THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 29.09.2015

\+ **W.P.(C) 1772/2014 & CM 3695/2014**

M/S SWAROVSKI INDIA PVT. LTD ... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr M. S. Syali, Sr Advocate with Ms Husnal Syali, Mr Mayank Nagi and Mr Harkunal Singh

For the Respondent : Mr Rohit Madan with Mr Zoyeb Shaikh and Mr Ajay Kshatriya

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

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This petition is directed against the notice dated 28.03.2013 issued by the Assessing Officer under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'), whereby re-assessment of the income for the assessment year 2006-07 was initiated. The petition is also directed against the order dated 18.02.2014, whereby the Assessing Officer rejected the objections taken by the petitioner.

2. The original assessment was completed under Section 143(3) of the said Act on 04.12.2009. Since the brought forward losses of the Delhi Unit had not been accounted for in the assessment order, the petitioner moved an application under Section 154 of the said Act seeking rectification, which was allowed by the Assessing Officer, by an order dated 05.03.2010 after verifying the records. This is where the matter rested for more than four years when the impugned notice under Section 148 was issued on 28.03.2013. The reasons for invoking Section 147 of the said Act were supplied to the petitioner and to which the petitioner filed its objections on 07.01.2014. Thereafter, the impugned order dated 18.02.2014 was passed by the Assessing Officer rejecting the objections.

3. The purported reasons, which were supplied to the petitioner for the belief that the income has escaped assessment, were as under:-

> "The original assessment u/s 143(3) was completed after scrutiny in December 2009, at 18712850/-u/s 143(3) as against the returned loss of Rs. (-) 9082195/-, and further assessed at Nil by way of rectification by order dated 05/03/2010. Perusal of records revealed that:-
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> > 1. The assessee had debited Rs. 27637716/- to the P&L account on account of provision for obsolete. As the provision made was not an ascertained liability, it should have been disallowed and added back to the total income of the assessee. The assessee has not done so. There is

mistake on the part of the assessee, no justification or detail of obsolete inventory has been given in the assessment proceedings.

2. The assessee company was running two units namely "100% EOU undertaking at Pune and Trading Unit at Delhi." The income of 100% EOU undertaking at Pune was exempted u/s 10B of the Income Tax Act, while framing the assessment order, the AO has set off the B/f losses of Previous year which were pertaining to 100% EOU undertaking at Pune. The Income of the trading unit was required to be assessed separately and cannot be set off against the b/ f losses of Pune unit.

3. The assessee company was running two units namely,'100% EOU undertaking at Pune & Trading unit at Delhi. The assessee has claimed and was allowed deduction of Rs. 108380645/- before set off unabsorbed depreciation and business losses of earlier year to the extent of income available. Had this loss been taken into account for computing the Profit of the business eligible for deduction u/s 10B, the assessee company would have been left with no income and thereby no deduction would have been allowed. The omission to do so resulted in incorrect allowance of deduction of Rs. 108380645/- u/s 10B. There is a failure on the part of the assessee to furnish complete details of brought forward losses, unitwise and its allowabiltiy against the current income before claiming the deduction.

4. On perusal of records revealed that goods in transit of Rs.1,77,53,040/-and stores & spares of Rs. 1443503/- was not taken into account while crediting the closing stock in P& L account which resulted in under valuation of closing stock and consequently resulted in under assessment of income by like amount i.e. by Rs. 1,91,96,543/-. There is a failure on the part of the assessee to disclose the method of accounting followed

> by it in respect of the goods in transit and stores & spares. There is further failure on the part of the assessee in showing the same as closing stock and thereby suppressing the assessable profits. I have therefore, reason to believe that an amount of Rs.17,39,27,754/- has escaped assessment within the meaning of section 147(c) of the IT Act, 1961. The escapement of the income has been by the reason of failure on the part of the assessee to disclose fully & truly, all material fact necessary for assessment. Since the assessment has been completed u/s 143(3) of the IT Act, 1961 and 4 years have since elapsed. The assessment record is being submitted for kind perusal and approval u/s 151(1) of the IT Act, 1961 for issuance of notice u/s 148 of the IT Act, 1961."

4. The learned counsel for the petitioner submitted that the notice under Section 148 of the said Act and the proposed re-assessment of income in respect of the assessment year 2006-07 was bad in law because there was no failure on the part of the assessee to disclose particulars which were material for its assessment which was a requirement of the first proviso to Section 147 of the said Act. It was also pointed out by the learned counsel for the petitioner that the reasons were also based on mere change of opinion. All the four points, which were raised in the 'reasons', were considered by the Assessing Officer at the time of the original assessment.

5. The learned counsel for the respondent/revenue supported the re-

assessment proceedings as also the order dated 18.02.2014 and submitted that the petitioner's case was validly taken up for re-assessment because of failure on the part of the assessee to fully and truly disclose all the particular materials for its assessment.

6. After having heard the learned counsel for the parties, we are of the view that the impugned notice under Section 148 dated 28.03.2013 and the impugned order dated 18.02.2014 are liable to be set aside. The reasons for the same are given herein below.

7. The reason No. 1 pertains to an allegation that the assessee had debited an amount of Rs 2,76,37,773/- to the profit and loss account by way of provision for obsolete stock. According to the said 'reason', the provision could not have been made and there was a mistake on the part of the assessee. We find that on the aspect of obsolete stock, a specific question was raised in the questionnaire furnished to the assessee by the Assessing Officer at the time of the original assessment. Question No. 17 of the questionnaire dated 17.09.2009 required the assessee to furnish details of valuation of stock along with related computation. The details were

provided by the assessee on 03.11.2009 by stating that the summary of stocks as on 31.03.2006 were enclosed as per Annexure-7. The said Annexure-7 clearly indicated the details of valuation of stock as on 31.03.2006. It disclosed that the assessee had deducted provision for obsolete goods in respect of both traded goods and manufactured goods to the extent of Rs 2,73,11,377/- and Rs 3,26,396/-, respectively. The sum of these two figures adds up to Rs 2,76,37,773/-, which is the amount referred to in the first reason given in the purported reasons for re-opening the assessment. This point was also taken in the objections preferred by the assessee before the Assessing Officer. But, we find that no heed has been taken thereof. All that this discloses is that the very point which is now sought to be raised in the re-assessment proceedings had been examined and considered by the Assessing Officer in the original assessment proceedings. Therefore, this issue cannot now be raised as it would be a mere change of the opinion. Apart from this, there was full disclosure on the part of the assessee to the specific queries raised by the Assessing Officer and, therefore, the re-assessment proceedings, being beyond four years, even the conditions stipulated in the proviso have not been satisfied.

8. The second reason for initiating re-assessment proceedings indicates that income of the trading unit was required to be assessed separately and could not be set off against the brought forward losses of the Pune unit. First of all, we agree with the learned counsel for the petitioner that this is factually incorrect. The losses of the 100% EOU undertaking at Pune had not been set off against the income of the trading unit at Delhi. Furthermore, the questionnaire which was given to the assessee at the time of the original assessment sought for details of brought forward losses etc. as per question No.14 thereof. The said question No. 14 reads as under:-

> "14. Details of b/f assessed losses and unabsorbed depreciation longwith evidence. Also give the same details in respect of b/f book losses and unabsorbed depreciation."

9. The reply to this was given by the assessee in the following manner:-

> "Point No.14: Regarding brought forward losses/deprecation allowance, your kind attention is drawn to Schedule X of the Tax Audit Report for AY 2006-07 filed by the assessee with your goodself."

10. A reference was made to Schedule X of the Tax Audit Report for the assessment year 2006-07 which was already with the Assessing Officer where all the necessary details were provided. Furthermore, it may be recalled that the assessee had sought rectification under Section 154 with

regard to the brought forward losses which had not been accounted for by the Assessing Officer in the original assessment order. In the rectification order dated 05.03.2010, the Assessing Officer had examined this aspect of brought forward losses in detail and clearly noted as under:-

> "After verifying the records and facts, the contention of the assessee is found to be correct. Since this is a mistake apparent from record, the same is being rectified under Section 154 of IT Act".

As a result of the rectification, the income/loss of the assessee was re-computed as under:-

	"Income assessed u/s 143(3)	1,87,12,850/-
Less:	B/f losses adjusted to the extent of	1,87,12,850/-
	Revised assessed income	NIL"

11. These facts also disclose clearly that the second reason, which was given by the Assessing Officer for initiating re-assessment proceedings, had also been examined in detail by the Assessing Officer and, therefore, the only conclusion that can be arrived at is that the second reason was also a mere change of opinion which cannot be permitted. This is apart from the fact that nothing new has been brought to the fore by the Assessing Officer and all the details were available with the Assessing Officer at the time of the original assessment. Therefore, there can be no failure on the part of the

assessee to disclose full and true particulars of its income for the purposes of assessment.

12. The third reason given in the purported reasons to believe that income had escaped assessment pertains to an allegation that an incorrect allowance of deduction of Rs 10,83,80,645/- had been given to the assessee when it was not eligible for the same. The learned counsel for the petitioner pointed out that the sum of approximately Rs 10.83 crores was exempted income of the assessee in respect of the 100% EOU Unit at Pune under Section 10B of the said Act. Therefore, it is incorrect to suggest that it was a deduction. It was an exemption. Furthermore, even if, for the sake of arguments, it is taken that the brought forward losses and unabsorbed depreciation were to be adjusted against this figure, the resultant figure would be Rs 7.8 crores and consequently, there would be no escapement of income which is an essential ingredient for invoking the provisions of Section 147 of the said Act. In any event, there is no failure on the part of the assessee to disclose full particulars with regard to its assessment of income. We agree with the submission made by the learned counsel for the petitioner on this aspect also.

13. Lastly, the fourth reason was with regard to goods in transit as also stores and spares of the amount of Rs 1,77,53,040/- and Rs 14,43,503/- respectively. In this connection also, we find that the details of the stock had been given by the assessee at the time of the original assessment and particularly, in response to the questionnaire that the Assessing Officer had handed over to the assessee. The details given to the Assessing Officer at that time were, *inter alia*, has under:-

"Swarovski India Private Limited
Assessment Year: 2006-07

Details of Valuation of Stock as on 31.03.2006

SR.NO	DESCRIPTION	Total Value	Delhi	Pune
1	Raw Material	13,351,037.00	10,912,162	2,438,875
2	PACKING MATERIAL	2,687,740.00		2,687,740
3	WIP	745,532.00		745,532
4	Finished Goods	3795050	928,196	2,866,854
5	Traded Goods	76468791	76,468,79	
6	Goods in Transit	17753040	17,753,040	
7	Stores and Spares	1443503		1,443,503
	Grand Total	116,244,693	106,062,189	10,182,504

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14. It is evident from the above extract that the goods in transit as well as the stores and spares had been clearly indicated. This aspect had, therefore, been specifically examined by the Assessing Officer during the original assessment. Apart from this, the goods in transit as well as the stores and spares, which were also in transit, could not have been taken as part of the stock particularly, in view of the fact that the assessee had not received the same and the purchases had not been claimed as a deduction.

15. We may also point out that in ***CIT v. Usha International: 348 ITR 585 (Delhi) (Full Bench)***, it was clearly held as under:-

> "13. It is, therefore, clear from the aforesaid position that:
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> (1) xxxx xxxx xxxx xxxx
>
> (2) xxxx xxxx xxxx xxxx
>
> (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."

16. In the present case, this is exactly what has happened as queries and issues have been specifically raised and answered by the assessee in the original assessment proceedings. Thus, even though the Assessing Officer did not make any addition in the assessment order, it would have to be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make any addition or to reject the stand of the assessee. Consequently, it will have to be presumed that the Assessing Officer had formed an opinion which is now sought to be changed through the re-assessment notice, which cannot be permitted.

17. For all the foregoing reasons, the impugned notice under Section 148 dated 28.03.2013 and the impugned order dated 18.02.2014 are set aside and the re-assessment proceedings in respect of the assessment year 2006-07 stand quashed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SEPTEMBER 29, 2015 **SANJEEV SACHDEVA, J**
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