

\$~18

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 21st November, 2014

+

ITA 319/2014

COMMISSIONER OF INCOME TAX-VI Appellant
Through Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

versus

VALVOLINE CUMMINS LTD. Respondent
Through Mr. Ajay Vohra, Sr. Advocate with
Ms. Kavita Jha, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short), which pertains to assessment year 2006-07, has to be dismissed, albeit for slightly different reasons as recorded in the order dated 29th November, 2012 passed by the Income Tax Appellate Tribunal (Tribunal, for short).

2. The respondent-assessee had filed return of income declaring income of Rs.9,52,15,517/- for the assessment year 2006-07 on 30th November, 2006. After issue of notice under Section 143(2), assessment order under Section 143(3) was

passed on 24th December, 2008 accepting the returned income.

3. Thereafter, re-assessment notice dated 30th March, 2011, under Section 148 read with Section 147 of the Act, was issued. The said notice and re-assessment order has been set aside by the impugned order passed by the Tribunal dated 29th November, 2012.

4. The “reasons to believe” as recorded by the Assessing Officer for initiating re-assessment proceedings read as under:-

"The Income tax Act, 1961, provides that a provision made in the accounts for an accrued or known liability is an admissible deduction, while other provisions made do not qualify for deduction. It has been judicially held that for a loss to be deductible, it must have actually arisen and incurred and not merely anticipated as certain to occur in future.

The assessment of M/s Valvoline Cummins Ltd. for the assessment year 2006-07 was completed after scrutiny in Dec 2008 determining an income of Rs.9,52,15,517/-. The assessee made and was allowed provision for expenses amounting to Rs.1,53,57,778/-. As the provision towards an unascertained liability is not allowable under the Act, it should have been disallowed and taxed. The omission resulted in underassessment of income by Rs.1,53,57,778/- with consequent tax effect of Rs.68,75,338/-."

5. The first paragraph of the “reasons to believe” correctly records that a provision made in accounts for an accrued and

known liability is an admissible deduction. Thus, the amounts shown under the head “provision” per se is not to be disallowed as unascertained expenditure. In the second paragraph of the “reasons to believe”, the Assessing Officer after correctly noticing the position in law in the first paragraph, contradicted himself and erroneously recorded and inferred that provision for expenses amounting to Rs.1,53,57,778/- were wrongly allowed being an unascertained liability. The “reasons to believe” do not state why and how the Assessing Officer came to the conclusion that the provision for expenses of Rs. 1,53,57,778/-was an unascertained liability. This has not been explained and clarified.

6. During the course of hearing before us, we had asked the counsel for the Revenue to point out and show that on what ground and reason the Assessing Officer came to the conclusion that the amounts shown under the head “provision” was an unascertained liability and not an accrued and certain liability. Noticeably, the respondent-assessee was following the mercantile system of accounting and any liability which had been incurred was to be allowed as a deduction, even when payment was not made in the said year.

7. The Commissioner of Income Tax (Appeals) in the first

appellate order has reproduced schedule 13 of the balance sheet, which for the sake of completeness is being reproduced below:-

“

"Schedule 13: Provisions	As at March 31, 2006 Rs.	As at March 31, 2005 Rs.
.....		
Provision for Expenses (refer not 2 below)	16,324,796	12,833,564
.....		
Note 1		
Note 2:		
Provision for expenses		
Opening	12,833,564	17,297,108
Provision		
Provision	15,357,778	12,833,564
Made during the year		
Amount used during the year	11,866,546	17,297,108
Closing provision	16,324,796	12,833,564"

”

Thus, last year there were provisions and this year also provision were made and there were payments. But, there is complete absence and no material has been shown and brought on record to show that the amount included under the head “provisions” represented

“unascertained liability”. Further, the Commissioner of Income Tax (Appeals) has recorded that provision for commission of Rs.35,09,021/- had been added back in the computation of income in accordance with Section 40(a)(ia) of the Act, for want of deduction of tax at source. The Assessing Officer overlooked this fact indicating non-application of mind.

8. The “reasons to believe” must show live link and nexus with the formation of prima facie opinion that income which should be taxed has escaped assessment. In the absence of any cogent and relevant material or information to show that the amount shown under the head provision included unascertained liability, re-assessment proceedings could not have been initiated. There is a difference between “reasons to believe” and “reasons to suspect”. Mere surmise or suspicion cannot be a ground to reopen assessment.

9. It was the responsibility of the Revenue to bring on record documents and material to show and establish that the “provisions” related to unascertained liability and the Assessing Officer while forming his opinion and recording “reasons to believe” was in knowledge or aware of information or material to show that what was shown under the head “provision” was not a certain and accrued liability. In the absence of any material or information, “reasons to believe” it has to be held were not relevant and meet the test of

satisfaction required to sustain the reopening. Use of the heading or word “provision” in the balance sheet it is apparent became the material or information to reopen. The word/expression “provision” by itself and alone without other information/material, would not reflect and indicate unascertained liability. Thus, the assumption drawn by the Assessing Officer in the “reasons to believe” is farfetched, vague and a mere pretence. It is also extraneous and irrelevant to the issue and formation of belief that “unascertained liability” had been claimed and allowed as expenditure.

10. With the aforesaid observations, the appeal is dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

NOVEMBER 21, 2014
NA