

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 02.09.2014
Judgment pronounced on:17.10.2014

W.P.(C) 747/2014

GLOBAL SIGNAL CABLES (INDIA) PVT. LTD. Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Piyush Kaushik, Advocate
For the Respondents : Mr Sanjeev Sabharwal, Advocate

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. By way of this writ petition a writ of certiorari has been sought for quashing the notice dated 28.03.2013 issued by the respondent (Deputy Commissioner of Income Tax) under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act').
2. The facts of the present writ petition are enunciated as below:-

3. On 29.11.2006 the petitioner/assessee filed its return of income for the assessment year 2006-2007. The aforesaid return of income of the petitioner was selected for scrutiny assessment vide issue of notice under Section 143(2) of the said Act dated 28.09.2007.

4. On 20.12.2007 the assessing officer issued another notice along with the detailed questionnaire raising queries on 32 points. Vide the said questionnaire, the assessing officer with respect to query No.1 required the petitioner/assessee to submit the audited account along with the audit report. Further, with respect to query No.9, the assessing officer required the petitioner/assessee to submit the details with regard to the loans taken by the petitioner/assessee, requiring information with respect to the opening balance, addition, repayment, rate of interest, interest accrued, interest received etc. Further, with respect to query No.12 of the said questionnaire the assessing officer required the petitioner/assessee to submit details with respect to loans and advances given by the petitioner/assessee along with the details with respect to rates of interest on advances, interest received on advances etc.

5. On 23.07.2008 the petitioner/assessee submitted its response with respect to the questionnaire issued by the assessing officer. With respect to

query No.1, the petitioner/assessee submitted the auditor's report and audited accounts. In the said auditor's report, the auditor had mentioned that the petitioner/assessee has given interest free loans/advances to group companies totaling to ₹5,20,57,726/- as at the year-end. In the said report, the auditor has also commented that the terms and conditions of the said advances are not *prima facie* prejudicial to the interest of the petitioner/assessee. Further, it was commented that the disclosure regarding the loans/advances to the group companies was also made by the petitioner/assessee in the audited notes of account. In the schedule of loans and advances forming part of the audited accounts, it is mentioned that out of the loans and advances outstanding at the year-end, substantial amount of advances are brought forward from the preceding year. The said audited accounts also contained the details of interest and financial charges of ₹81,30,819/- debited to the Profit & Loss Account.

6. With respect to the query No.9 of the assessing officer, the petitioner/assessee furnished schedules of loan taken along with the interest payment. The petitioner/assessee submitted that all the loans taken are for specific business purpose, like purchase of vehicle, plant and machinery etc.

7. With respect to the query No.12 of the assessing officer, the petitioner/assessee furnished details of loans and advances including the advance of ₹5,20,57,726/- to the group companies. In reply to the assessing officer's query as to why interest is not charged on the loans and advances, it was explained that the loans and advances are given for business purposes.

8. It was submitted to the assessing officer that the loans and advances are given by the assessee-company from the available interest free funds placed at the disposal of the assessee in the form of share capital, reserves and surplus and sales proceeds, which exceed the amount of loans and advances given.

9. Thereafter on 05.08.2008 another questionnaire was issued by the assessing officer. The reply to the aforesaid questionnaire was submitted by the petitioner/assessee on 12.08.2008, mentioning the commercial advantage arising out of business transactions with group companies.

10. On 29.08.2008, scrutiny assessment order under section 143(3) of the said Act was issued by the respondent (Deputy Commissioner of Income Tax) determining the total income at ₹1,06,25,560/-.

11. Thereafter, the assessing officer issued the impugned notice dated 28.03.2013 for reopening of assessment under section 148 of the said Act. The petitioner/assessee submitted its response before the assessing officer to treat the return as originally filed under section 139 of the said Act as a return for the purpose of section 148 of the said Act and asked for the reasons recorded under Section 148 of the said Act.

12. On 03.12.2013, the assessing officer forwarded the copy of the recorded reasons for reopening the assessment. In the recorded reasons the reopening has been proposed on the ground that since the petitioner/assessee has granted interest free loan of ₹5,20,57,726/-, therefore, proportionate disallowance on account of interest and financial charges of ₹56,01,390/- out of total interest and financial charges of ₹81,30,819/- debited in Profit & Loss Account should have been made resulting in under assessment of income.

13. On 17.01.2014 the petitioner/assessee submitted their objections to the reopening of assessment, on the ground that reopening is initiated on the basis of review or re-appreciation of the same material and no fresh material of any sort has come in the possession of the department as also there has

been no failure on the part of the petitioner/assessee in disclosing fully and truly all material facts.

14. The respondent rejected the objection of petitioner/assessee vide its letter dated 24.01.2014.

15. Admittedly, the issuance of notice under section 148 of the said Act is beyond the period of four years from the end of the relevant assessment year i.e. assessment year 2006-2007. Consequently, the first proviso of section 147 of the said Act would be relevant. The first proviso of the section 147 of the said Act is reproduced hereinbelow:-

“147Provided that where an assessment under sub-section (3) of section 243 or this section has been made for the relevant assessment year, no action shall be taken under this section 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 make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.”

16. The point urged by the learned counsel appearing on behalf of the petitioner was that in a case where the proviso to section 147 of the said Act was applicable, it must be clearly indicated that the understatement of income was on account of the failure on the part of the assessee to fully and

truly disclose all material facts necessary for the assessment. The purported reasons behind the issuance of the notice under section 148 of the said Act are reproduced below:-

“....The assessment of M/s Global Signal Cables (India) Pvt. Ltd for the assessment year 2006-07 was completed after scrutiny in September 2008 determining an income of ₹1,06,25,5578/-. It is gathered that the assessee debited ₹81,30,819/- to profit and loss account on account of interest and financial charges. In the auditor’s report it was stated that interest free loan upto the tune of ₹5,20,57,726/- had been given to other companies. Therefore, proportionate amount of expense on account of interest and financial charge should have been disallowed by the assessing officer. The mistake resulted in underassessment of income of ₹56,01,390/- involving short levy of tax of ₹24,32,200/- including interest.

On the basis of the facts as stated above, I have reasons to believe that income chargeable to tax exceeding ₹1 lac has escaped assessment, as the assessee has not disclosed fully and truly all material facts necessary for his assessment for the relevant assessment year. Hence, a notice u/s 147 read with section 148 for reopening of assessment is required to be issued in this case.”

17. It is evident that while the assessing officer mentioned that income had escaped assessment because of the failure on the part of the assessee to fully and truly disclose the material facts for assessment, he has not indicated as to which material fact had not been fully and truly disclosed by the petitioner/assessee.

18. The learned counsel for the petitioner placed reliance on a decision of this Court in the case of *Haryana Acrylic Manufacturing Co. vs. Commissioner of Income-Tax and Another*: [2009] 308 ITR 38 (Delhi).

While considering the provisions of sections 147 and 148 of the said Act, in particular the first proviso thereof, this court observed as under:-

“29. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in *Wel Intertrade Private Ltd.* [2009] 308 ITR 22 (Delhi) we had agreed with the view taken by the Punjab and Haryana High Court in the case of *Duli Chand Singhania* [2004] 269 ITR 192 that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing Officer under section 147 beyond the four year period

would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated March 29, 2004, under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated March 2, 2005, are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above.”

(underlining added)

19. The same principle is reiterated in **Rural Electrification Corporation Ltd. vs. Commissioner of Income Tax**: [2013] 355 ITR 356. Also in **Microsoft Corporation (I) Pvt Ltd vs. Deputy Commissioner of Income Tax & Anr**: [WP(C) 284/2013 decided on 23.05.2013] a Division Bench of this Court had observed as under:-

“From the above, it is evident that merely having a reason to believe that income had escaped assessment is not sufficient for reopening the assessment beyond the four year period referred to above. It is essential that the escapement of income from assessment must be occasioned by the failure on the part of the assessee to, *inter alia*, disclose material facts, fully and truly. If this condition is not satisfied, there would be a bar to taking any action under Section 147 of the said Act.”

20. The facts of the present case are squarely covered by the decision of a Division Bench of this Court in **M/s Swarovski India Pvt. Ltd. vs. Deputy Commissioner of Income Tax**: W.P.(C) 1909/2013 decided on 08.08.2014 wherein the notice under section 148 of the said Act was quashed for being issued after the expiry of 4 years from the relevant assessment year wherein there was no specific mention of which material facts were not disclosed by

the assessee in the course of its original assessment proceedings under section 143(3) of the said Act. The relevant paragraph is reproduced hereinbelow:-

“12 It is clear that the escapement of income by itself is not sufficient for reopening the assessment in a case covered by the first proviso to Section 147 of the said Act unless and until there is failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. In the present case, it has not been specifically indicated as to which material fact or facts was/were not disclosed by the petitioner in the course of its original assessment under Section 143(3) of the said Act....”

21. In the present case also, there exist no grounds for re opening the assessment after the expiry of 4 years from the relevant assessment year. The notice under section 148 of the said Act is based on re-appreciation of the same material on record. The respondent has not specifically indicated as to which material facts were not disclosed by the petitioner/ assessee in the course of the assessment proceedings under the said Act.

22. In view of the aforesaid discussion, the notice dated 28.03.2013 issued by the respondent under section 148 of the said Act is liable to be quashed. It is ordered accordingly. All proceedings pursuant to the notice dated 28.03.2013 also stands quashed.

23. The writ petition is allowed and disposed of accordingly. Pending applications also stand disposed of.

24. There shall be no order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

OCTOBER 17, 2014

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