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

%	Judgment delivered on: 11.12.2015

\+	**W.P.(C) 9094/2014**

SHRI PARASRAM INDUSTRIES PVT. LTD .... Petitioner

versus

INCOME TAX OFFICER WARD 8(3) & ANR .... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Sabharwal, Sr Advocate with Mr Deepak Sharma

For the Respondents : Mr Rohit Madan with Mr Akash Vajpai

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition pertains to the assessment year 2007-08 and seeks the quashing of the notice dated 23.08.2014 issued by the respondent No.1 under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') as also all proceedings pursuant thereto, including the order dated 26.09.2014, passed by the respondent No.1, dismissing the objections filed by the petitioner.

2. The main grounds raised in the writ petition are that the re-assessment proceedings having been initiated after four years from the end of the relevant assessment year, required certain pre-conditions to be fulfilled. One of the pre-conditions was that there was failure on the part of the assessee to fully and truly disclose all the material particulars necessary for the assessment. It is contended by the learned counsel for the petitioner that apart from there being no such failure, in fact, there is not even an allegation in the reasons that there has been such a failure on the part of the assessee.

3. The second ground urged on behalf of the petitioner/assessee is that this is a case of change of opinion inasmuch as the very issue sought to be raked up by way of the impugned notice under Section 148 of the said Act has been considered by the Assessing Officer during the time of the original assessment under Section 143 (3) of the said Act.

4. The original assessment under Section 143(3) was completed on 18.12.2009. This was, however, after a questionnaire had been issued to the assessee during the assessment proceedings on 12.06.2009. Question No. 3 of the questionnaire specifically required the assessee to give the names, addresses and PAN numbers of the shareholders along with their percentages/ ratios. This was provided by the assessee. In fact, the

Assessing Officer did not stop at that and issued notices under Section 133(6) of the said Act to the individual applicants. One such letter dated 04.12.2009 was issued to M/s Sino Credits and Leasing Limited. The said letter reads as under:-

"OFFICE OF THE
INCOME TAX OFFICER, WARD 8 (3),
ROOM NO. 196A, C. R. BUILDING, I.P. ESTATE, NEW DELHI-110002.
PHONE-23705348

NOTICE UNDER SECTION 133 (6) OF THE INCOME TAX ACT, 1961

F. NO. ITO/ W8(3)/143(3)/2009-10/ Dated 04-12-2009

To

The Principal Officer
M/s Sino Credits And Leasing Ltd
308, Arunachal Building,
19, Barakhambha Road
New Delhi -110001

Sir/Madam,

Sub:- Assessment proceedings u/s 143(3) of the I.T.Act, 1961 in the case of M/s Shri Parasram Industries P Ltd for A.Y 2007-08-reg:-

During the course of assessment proceedings u/s 143(3) of the I.T. Act, 1961 for A.Y. 2007-08 in the case of the above subject-mentioned Assessee Company it could be seen that you have made certain kinds of transactions with this company.

You are requested to give a certified copy of the Ledger Account maintained by you in respect of the above mentioned assessee company giving necessary evidence with date-wise details and nature of such transaction made with this company alongwith your source thereof in respect of such transaction with you bank statement for the relevant period and latest copy of ITR.

The above information should reach my office by 10-12-2009 failing which penalty u/S 272 A of the Income Tax Act, 1961 may be initiated.

Yours faithfully

Sd/-

(PIYUSH SINHA)
Income Tax Officer,
Ward-8(3), New Delhi."

5. The response to the said letter was given by M/s Sino Credits and Leasing Limited by issuing a confirmation letter to the following effect:-

"SINO CREDITS AND LEASING LIMITED
STOCK AND SHRE BROKERS
MEMBER: NATIONAL STOCK EXCHAGNE OF INDIA LIMITED
: OTC EXCHANGE OF INDIA

CONFIRMATION LETTER

This is to confirm that we have paid Share Application Money of Rs. 58,90,000/- (Fifty Eight Lac Ninety Thousand only) vide Cheque /DD No. 1131 drawn on HDFC Bank of Rs 5500000/- and vide Cheque /DD No. 1135 drawn on HDFC Bank of Rs 590000/- and vide Cheque /DD No. 152512 drawn on HDFC Bank of Rs 1000000/- and vide Cheque /DD No.152554 drawn on HDFC Bank of Rs 1000000/- to Shri Parasram Industries Pvt. Ltd. 334, Sunheri Bagh Apartment, Sector-13, Rohini, Delhi-110085.

We are assessed to Income Tax and our PAN is AAACS 1172 N.

The Amount has been paid out of realization from our debtors.

For Sino Credits And Leasing Limited
Sd/
Director"

Similar letters were issued to all the share applicants and confirmations were obtained from the said share applicants.

6. The summary of documents filed by the petitioner/assessee and the confirmations received from the third parties directly by the Assessing Officer have been set out in Annexure P-XIII, which reads as under:-

"SUMMARY OF DOCUMENTS FILED BY THE PETITIONER/ASSESSEE AND CONFIRMATIONS RECEIVED FROM THIRD PARTIES DIRECTLY BY THE ASSESSING OFFICER

ANNEXURE-P-XIII

S. No.	Name of Party		Amount	Relevant documents filed by **Petitioner / Assessee** and verified by Assessing Officer during proceedings u/s 143(3)	Confirmations/ documents **directly** received by AO u/s 133(6) and duly verified
1	**Advantage Software Pvt. Ltd.**		1000000	i. Confirmation Letter filed	i. Confirmation letter recd
				ii. IT Return filed	ii. IT Return recd
					iii. Bank Statement recd
2	**Central Gum & Chemical Ltd.**		4000000	Confirmation Letter filed	i. Confirmation Letter recd
					ii. IT Return recd
					iii. Bank Statement recd
3	**Dhamaka Trading & Constructions**		**1000000**	i. Confirmation Letter filed	i. Confirmation Letter recd
				ii. IT Return filed	ii. IT Return recd
				iii. Bank Statement filed	iii. Bank Statement recd
4	**Giriasho Company**		**1000000**	i.Confirmation Letter filed	i. Confirmation Letter recd
				ii. IT Return filed	ii. IT Return recd
				iii. Bank Statement filed	iii. Bank Statement recd
5	**KSA Chits**		**2000000**	i. Confirmation Letter filed	i. Confirmation Letter recd
				ii. IT Return filed	ii. IT Return recd
				iii. Bank Statement filed	iii. Bank Statement recd

6	**New Star**		**1000000**	Confirmation Letter filed	i.Confirmation Letter recd
					ii. IT Return recd
					iii. Bank Statement recd
7	**Sino Credits and Leasing Ltd**		**2000000**	i.Confirmation Letter filed	i. Confirmation Letter recd
				ii. IT Return filed	ii. IT Return recd
					iii. Bank Statement recd
8	**V.A. Foods**		**1000000**	--	i. Confirmation Letter recd
					iii. Bank Statement recd
9	**Vasudeva Farms**		**1000000**	i. Confirmation Letter filed	i.Confirmation Letter recd
				ii. IT Return filed	ii. IT Return recd
					iii. Bank Statement recd
10	**Vijay Conductors**		**5500000**	i. Confirmation Letter filed	i. Confirmation Letter recd
				ii.IT Return filed	ii. IT Return recd
					iii. Bank Statement recd
11	**Vijay Shines**		**500000**	Confirmation Letter filed	i. Confirmation Letter recd
					ii. IT Return recd
					iii. Bank Statement recd
12	**Vishrut Marketing**		**850000**	i. Confirmation Letter filed	i. Confirmation Letter recd
				ii. IT Return filed	ii. IT Return recd
				iii. Bank Statement filed	iii. Bank Statement recd
13	**Zenith Estates**		**4000000**	i. Confirmation Letter filed	i. Confirmation Letter recd
				ii. IT Return filed	ii. IT Return recd
				iii. Bank Statement filed	iii. Bank Statement recd
	Total		**24850000**		

	Entries not in books of accounts (Reconciliation of Notice)				
Dated	Name of Party	Cheq / DD No.	**Amount**		
10.04.2006	Vasudeva Farms	750092	900000		
10.04.2006	Vasudeva Farms	750093	600000		
10.04.2006	V.A. Foods	775320	600000		
10.04.2006	Giriasho Company	397652	900000		
27.06.2006	Omni Farms	776932	650000		
	Total amount as per notice		**28500000**		

”

7. It is only after all the above mentioned information was received by the Assessing Officer, that the assessment was framed under Section 143(3) on 18.12.2009. In the assessment order itself, it has been specifically recorded as under:-

> “In response through Harish Kumar, C.A and A.R attended the proceedings and submitted the requisite details/ information/ documents from time to time. Case was discussed with him.”

8. It is clear that after the Assessing Officer examined the aspect of the share application money received by the assessee through the issuance of a questionnaire and notices under Section 133(6) of the said Act, the assessment under Section 143(3) of the said Act was framed on 18.12.2009.

9. The learned counsel for the petitioner placed reliance on the decision of this Court in ***Lahmeyer Holding GMBH v. Deputy Director of Income***

***Tax**: [2015] 376 ITR 70 (Delhi)* to submit that the re-assessment proceedings would be invalid in case an issue or query is raised and answered by the assessee in the original assessment and yet, the Assessing Officer does not make any addition in the assessment order. In such situations, it would have to be accepted that the issue had been examined, but the Assessing Officer did not find any ground or reason to make any addition or reject the stand of the assessee. Relying on the said decision, it was also submitted that when such an exercise is undertaken by the Assessing Officer, it can be regarded as a case where the Assessing Officer forms an opinion and that re-assessment on the very same ground would be invalid because the Assessing Officer having once formed an opinion in the course of the original assessment, although he did not record the reasons for the same, cannot be permitted to change his opinion through the re-assessment proceedings.

10. We note that in ***Lahmeyer Holding GMBH*** *(supra)*, a Division Bench of this Court had placed reliance on the Full Bench decision in ***CIT v. Usha International Limited**: [2012] 348 ITR 485 (Delhi) (FB)*, wherein it was, *inter alia*, held as under:-

> "3. Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons."

11. After hearing the submissions of the learned counsel for the petitioner and also the submissions made by the learned counsel for the respondents, we are of the opinion that the present case is also one of change of opinion. This is so, because, the questionnaire and, particularly, question No. 3, specifically raised the issue with regard to the shares. The responses were given by the assessee from time to time and what is more important is that the Assessing Officer had directly issued letters to all the share applicants, who had, in turn, given their confirmations along with their PAN numbers and bank details. After having received the said information, the Assessing Officer did not think it fit to make an addition and that itself would amount to forming an opinion, as indicated in ***CIT v. Usha International Limited*** *(supra)* and ***Lahmeyer Holding GMBH*** *(supra)*. Therefore, the present exercise of issuing the notice under Section 148 of the said Act would be nothing but one of change of opinion, which is impermissible.

12. The second point that has been urged by the learned counsel for the petitioner/assessee is that even otherwise, the impugned notice under Section 148 and the proceedings pursuant thereto have to be set aside for the simple reason that the clear pre-conditon of there being a failure on the part of the assessee to fully and truly disclose all the material particulars necessary for assessment, has not been made out. In fact, if one looks at the reasons which have been supplied for initiating re-assessment, there is not even an allegation that there has been such a failure on the part of the petitioner/ assessee. For the sake of convenience, the reasons are set out herein below:-

"Income Tax Department

26/02/2014 **Reasons for reopening the case of M/s Shri Parasram Industries P. Ltd. (AABCS7930D) A.Y. 2007-08, U/s 147/148 of the Income Tax Act, 1961**

1. Information /documents in the form of CD has been received from the office of ACIT, Central Circle 22-New Delhi wherein it was revealed that the above assessee, *M/s* Shri Parasram Industries P. Ltd. has received and is a beneficiary of accommodation entries provided by certain entry operators. The Investigation Wing of the Department had carried out survey u/s 133A in the case of Shri Suresh Kumar Gupta (S.K. Gupta) on 20.11.2007. It was gathered that Sh.S.K. Gupta who is having his office at 308, Arunachal Building, Barakhamba Road, New Delhi is a Chartered Accountant and is carrying on the business of share broker, financial consultancy and providing accommodation entries in the form of loans, advances, share application money, issuing bogus expenses' bills on commission basis. For this purposes, he had floated several companies/firm in which he and his family members as well as his employees were either directors or proprietors. Bank accounts were opened III the names of these companies/firms in which he and his family members as well as his employees were either directors or

proprietors. Bank accounts were open in the names of these companies/firm and individuals of create layer/layers before providing accommodation entries of the beneficiaries through bank channels to give the color of genuineness of these accommodation entries.

2. This information has been provided by the ACIT, central Circle 22, New Delhi to the Assessing officer. In the case of the above assessee, the following accommodation entries have been taken:-

Date of entry in books	Ch. No. /PO/ DD/ Ch.And date	Conduit Companies through which cheque issued	Bank a/c Such conduit company	Party to whom issued (beneficiaries)	Amount
07.04.2006	Ch. No. 296100 dt. 07.04.06	Giriasho Company	OBC	Shri Parasram Indus. P. Ltd.	10,00,000
07.04.2006	Ch. No. 152554 dt. 06.04.06	Sino Credits	HDFC	Shri Parasram Indus. P. Ltd.	10,00,000
10.04.2006	Ch. No. 775319 dt. 10.04.06	V.A. Foods	SIB	Shri Parasram Indus. P. Ltd.	10,00,000
10.04.2006	Ch. No. 750090 dt. 10.04.06	Vasudeva Farms	SIB	Shri Parasram Indus. P. Ltd.	10,00,000
10.04.2006	Ch. No.775261 dt. 10.04.06	Vijay Shines	SIB	Shri Parasram Indus. P. Ltd.	5,00,000
10.04.2006	Ch. No.750092 dt. 11.04.06	Vasudeva Farms	SIB	Shri Parasram Indus. P. Ltd.	9,00,000
10.04.2006	Ch. No.750093 dt. 10.04.06	Vasudeva Farms	SIB	Shri Parasram Indus. P. Ltd.	6,00,000
10.04.2006	Ch. No.775320 dt. 11.04.06	V.A. Foods	SIB	Shri Parasram Indus. P. Ltd.	6,00,000
10.04.2006	Ch. No.793197 dt. 17.04.06	Central Gum	SIB	Shri Parasram Indus. P. Ltd.	30,00,000
10.04.2006	Ch. No.287098 dt. 15.04.06	Dhamaka Trading	OBC	Shri Parasram Indus. P. Ltd.	10,00,000
10.04.2006	Ch. No.397652 dt. 13.04.06	Giriasho Company	OBC	Shri Parasram Indus. P. Ltd.	9,00,000
20.04.2006	Ch. No.000034	New Star	Kotak	Shri Parasram Indus.	10,00,000

	dt. 18.04.06			P. Ltd.	
20.04.2006	Ch. No.000121 dt. 18.04.06	Advantage	Kotak	Shri Parasram Indus. P. Ltd.	10,00,000
20.04.2006	Ch. No.727314 dt. 18.04.06	Zenith Estates	IPSB	Shri Parasram Indus. P. Ltd.	10,00,000
21.04.2006	Ch. No.786367 dt. 18.04.06	Central Gum	SIB	Shri Parasram Indus. P. Ltd.	10,00,000
29.04.2005	Ch. No.141336 dt. 27.04.06	Vijay Conductors	HDFC	Shri Parasram Indus. P. Ltd.	15,00,000
29.04.2005	Ch. No.115494 dt. 01.05.06	Vijay Conductors	HDFC	Shri Parasram Indus. P. Ltd.	15,00,000
29.04.2005	Ch. No.141335 dt. 27.04.06	Vijay Conductors	HDFC	Shri Parasram Indus. P. Ltd.	20,00,000
29.04.2005	Ch. No.141337 dt. 27.04.06	Vijay Conductors	HDFC	Shri Parasram Indus. P. Ltd.	5,00,000
19.05.2006	PO. No. 016727 dt. 19.05.06	Zenith Estates	IPSB	Shri Parasram Indus. P. Ltd.	10,00,000
19.05.2006	PO. No. 016727 dt. 19.05.06	Zenith Estates	IPSB	Shri Parasram Indus. P. Ltd.	20,00,000
19.05.2006	PO. No. 016725 dt. 19.05.06	KSA Chits	IPSB	Shri Parasram Indus. P. Ltd.	20,00,000
08.06.2006	Ch. No. 152512 dt. 07.06.06	Sino Credits Bus A/c	HDFC	Shri Parasram Indus. P. Ltd.	10,00,000
29.06.2006	Ch. No. 776932 dt. 27.06.06	Omni Farms	SIB	Shri Parasram Indus. P. Ltd.	6,50,000
29.06.2006	Ch. No. 505419 dt. 29.06.06	Vishrut Marketing	OBC	Shri Parasram Indus. P. Ltd.	8,50,000

3. This case was completed under scrutiny assessment in the F.Y. 2009-10 and it is observed that the said information about receipt of accommodation entry was not received at the time of original assessment. In view of the above discussed factual matrix, additional information/documents received from the Investigation Wing of the Income Tax Department and the various Judgments of the Hon'ble

> Supreme Court and Hon'ble High Courts, I have reason to believe that income of Rs.2,85,000/- chargeable to tax has escaped assessment for AY.07-08, within the meaning of section 147 of the Income tax Act,1961. Therefore, file is put for necessary approval of Commissioner of Income tax, Delhi -III, New Delhi, as required u/s 151 of the Income Tax Act, 1961 before issuance of notice u/s 148 of the Income tax Act, 1961.
>
> (Manoj Tiwari)
> ITO, W-8(3), New Delhi
>
> (Binay K.Jha)
> Commissioner of Income Tax,
> Delhi -III, New Delhi"

13. It is evident from the above that there is not even an allegation that there has been a failure on the part of the assessee to disclose fully and truly all the material particulars necessary for assessment.

14. This aspect is also covered by several decisions of this Court, including ***Global Signal Cables (India) Private Limited v. Deputy Commissioner of Income Tax*: [2014] 368 ITR 609 (Delhi)**, wherein a reference to an earlier decision in ***Haryana Acrylic Manufacturing Company v. CIT*: [2009] 308 ITR 38 (Delhi)** was made. In ***Haryana Acrylic*** *(supra)*, this Court had observed as under:-

> "29. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income

chargeable to tax. <u>Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned 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</u>. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in Wel Intertrade Private Ltd. [2009] 308 ITR 22 (Delhi) we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania [2004] 269 ITR 192 that, in the absence of an allegation in the reasons recorded that the escapement of 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, any action taken by the Assessing Officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated March 29, 2004, under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated March 2, 2005, are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above.

(underlining added)"

15. A reference was also made to <u>***Swarovski India Limited v. Deputy CIT***</u>***: [2014] 368 ITR 601 (Delhi)***, wherein a notice under Section 148 of the said Act was quashed for being issued after the expiry of four years from the relevant assessment year, wherein there was no specific mention of which material facts were not disclosed by the assessee in the course of its original

assessment proceedings under Section 143(3) of the said Act. In the present case also there is not even a whisper of the allegation that there has been a failure on the part of the assessee to disclose fully and truly all material particulars necessary for assessment.

16. Thus, on both grounds, the petition is liable to succeed. The writ petition is allowed. The notice under Section 148 dated 28.03.2014 and all proceedings pursuant thereto, including the order dated 26.09.2014, are quashed/ set aside. There shall be no order as to costs.

BADAR DURREZ AHMED, J

DECEMBER 11, 2015 **SANJEEV SACHDEVA, J**
SR