."*

3. It was urged that in compliance with the notice, the assessee had furnished all details and particulars relating to it. Learned counsel relied upon the voluminous documents filed which include copies of account information issued to the share applicants/third parties, containing cheque numbers, the ITR forms of the share applicants/third parties etc. and stated that since the AO framed the assessment after being satisfied with regard to the replies to the queries and having regard to the re-assessment notice, there was no question of any material suppression of fact, nor any independent ground constituting valid reasons to believe that could sustain the impugned notice. Learned counsel relied upon the judgment of the Supreme Court in *ITO v. M/s. Mewalal Dwarka Prasad* 1989 (2) SCC 279; the subsequent judgment in *CIT v. Kelvinator of India Limited* 2010 (2) SCC 723; *Haryana Acrylic Manufacturing Co. v. CIT* 2009 (308) ITR 38 (Del); *Wel Intertrade Private Limited v. ITO* 380 ITR 22. It was urged that the facts in *Haryana Acrylic (supra)* and *Wel Intertrade (supra)* are closely similar to the circumstances of the present case. In that, the Court was of the opinion that so long as disclosure of the materials elicited and the replies to the pointed queries were made during the assessment proceedings, in the absence of any fresh material to the contrary, it could not be said that there was suppression of material facts, justifying a notice under Section 147 of the Act.

4. The revenue's stand is that the impugned notice is valid. It is pointed

out that after completion of assessment, information was received that the share applicants who are said to have invested in the petitioner's company were in fact bogus entities. Acting upon such information, a survey was conducted during the course of which certain documents were impounded from the assessee. It was urged that despite eliciting information in the course of original proceeding under Section 143(3), the assessee did not disclose full and material facts with respect to the share applicants who were specifically mentioned in the notice. It was stated that even replies to the queries by the AO dated 21.12.2009 were incomplete. The assessee had not furnished all the relevant materials; in any event, it was bound to do so given that the queries pointedly related to Section 68 of the Act. Highlighting that the requirements of this provision are that in order to establish that investments or entries found suspect were in fact genuine, what is required is not merely disclosure of true identity of the share applicants but also genuineness of the transaction and the creditworthiness of such investors. In this case, the latter two requirements are not satisfied during original assessment. This finds express advertence in the notice under Section 147.

5. As is evident from the above discussion, the petitioner's main submission is that reassessment notice proposes a "look-in" to the original assessment for AY 2008-09 on three grounds all of which are covered in the course of enquiry in the original assessment proceedings completed under scrutiny under Section 143(3). It is argued that there is in fact no *live link* between the tangible material relied upon by the revenue and the completed assessment, warranting such reassessment/reopening. The entire emphasis during the course of hearing was that what was queried was in fact satisfactorily replied earlier to resulting in a completed assessment and that

such matters cannot be reopened since it would amount to impermissible review.

6. In *Kelvinator (supra)*, the Supreme Court had succinctly summarised the legal requirements for a valid notice under Section 147 and stated *inter alia* that, *"Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is" tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief".*

7. *Haryana Acrylic (supra)* - on which the petitioner relied upon heavily is instructive in the circumstances of this case. The Court had occasion to consider validity of notice under Section 147 in the context of a reopening of assessment *vis-à-vis* receipt of share application amounts – much like in the present case. After discussing *Kelvinator (supra),* the Court held that in the circumstances of that case, the notice was invalid:

> *"In the present case, what is to be seen is whether the petitioner failed to make a full and true disclosure of all the material facts necessary for its assessment for the assessment year 1998-99. Explanation I to section 147 also makes it clear that mere production before the Assessing Officer of account books or other evidence from which material evidence could, with due diligence have been discovered by the Assessing officer, will not necessarily amount to disclosure within the meaning of the said proviso. This Explanation, however, does not mean that production of account books and other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not "in any event" amount to disclosure within the meaning of the said proviso. The said explanation only stipulates that such evidence will not necessarily "amount to disclosure" within the meaning of the said proviso. However, we need not labour on this aspect any further inasmuch as we find that in this case, the Assessing*

officer had made specific queries, inter alia, with regard to the share application money of Rs.5 lakhs received from Hallmark Healthcare Limited. The petitioner had supplied, in the course of the original assessment proceedings all the relevant documents such as the share application money form, confirmation from the applicant and the bank statement relating to the receipt of the cheque No.201845 dated October 17, 1997, from Hallmark Healthcare Limited. It is only thereafter that the assessment was completed by the Assessing Officer on March 7, 2001. We have already noted above that in the assessment order itself, the Assessing officer has recorded that the details as required were filed and verified…....."

8. Learned counsel had relied upon *Mewalal (supra)*. In that case full disclosure had been made and that consequently, the notice was held invalid. The Court at the same time, recollected its previous ruling and pointedly stated as follows:

"7. No serious effort, however, was made by Mr. Manchanda appearing for the assessee-respondent to counter this submission advanced on behalf of the revenue. Accepting the legal position indicated in these cases we come to the conclusion that it was not for the High Court to examine the validity of the notice under Section 148 in regard to the two items if the High Court came to the conclusion that the notice was valid at least in respect of the remaining item. Whether the Income Tax Officer while making his reassessment would take into account the other two items should have been left to be considered by the Income Tax officer in the fresh assessment proceeding.

8……………………This Court in Calcutta Discount Company Limited v. ITO 1961 (41) ITR 191 held that the expression 'material facts' used in clause (a) referred only to primary facts and the duty of the assessee was confined to disclosure of primary facts and he had not to indicate what factual or legal inferences should properly be drawn from the primary

facts…………..”

9. Likewise in *Wel Intertrade (supra),* the Court again emphasized that:

> *“.....it must also be established as a fact that such escapement of assessment has been occasioned by either the assessee failing to make a return under section 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……..”*

10. In the present case, a reading of the reassessment notice brings out two salient aspects – firstly that information was received by the revenue with respect to bogus entries made, resulting in a survey and impounding of certain documents. On the basis of these, certain inferences were sought to be drawn. There cannot be any denial that this clearly amounted to tangible material. Nevertheless, the enquiry would not end there. The question is whether scrutiny by the AO at the time the original assessment was completed into the self-same matters precluded it from seeking recourse to Sections 147/148. Having regard to the overall circumstances and as this Court would discuss hereafter, there was no such bar. Whilst the assessee, no doubt, replied to the queries (especially question no.10) addressed to it on 21.12.2009, the materials on record clearly show that there was no full disclosure. The requirement in such cases - whether the AO is *prima facie* not satisfied about the genuineness of the transaction (Section 68), is not merely to establish the genuineness of the identity but also genuineness of the transaction itself and the creditworthiness of the investor. Clearly, the material, primarily called “primary materials” in *Mewalal (supra)* referring to *Calcutta Discount Company Limited v. ITO* AIR 1961 SC 372, in turn

were not merely PAN numbers or other registration identities of the share applicants. They extended to details *vis-à-vis* other documents such as bank accounts etc, of the share applicants – that the assessee was in possession of. The materials supplied to the AO at the relevant time on 07.02.2009 (by the assessee) there is singular absence of documents such as bank details of the share applicants: undoubtedly, the cheque numbers were disclosed whereby amounts were received by the assessee and credited to its accounts. They were, however, not a full disclosure. A further look into the bank accounts or even the bank branches would be sufficient in the circumstances, which was possible if Bank details were given (i.e. name of bank branch etc.). Likewise, the ITR form disclosing returns raise more questions than satisfy the queries. They merely show that the share applicants paid paltry amounts as income tax even while claiming to have invested amounts ranging over ₹8 crores. Clearly, there was no full disclosure of material facts.

11. For the foregoing reasons, we are of the opinion that the petitioner is disentitled to relief. The impugned notice is valid. The writ petition is accordingly dismissed.

HIGH COURT OF DELHI
सत्यमेव जयते

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

DECEMBER 1, 2016