

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

Date of decision: 20.07.2012

+ **ITA 426/2012**

CONTEL MEDICARE SYSTEMS PVT LTD Appellant
Through : Dr. Rakesh Gupta, Ms. Rani Kiyala and
Sh. Piyush Singh, Advocates.

versus

CIT Respondent
Through : Sh. Sanjeev Sabharwal, Sr. Standing
Counsel with Sh. Puneet Gupta, Jr. Standing
Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The assessee questions the decision of the Income Tax Appellate Tribunal in ITA No. 3642(Del)/2011 dated 31.10.2011, whereby the Revenue's appeal against the order of CIT (A), setting-aside the reassessment on the ground that the jurisdiction under Section 148 was improperly assumed, has been challenged.
2. Learned counsel urges that a facial reading of the satisfaction recorded by the authority under Section 148 shows that it was flawed and that there is

complete non-application of mind. It was submitted that very evidently, the concerned officer did not take into consideration the returns which had been previously filed by the Assessee.

3. Learned counsel took this Court through the reasoning of the Tribunal as well as that of the CIT (A) and submitted that substantial question of law is whether under the circumstances, there was application of mind as warranted by Section 148, by the AO.

4. The Tribunal's reasoning in allowing the Revenue's appeals is in the following terms:

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10. From the perusal of the reasons recorded by the assessing officer it is seen that in paragraph 1 the assessing officer has mentioned about the receipt of report from the office of the Commissioner of Income-tax indicating that enquiries were initiated by Directorate of Income Tax [Investigation] to probe into bank account which were used by entry operators for the purpose issue of cheques to beneficiaries against cash paid by them. In paragraph 2 the assessing officer has mentioned the out-come of enquiries conducted by the Investigation Wing. In paragraph 3 the assessing officer has summed up the result of enquiries conducted by Investigation Wing of the Department indicating the non-genuineness of the share capital or receipt of gifts or consideration for sale purchase. In paragraph 4, the assessing officer has given details of credit entries appearing in the bank account of the assessee coming from the account of three persons. The assessing officer on the basis of the report given by the Investigation Wing has come to the conclusion that the entries were squarely hit by section 68 of the Act. There is no dispute about the fact that the assessing officer had not conducted independent enquiries after receipt of information. However, he has analyzed the report received from Investigation Wing to come to a conclusion that transactions were not genuine. The

reasons recorded in the case of the present assessee are exhaustive as against the scanty reasons recorded in the case of Signature Hotels P. Ltd. (supra). This is not the case in the present appeal. Therefore, in our considered opinion, the assessing officer had applied his mind while recording the reasons for re-opening of the assessment under section 147 of the Act. Moreover, the information is specific giving the details of the branch, the name of the account holder and the date of cheque and cheque number. Hon'ble Supreme Court in the case of Phool Chand Bajrang Lal Vs. ITO 203 ITR 456 (SC) has held as under :-

“ Since the belief is that of the Income-tax Officer, the sufficiency of the reasons for forming the belief is not for the court to judge, but it is open to an assessee to establish that there in fact existed no belief or that the belief was not a bonafide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection with or a live link for the formation of the requisite belief. It would be immaterial whether the Income-tax Officer, at the time of making the original assessment, could or could not have found by further enquiry or investigation, whether the transaction was genuine or not if, on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in section 147(a) that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore, income chargeable to tax had escaped assessment.”(page 477-E-H)

11. From the decision of Hon'ble Supreme Court in the case of Phool Chand Bajrang Lal (supra) it is clear that sufficiency of reasons for forming the belief cannot be judged by the Court. From the reasons recorded, the Id. AR of the assessee has not pointed out as to why the belief formed by the assessing officer was not bonafide or was based on vague, irrelevant and nonspecific information. As mentioned above, a specific information was received by the assessing officer through the office of the Commissioner of Income-tax that the assessee had received amount of Rs.1,60,000/- from three persons through bank accounts. Under the law, there is no requirement that the assessing officer should verify the information before forming the belief that income had in fact escaped assessment and only then he can resort to proceedings under section 148 of the Act. What is to be seen is whether there is nexus with the information and formation of belief by the assessing officer while issuing notice under section 148 of the Act. In the case before us, the assessing officer had recorded detailed reasons in order to arrive at the conclusion that provisions of section 68 are applicable and thus resulted in escapement of income. We find that there is nexus between the specific information and reasons recorded by the assessing officer. Therefore, in our considered opinion, the assessing officer is justified in reopening the assessment. The Id. CIT (Appeals), therefore, in our considered opinion is wrong in holding that there is no nexus between the information received and the reasons recorded by the assessing officer. We, therefore, uphold the reopening of assessment.

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5. This Court has considered the submissions on behalf of the appellant. The arguments entirely hinge on the factual appreciation of the materials which were taken into account by the AO when the notice under Section 148 was issued to the Assessee. The Court is of the opinion that having regard to

the imperative of the provisions, the concerned officer did take into consideration the relevant materials while forming his *prima facie* opinion that reassessment proceedings were warranted. In the circumstances, no substantial question of law arises for consideration. The present appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

JULY 20, 2012
‘ajk’