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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 768/2015**

THE PRINCIPAL COMMISSIONER
OF INCOME-TAX-08 ..... Appellant
Through: Mr. Dileep Shivpuri, Advocate and
Mr. Sanjay Kumar, Advocate.

versus

SAMCOR GLASS LTD. ..... Respondent

And

\+ **ITA 769/2015**

THE PRINCIPAL COMMISSIONER
OF INCOME-TAX-O8 ..... Appellant
Through: Mr. Dileep Shivpuri, Advocate and
Mr. Sanjay Kumar, Advocate.

versus

M/S SAMTEL COLOR LTD. ..... Respondent

CORAM:
DR. JUSTICE S.MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

O R D E R

% **12.10.2015**

CM APPL No. 22567 of 2015 (for condonation of delay) in ITA No. 768 of 2015
CM APPL No. 22568 of 2015 (for condonation of delay) in ITA No. 769 of 2015

1. For the reasons stated in the applications, the delay in refiling the appeals

is condoned.

2. The applications are disposed of.

ITA No. 768 of 2015 and ITA No. 769/2015

3. These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') are directed against a common order dated 17th February 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 4135/Del/2010 and 4134/Del/2010 for the Assessment Year ('AY') 2002-03.

4. Although the Assessees in both the appeals are different, the issue involved in both cases is similar, i.e., whether the reopening of the assessment under Section 147/148 of the Act is valid?

5. Apart from the fact that the impugned order of the ITAT suffers from no legal infirmity, the Court is of the view that on the face of it, the reasons for reopening of the assessment in both the cases did not satisfy the basic requirement of the law, in at least in two aspects. One was that the reopening was of assessment beyond four years after the AY for which the original assessment was framed and yet the reasons for reopening did not categorically state that there was a failure by the Assessees to disclose any material particulars on the basis of which there were reasons to believe that the income has escaped assessment. This Court has recently, in a decision dated 22nd September 2015 in ITA No. 356 of 2013 (***CIT v. Multiplex Trading & Industrial Co. Ltd.***), clearly stated in cases where reopening of assessment is beyond four years from the end of the relevant assessment year "the condition that there has been a failure on the part of the Assessee

to truly and fully disclose all material facts must be concluded with certain level of certainty."

6. Secondly, the Court finds that at least in respect of one of the issues, viz., payment of interest on fixed deposits, the Assessees drew the attention of the Assessing Officer ('AO') to the fact that the amount has already been offered to tax and tax had been paid and yet, in the order disposing of the objections, the AO is completely silent as regards this objection.

7. The Court is of the view that notwithstanding several decisions of the Supreme Court as well as this Court clearly enunciating the legal position under Section 147/148 of the Act, the reopening of assessment in cases like the one on hand give the impression that reopening of assessment is being done mechanically and casually resulting in unnecessary harassment of the Assessee.

8. The Court would have been inclined to impose heavy costs on the Revenue for filing such frivolous appeals but declines to do so since the appeals are being dismissed *ex parte*. However, the Court directs the Revenue through the Principal Chief Commissioner of Income Tax (Pr CIT) to issue instructions to the AOs to strictly adhere to the law explained in various decisions of the Supreme Court and the High Court in regard to Sections 147/148 of the Act and make it mandatory for them to ensure that an order for reopening of an assessment clearly records the compliance with each of the legal requirements. Secondly, the AOs must be directed to strictly comply with the law explained by the Supreme Court in ***GKN***

Driveshafts (India) Ltd v. Income Tax Officer (2003) 259 ITR 19 (SC) as regards the disposal of the objections raised by the Assessee to the reopening of the assessment.

9. The appeals are dismissed with above observations.

10. A certified copy of this order be delivered to the Pr CIT concerned for compliance.

S.MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 12, 2015
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