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ORDER SHEET

WPO 575 of 2017  
IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE

THE TINPLATE COMPANY OF INDIA LTD  
Vs  
DEPUTY COMMISSIONER OF INCOME TAX,  
CIRCLE 3(1), KOLKATA & ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 15<sup>th</sup> June, 2022

Mr. J.P. Khaitan, Sr. Adv.

Ms. Nilanjana Banerjee Pal, Adv.

...for the petitioner

Mr. Dhiraj Trivedi, Asst. S.G.

Mr. Amit Sharma, Adv.

...for the respondents

The Court: Heard learned counsel appearing for the parties.

In this writ petition petitioner has challenged the impugned notice under Section 148 of the Income Tax Act, 1961, dated 31<sup>st</sup> March, 2017, relating to assessment year 2010-11 and the impugned order dated 13<sup>th</sup> September, 2017 rejecting the petitioner's objection to the aforesaid impugned notice under Section 148 and the proceedings under Section 147 of the Income Tax Act, 1961. Recorded reasons for reopening of assessment under Section 147 of the Act as appears at page 140 of the writ petition are as follows :

“Reasons for the belief that Income has escaped assessment

“For the Financial year 2009-10 relevant to the assessment year 2010-11, the assessee had debited a sum of Rs. 21,09,18,000/- to the P & L Account under the head “interest”. A part of the borrowed fund was utilized by the assessee in acquiring fixed assets under Capital Work in Progress (CWIP). The proportion of CWIP to fixed assets for the FY 2009-10 in case of the assessee company comes out to 61.85%. Hence, proportionate interest that was required to be disallowed u/s 36(i)(iii) of the Income-tax Act, 1961 in the assessment order u/s 143(3) (in proportion of CWIP to fixed assets) should have been Rs. 13.04 crore. However, only a sum of Rs. 8.98 crore was added back to the income of the assessee in the scrutiny assessment order dated 29.03.2013. It is pertinent to note that no part of the interest expense debited to the P & L Account has been capitalized by the assessee in its books of accounts for the relevant assessment year. Disallowance of the sum of Rs. 8.98 crore only u/s 36(i)(iii) instead of Rs. 13.04 crore in the assessment order has resulted in escapement of income amount of Rs. 4.06 crore (13.04 crore less 8.98 crore). In view of the same I have reasons to believe that income to the tune of Rs. 4.06 crore has escaped assessment for the AY 2010-11 and needs to be re-assessed.”

Admittedly impugned reassessment proceeding under Section 147 of the Act has been initiated after expiry of four years from the end of the relevant assessment year. Petitioner challenging the aforesaid impugned assessment proceeding submits that impugned

notice under Section 148 and the proceedings under Section 147 of the Act is bad in law since it does not fulfil the criteria for reopening of reassessment after expiry of four years from the end of relevant assessment year that in addition to escapement of income additional duty cast upon the assessing officer is to establish that the escapement was due to omission or failure on the part of the assessee to disclose fully or truly necessary material facts necessary for the assessment and that some new material facts have come to his possession which was not made available by the assessee at the time of regular assessment.

It is also admitted position that in this case regular assessment under Section 143(3) of the Act was made and it is not a case of summary assessment. It also appears on perusal of the recorded reasons that the successor of the assessing officer who intends to invoke the provisions of Section 147 of the Act on the ground and by taking a view that the disallowance which was made under Section 36(i)(iii) of the Act in course of regular assessment should have been more than the amount which has been disallowed in the original assessment made by his predecessor.

In my considered view, this is a clear case of change of opinion. Furthermore from the recorded reasons it appears that nowhere assessing officer has been able to make out a case that there was any omission or failure on the part of the petitioner to disclose fully and truly the necessary material facts on the basis of which predecessor

of the assessing officer has formed an opinion for disallowing lesser amount under Section 36(i)(iii) of the Income Tax Act in the assessment order under Section 143(3) of the Income Tax Act, 1961. Assessing officer in his recorded reasons also could not make out a case that the basis of reopening the assessment in question is some new material which came into his possession subsequently and which was not available or was undisclosed or suppressed by the assessee/petitioner in course of regular assessment. From the recorded reason it appears that one of the grounds for reopening of the assessment is that in regular assessment there was mistake of calculation in disallowance under the aforesaid provisions of the Act to which I am of the view that if at all there was any clerical/arithmetical mistake apparent from record then recourse was available to the assessing officer by way of rectification under Section 154 of the Income Tax Act, 1961 and that cannot be a ground of reopening of an assessment for correcting a mistake in calculation of an amount of disallowance causing alleged escapement of income.

Mr. Khaitan, learned senior counsel appearing for the assessee/petitioner relies on a decision of this Court in the case of **Calcutta Club Ltd. vs. Income-Tax Officer and Ors. reported in (2020) 426 ITR 157 (Cal)** particularly paragraph 30 of the said judgment which is quoted hereunder :

“30. Considering the submission of the parties, the relevant records, provisions of law and the decisions relied upon by the parties,

in my considered view the impugned notices under Section 148 of the Income-tax Act, 1961 and the proceedings under Section 147 of the Act are not sustainable in law and should be quashed for the reason that admittedly the impugned proceeding initiated under section 147 and notices issued under section 148 of the Income-tax Act, 1961, which were issued after the expiry of four years from the end of the relevant assessment year and in view of the fact that there is no whispering in the recorded reason that there was any omission or failure on the part of the assessee in disclosing fully and truly material facts for assessment and in view of the fact that the Assessing Officer could not establish that the information of alleged escaped income was not within his knowledge and was not considered at the time of passing of the assessment order under Section 143(3) of the Income-tax Act, 1961 and it came to his knowledge subsequent to the assessment order passed under section 143(3) of the Income-tax Act, 1961 and that the subsequent decision of the Hon'ble Supreme Court reversing the legal position prevailing at the time of regular assessment cannot be called an omission or failure on the part of the assessee in disclosing fully and truly the material facts necessary for the relevant assessment."

He also relies on a decision of the Hon'ble Supreme Court in the case of **Income-Tax Officer vs. Techspan India Private Ltd. and Another reported in (2018) 404 ITR 10 (SC)** particularly paragraph 13 of the said judgment which is quoted hereunder :

“13. The fact in controversy in this case is with regard to the deduction under section 10A of the Income-tax Act which was allegedly allowed in excess. The show-cause notice dated February 10, 2005 reflects the ground for reassessment in the present case, that is, the deduction allowed in excess under section 10A and, therefore, the income has escaped assessment to the tune of Rs. 57,36,811. In the order in question dated August 17, 2005, the reason purportedly given for rejecting the objections was that the assessee was not maintaining any separate books of account for the two categories, i.e., software development and human resource development, on which it has declared income separately. However, a bare perusal of notice dated March 9, 2004 which was issued in the original assessment proceedings under section 143 makes it clear that the point on which the reassessment proceedings were initiated was well considered in the original proceedings. In fact, the very basis of issuing the show-cause notice dated March 9, 2004 was that the assessee was not maintaining any separate books of account for the said two categories and the details filed do not reveal proportional allocation of common expenses to be made to these categories. Even the said show-cause notice suggested how proportional allocation should be done. All these things lead to an unavoidable conclusion that the question as to how and to what extent deduction should be allowed under section 10A of the Income-tax Act was well considered in the original assessment proceedings itself. Hence, initiation of the reassessment proceedings

under section 147 by issuing a notice under section 148 merely because of the fact that now the Assessing Officer is of the view that the deduction under Section 10A was allowed in excess, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings.”

Learned counsel appearing for the respondent Income Tax Authority submits that this Court should not interfere with the reassessment proceeding under Section 147 of the Act since no procedural irregularity has been committed by the assessing officer and there was escapement of income due to wrong claim made by the assessee/petitioner. Such submission is not convincing and after perusing original assessment order under Section 143(3) of the Act as well as recorded reason for impugned reopening of the assessment and considering the submissions of the parties, relevant records available and judgments relied upon by the petitioner I am of the considered view that the impugned notice under Section 148 of the Income Tax Act, 1961 and the proceeding under Section 147 of the Act are not sustainable in law and are liable to be quashed for the reason that the respondent assessing officer has been failed to make out any case that the alleged escapement of income was due to any omission or failure on the part of the assessee/petitioner in disclosing fully and truly the material facts necessary in course of regular assessment. In the facts and circumstances of the case in my considered view it is a

clear case of change of opinion since the materials which were already available at the time of regular assessment and which were already considered by the assessing officer at the time of regular assessment, on the basis of very same material and not on any another new material assessing officer wants to take a different view which is not permissible for reopening of an assessment particularly proceedings after regular assessment and after expiry of four years from the end of the relevant assessment year.

In view of the discussion made above, the impugned notice under Section 148 of the Act dated 31<sup>st</sup> March, 2017 and all subsequent proceedings on the basis of aforesaid impugned notice relating to assessment year 2010-11 are quashed.

Accordingly, this writ petition being WPO 575 of 2017 is disposed of by allowing the same.

There will be no order as to costs.

(MD. NIZAMUDDIN, J.)

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