

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 21.09.2015

+ W.P.(C) 2029/2014 & CM 4235/2014

**CONSULTATING ENGINEERING SERVICES (INDIA) PVT.
LTD.** ...Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX, & ANR. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Salil Kapoor with Mr Sanat Kapoor, Mr Sumit
Lalchandani

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 is directed against the notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as “the said Act”) issued on 21.03.2013 in respect of the Assessment Year 2007-08. It is also directed against the order dated 21.03.2014 passed by the Assessing Officer disposing the objections raised by the petitioner.

2. The assessment in respect of the petitioner’s income was completed under section 143(3) on 15.12.2010. The assessing officer had made certain

additions on account of section 40(a)(ia) (Rs.1,55,94,534/-), under section 14A (Rs.1,55,603/-) and on account of extra depreciation claimed on computer peripherals (Rs. 6,87,043/-).

3. The impugned notice under section 148 was, as mentioned above, issued on 21.03.2013, beyond four years from the end of the relevant Assessment Year. Consequently, the first proviso to section 147 of the said Act would come into play. The said proviso stipulates that no action shall be taken under section 147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to, *inter alia*, “disclose fully and truly all material facts necessary for his assessment” for that assessment year. It is in this context that the reasons given for reopening of the assessment have to be seen.

4. The purported reasons were as under:

“Reasons for reopening the assessment u/s 148 of the I-T Acting the case of M/s Consulting Engineering Services India (P) Ltd PAN AAACC 5110G for the A.Y. 2007-08

Return of income in this case for A.Y. 2007-08 was filed on 17.02.2009 declaring total income at Rs. 12,26,51,602/-. The return was processed u/s 143(1) of the Income-tax Act at the returned income. Subsequently the case was selected for scrutiny and the order u/s 143(3) was passed on 15.12.2010 at an income of Rs. 12,64,78,500/- after the AO made additions of Rs. 1,55,94,534/- on account of disallowance u/s 40(a)(ia), Rs. 1,55,603/- u/s 14A and Rs. 6,87,043/- on account of disallowance of extra depreciation claimed on computer peripherals.

2. On perusal of records, it is noticed that the assessee co. has claimed interest expenses of Rs. 25,07,124/- on terms loans in the P&L a/c. Further, the assessee co. has shown capital work in progress (CWIP) at Rs. 2,83,56,670/- for the period under consideration. However, the interest capitalized against the same has been shown at NIL. From the above, it is

clear that the assessee should have been capitalized. The assessee however, claimed the same as revenue expenses instead thereby making a wrong claim. It is pertinent here to mention that similar claim of the assessee regarding the interest expenses has been disallowed by the AO amounting to Rs. 24,73,568/- for AY 2009-10.

Hence it is clear that the assessee failed to disclose the true particulars of its income on this issue and the same was not dwelled upon by the AO during the original assessment proceedings and no findings were given on this issue by the AO.

In view of the above, I have reasons to believe that taxable income to the tune Rs. 25,07,124/- has escaped assessment and I am satisfied that it is a fit case for issue of notice u/s 148 of the Income-tax Act.

3. Further, on perusal of notes to a/c in case of the assessee co., it has been reported by the auditors at sr. No. 9 that the assessee has booked the professional fees less than the Job in progress brought forward from the last year on their ultimate completion by Rs. 3,21,21,550/-. Further it is notice that the assessee follows two methods for revenue recognition for the jobs in progress:-

(a) In cases where the agreements were executed before revised AS-7, the revenue is recognized on completed contract method.

(b) In cases where the agreements were executed after revised AS-7, the revenue is recognized on percentage of completion method.

However, as per the part B of Audit Report u/s 44AB of the I-T Act, it has been mentioned that the valuation of the jobs in progress w.r.t. (a) above is limited to the realizable free for the respective jobs whereas for the jobs in progress w.r.t. (b) above the valuation is subject to agreed realized fee to the extent of value of percentage of completion of each such

4. Hence it is clear that the assessee failed to disclose the true particulars of its income on this issue and the same was not dwelled upon by the AO during the original assessment proceedings and no findings were given on this issue by the AO.

In view of the above, I have reasons to believe that taxable income on the abovementioned issues to the tune of Rs. 3,46,28,674/- has escaped assessment and I am satisfied that it is a fit case for issue of notice u/s 148 of the Income-tax Act.”

To complete the narration of facts, we may point out that the petitioner had filed objections on 22.08.2013 and they were disposed of by the impugned order dated 21.03.2014.

5. From the purported reasons it appears that the assessing officer in the first instance had raised an issue as to whether the interest payments were to be on the revenue account or the capital account. The petitioner had claimed it as a revenue expense and that had been allowed in the original assessment proceedings. The extent of the claim was Rs. 25,07,124/-. As can be seen from paragraph 2 of the reasons, the assessing officer has done nothing but to re-examine the records which were already available and has arrived at a different conclusion in stating that the interest expenses ought to have been capitalised. This, by itself, to our mind does not amount to any failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. It has not been indicated as to what particulars were not disclosed by the assessee. All the relevant accounts and records were available for consideration and the assessing officer had considered the entire material and he gave a detailed assessment order running into five pages. It cannot be inferred from these facts that the petitioner had not made a full and true disclosure of the material particulars necessary for assessment.

6. With regard to the second point raised in the purported reasons, we find that the assessing officer has not even indicated the extent of the alleged escapement of income. Furthermore, the assessing officer has once again stated that on “perusal” of the notes to the accounts of the assessee and particularly the note at serial number 9 of the auditor’s report, it is seen that the assessee has booked the professional fees less than the job in progress brought

forward from the last year on the ultimate completion by an amount of Rs. 3,21,21,550/-. Nothing further has been indicated apart from this fact which was there on record even in the original assessment. Therefore, once again we are of the view that the allegations of the assessing officer in the purported reasons that the assessee had failed to disclose full and true particulars of his income, is without any basis. Consequently, in view of the provisions of the first proviso of section 147 of the said Act, the revenue cannot be permitted to reopen the assessment as the necessary pre-condition for doing so in a case which is beyond four years from the end of the relevant assessment year has not been fulfilled.

7. The writ petition is allowed. The impugned notice under section 148 of the said Act dated 21.03.2013 as also the order dated 21.03.2014 are set aside. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

SEPTEMBER 21,2015

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