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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
R-106

+ **W.P.(C) 1912/2002**

NESTLE INDIA LTD. Petitioner
Through: Mr Mayank Nagi, Ms Husnal Syali,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent
Through: Mr Amol Sinha, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER
% **11.03.2016**

1. This is a writ Petition seeking quashing of the reasons communicated to the Petitioner under letter dated 8th March, 2002 of the Deputy Commissioner of Income Tax, Special Range-3, seeking to reopen the assessment for Assessment Years ('AYs') 1993-94 and 1994-95.

2. For both the aforementioned AYs the regular assessments under Section 143(3) of the Act was completed on 27th March, 1996 and 28th February, 1997 respectively. For both the AYs, deductions were claimed under Section 80HHC of the Act and the returns were accompanied, *inter alia*, by the reports of the Chartered Accountant under Section 80HHC(4) in form 10CCAC, as well as the audit report under Section 44AB of the Act. It is stated that for AY 1994-95 the Assessing Officer ('AO') specifically

examined the issue under Section 80HHC.

3. Rectification proceedings under Section 154 of the Act were initiated by the AO and these were subsequently dropped after the replies of the Petitioner.

4. On 29th March, 2001, the AO issued notices under Section 148 of the Act seeking to reopen the assessment for the aforementioned AYs. The notices were served on the Petitioner on 3rd April, 2001. These notices were in the standard form which simply stated that AO had reason to believe that in the respective AYs income had escaped assessment. In response to the notices, the Petitioner by letters dated 18th April, 2001 re-filed copies of the original returns for the respective AYs.

5. It must be noted straightway that as far as AY 1993-94 is concerned, the notice dated 29th March 2001 is beyond the period of six years from the end of the financial year, i.e., 31st March, 1994. Therefore, as far as the notice under Section 148 of the Act for AY 1993-94 is concerned, it was clearly beyond the limit in terms of Section 149(1) (b) of the Act. On this short ground, the said notice for AY 1993-94 and all proceedings pursuant thereto are held to be bad in law.

6. As far as the notice under Section 148 of the Act seeking to reopen the assessment for AY 1994-95 is concerned, certain facts are required to be noted. On 22nd March 2002, while directing notice to be issued to the Respondent, the Court had directed that the assessment proceedings shall continue but the final order shall not be passed by the Assessing Officer

(AO) till further orders. However, it appears that unknown to the Petitioner, and therefore this Court, an assessment order was, in fact, passed by the AO on 18th March, 2002. This fact is seriously contested by the Petitioner. Subsequently, an order was passed by the Court on 23rd April, 2004 in light of the decision in *GKN Driveshafts (India) Ltd. v. Income Tax Officer (2003) 259 ITR 19* requiring the AO to dispose of the petitions of the Petitioners with the reasons for reopening the assessment after the reasons being furnished to the Petitioner, in a time bound manner. This order, however, was recalled on 28th May, 2004 when the court's attention was drawn to the fact that an assessment order has already been made.

7. The Court is informed that, as of date, no further steps have been taken subsequent to the assessment order, which according to the Petitioner had not been passed on the date of the filing of this petition. However, the counsel for the Petitioner has no information if the said assessment order has been given effect to.

8. The Court has perused the reasons for reopening of the assessment for AY 1994-95, which is clearly beyond the period of four years of the assessment year in question in terms of Section 147 of the Act. In order to justify the reopening of the said assessment, the Revenue had to show that there was some tangible material providing a live link to the reasons to believe that income had escaped assessment. Further the Revenue had to show that that there was a failure by the Assessee to 'disclose fully and truly all material facts necessary for the assessment for the relevant assessment year'.

9. On perusal of the reasons for reopening the assessment, it is clear that

neither of the above conditions is satisfied. All that the reasons refers to is the material already on record before the AO at the time that the original assessment order was passed under Section 143(3) of the Act. There is not a whisper that there has been a failure by the Assessee to fully and truly disclose the material facts. Consequently, the Court has no hesitation in holding that the order dated 18th March 2002, recording the reasons for the reopening of the assessment for AY 1994-95, is not in conformity with the mandatory requirement under Section 147 of the Act and therefore is unsustainable in law.

10. The assessment order passed by the AO pursuant to the said reopening of the assessment for AY 1994-95 is also, therefore, held to be bad in law. The writ petition is allowed in the above terms.

S. MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 11, 2016

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