

\$~29

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

+ W.P.(C) 16902/2004

WOODWARD GOVERNOR(INDIA)LTD. Petitioner

Through: Mr. Piyush Kaushik, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Rahul Kaushik, Sr. Standing
Counsel for Income Tax.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

05.10.2016

The assessee challenges reassessment notice under Section 147-148 of the Act issued by the revenue seeking to re-open the concluded assessment for AY 97-98. The reasons furnished by the respondent/revenue to re-open the assessment are extracted below-

<i>Reasons for the belief that income has escaped assessment.</i>	<i>The assessee company has claimed deduction u/s 801A on 30% of taxable income (Rs. 1,66,26,841). Taxable income includes income from services (Rs. 31,53,009/-) income from sale commission (Rs. 6,22,987/-) and interest on fixed deposits with bank (Rs. 24,746/-) apart from trading income, which is to be quantified. Deduction u/s 801A is only allowable on profits and gains 'derived from' the industrial undertaking setup. Income from sales</i>
---	---

<p><i>commission, income from services, trading income, bank interest cannot be said to be profits 'derived from' the industrial undertaking. I therefore have reason to believe that income in excess of Rs. 4,70,532/- has escaped assessment Notice u/s 148 may be issued, if approved.</i></p>
--

After notice was issued this court admitted the petition and issued rule. The revenue in support of the reassessment notice urges that the failure of the petitioner to indicate the break-up of income that arose on account of commission and interest on fixed deposits empowers it to proceed under Section 147. It is submitted that in any event, the materials on record originally disclosed to the revenue at the time of completion of assessment, do not give the appropriate break up; more significantly the AO did not make diligent enquiries in that regard. It is urged that the two heads of Income sought to be passed off as deductions and clubbed with the receipts that are legitimately admissible under Section 80-IA, are contrary to the declaration of law by the Supreme Court in *Pandian Chemicals Ltd. Vs. CIT* reported in 262 ITR 278 SC and *Liberty India vs. CIT* (2009) 317 ITR 218 SC.

The counsel for the petitioner urges that the so-called opinion or “reasons to believe” leading to the re-assessment, nowhere indicate any objective material much less tangible material in that impelled the AO to revisit a concluded issue. It is urged that the rationale for re-opening is utterly inaccurate because during the course of assessment proceedings, full disclosure including the break-up of income was in

fact made.

It is evident from a plain reading of the reasons furnished by the revenue that there is no allusion to tangible material in the form of objective documents, information etc outside of the concluded assessment and the documents pertaining to it. According to the binding ruling of the Supreme Court in *Commissioner of Income Tax vs. Kelvinator Ltd.* 320 ITR 561, *sans* such documents, evidence or tangible material, there cannot be valid opinion leading to proper re-assessment proceedings.

The rationale furnished by the revenue in its counter affidavit and reiterated in the court during the hearing was that a component of income which was otherwise inadmissible but escaped the notice of the AO, because of the ratio in *Liberty India* and *Pandian* (supra) is unpersuasive. Besides, the lack of any reference to objective material, cannot in any way improve the case of the revenue – much less its reference to otherwise binding judgments that could have been the basis of a valid revision by the revenue under Section 264. It goes without saying that statutory orders containing reasons are to be judged on the basis of what is apparent and not what is explained later, as the validity of those orders does not improve with time or on account of better explanations furnished in the course of legal proceedings (refer *M.S. Gill and Anr. vs. Chief Election Commissioner* AIR 1978 SC 581).

For the foregoing reasons, the petition has to succeed. The reassessment notice dated 31.03.2004 and all further proceedings

emanating from it are hereby quashed.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 05, 2016

sapna