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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.12.2016

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W.P.(C) 2685/2016, CM APPL. 11355/2016
TECHNICO AGRI SCIENCES LTD

..... Petitioner

Through: Mr. Rupesh Jain, Adv.

Versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR.

..... Respondent

Through: Mr. P. Roychoudhuri, Senior Standing
Counsel

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT, J (Oral)

1. The assessee/petitioner, in the present proceedings under Articles 226/227 of the Constitution, impugns a notice issued under Section 148 of the Income Tax Act, 1961 ['the Act', for short] proposing re-assessment for Assessment Year (AY) 2008-09 which was concluded through scrutiny assessment under Section 143(3) of the Act on 22.12.2010. The re-assessment notice refers to the proceedings for a subsequent year, i.e., AY 2012-13 as well as a decision of the Karnataka High Court in the case of *CIT v. Namdhari Seeds Pvt. Ltd.*: 16 taxmann.com 83 which states as follows:

“M/s Technico Agri Science Ltd. is assessed to tax with Circle 25(1) New Delhi. Assessment in this case for AY 2008-09 was completed on

22.12.2010 u/s 143(3) of the Act. While completing assessment for AY 2012-13 under section 143(3), it has been held that assessee has wrongly claimed income of ₹ 5,33,26,639/- as agricultural income. Considering this finding assessment record for A.Y.2008-09 was examined and it was found that income of ₹ 10,15,72,169/- has also been claimed as agriculture income for this year and treated as exempt. Nature of business of the assessee company remained same during these years. Assessee is involved in the business of producing and selling TECHNITUBER seed potatoes and field generated seed potatoes. Assessee claimed it as purely agricultural activity but after deep investigation, it was established that income generated from this activity is not an agricultural income because assessee has no interest in the land nor it actually cultivates the land. Assessee is getting the land cultivated from growers by way of contract farming.

As the assessee has wrongly claimed the income of ₹ 10,15,72,169/- as agricultural income while computing its income for AY 2008-09 otherwise which would have been treated as normal business income. Therefore, the income of ₹ 10,15,72,169/- has escaped assessment by reason that assessee failed to disclose fully and truly all materials facts necessary for its assessment for the A.Y. 2008-09 as provided in 1st proviso to section 147 of the I.T. Act, In view of the above facts I have reason to believe that income to the tune of ₹ 10,15,72,169/- of the assessee company for A.Y. 2008-09 has escaped assessment. Therefore, in accordance with sub section (1) of Sec.151 of I.T. Act notice u/s 148 is being issued after getting necessary approval from Pr.CIT, Delhi-09.”

2. It is urged that the re-assessment notice is unsupported in law given the fact that at all relevant times all materials were in fact furnished and, there was no concealment and furthermore that on the very same issue, i.e., nature of operation and business carried on and whether it amount to agricultural activities, the scrutiny assessment had carried out full inquiry. The learned counsel for the assessee relies upon a notice/questionnaire by the A.O. during the course of the scrutiny assessment issued on 19.11.2010 pointing to the fact that on the very same issue, pointed query was made which was supported through documentary evidence and other materials. It is therefore contended that the re-assessment notice is nothing but a change of opinion which is not permissible having regard to the narrow scope of Section 147/148 of the Act which admits all violated re-assessment proceedings only if tangible material as to escapement of income on the ground of non-disclosure of material facts, is discerned.

3. The learned counsel for the revenue seeks to justify the re-assessment notice and urges that since for the subsequent year, and the matters which came to light are sufficient grounds to constitute tangible material, there were valid reasons to believe under Section 147 of the Act. It is submitted that in the circumstances the Court would desist from exercising writ jurisdiction. As is evident, the completed scrutiny assessment for the concerned year, i.e., AY 2008-09, encompassed the inquiry. The nature of the inquiry was as to the kind of activities carried on by the petitioner company. The AO in his letter/query dated 19.11.2010 elicited specific information inter alia

which is produced as follows:

- “(1) A detailed note on the activities carried out by the assessee company during the year under consideration.*
- (2) File separate balance sheets, profit & loss accounts alongwith all annexures in respect of agricultural income claimed exempt u/s 10(1) and business income.*
- (3) Justify the criteria of offering income under different heads i.e. income from business and agricultural income while the activity on which income has been earned is same.*
- (4) xxx ... xxx ... xxx*
- (5) Give complete details of agricultural income i.e. details of agricultural land, evidence of possession of agricultural land, details of crops produced and sold and other expenses incurred.*
- (6) xxx ... xxx ... xxx*
- (7) Justification with evidence in respect of claim u/s 10(1) in respect of income from field generated seed potatoes.”*

4. The assessee has placed on record the replies to the queries on each of the aspects made as well as the documentary evidence spanning 21 Annexures to the letter. It is quite evident that the A.Os., upon proper inquiry and investigation into these materials, were satisfied as to the nature of the petitioner’s activities and it is eligible to claim exemption under Section 10 of the Act.

5. It has been repeatedly held in several decisions, both before and after the ruling of the Supreme Court in *Commissioner of Income Tax v. Kelvinator* 320 ITR 561(SC) that a notice for re-opening the assessment is permissible only when it (i) does not amount to “change

of opinion”; (ii) is based on tangible material/evidence but is not opposed to the existing record and (iii) points to suppression of material facts by the assessee in the original return.

6. In the present case there is none of these elements *ex facie* exists to justify the impugned notice. It is therefore quashed as well as all proceedings emanating from the impugned notice. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 07, 2016/acm