IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1040 OF 2013

Commissioner of Income Tax-15 ..Appellant

Vs.

M/s Jagnandan Singh & Party ..Respondent

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Mr. A.R. Malhotra, Advocate for Appellant.
Ms. Beena Pillai, Advocate for Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 10 MARCH 2015

P.C.:

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') is directed against the order dated 24 August 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The impugned order has been passed in respect of the Assessment Year 2003-2004.

2. The appellant-revenue has formulated following question of law for our consideration:

> *"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the re-opening u/s 147 of the Act is invalid when the source of Rs.7.6 Crores remained unidentified."*

3. The respondent-assessee is an Association of Persons (AOP) which came into existence by deed dated 2 April 2002. The respondent-assessee is engaged in Liquor/Country Liquor, Indian Made Foreign Liquor (IMFL) and Beer business as per the license issued by Government of Rajasthan for different districts. The respondent-assessee in its return of income for the Assessment Year 2003-04 declared an income of Rs.60 Lakhs. The Assessing Officer completed the assessment under Section 143(3) of the Act by an order dated 27 February 2006 determining the respondent-assessee's total income of Rs.72.65 Lakhs.

4. On 30 December 2008, the Assessing Officer issued a notice under Section 147/148 of the Act seeking to reopen the assessment for the Assessment Year 2003-04. The grounds recorded in support of the notice dated 30 December 2008 for reopening the assessment are as under:

> *"The above assessee Shri Jagnandan Singh & Party, (AOP, C/o Blue Stand Wines, Opp: Santacruz Police Station, Juhu Road, Santacruz (W), Mumbai – 400 054 (address as per the latest return: C/o 308, Tusiani Chamber, Nariman Point, Mumbai) is assessed to tax in this circle for the AY 2003-04. The AOP had filed its return of income on 28.11.2003 declaring an income of Rs.60,00,000/-. The return was processed u/s 143(1) on 11.05.2004. Later the assessment was completed u/s 143(3) on 27.02.2006 at an*

amount of Rs.72,65,805/-.

During the course of investigation in respect of liquor contracts awarded by the Excise Department of Rajasthan, the ADIT (Inv)-1, Jaipur has come across the information that the above assessee AOP had paid Rs.7.60 Crores to the State Excise Department as earnest money during the financial year 2002-03.

During the course of enquiry by the ADIT (Inv)-1, Jaipur, the assessee AOP has explained the source to the extent of Rs.1.40 Crore, as the amount contributed by the three of the AOP members. The assesee AOP has not explained the source of the balance amount of Rs.6.20 Crores. This information has been passed on the CIT-15, Mumbai vide the letter No. DIT (Inv.)/Jpr./2008-2009/581, dated 25.11.2008.

In view of the above I have reason to believe that the income of the assessee AOP has escaped assessment within the meaning of Section 148 of the I.T. Act, 1961. Further I also believe that the assessee has failed to disclose all material facts necessary for assessment in respect of the amount deposited with the Excise Department."

5. The respondent-assessee objected to the same. The objection was two fold – change of opinion and no reason to believe income chargeable to tax has escaped assessment. However the Assessing Officer rejected the objections and passed the assessment order dated 24

December 2009 under Section 143(3) r/w Section 147 of the Act determining the income at Rs.6.92 Crores.

6. Being aggrieved, the respondent-assessee preferred an appeal to the Commissioner of Income Tax (Appeals) (the 'CIT(A)'). By order dated 27 September 2010 the CIT (A) dismissed the respondent-assessee's appeal and held that the reopening of assessment was valid. Being aggrieved, the respondent-assessee carried the issue in appeal to the Tribunal. The Tribunal by the impugned order allowed the respondent-assessee's appeal interalia holding that during the regular assessment proceedings for the Assessment Year 2003-04 leading to the order dated 27 February 2006, the Assessing Officer made detailed enquiries regarding the capital contribution of the members to the respondent-assessee AOP. In fact the order records that the Assessing Officer during the regular assessment proceedings has prepared an office note recording his enquiry to the capital contribution of the members and also the fact that deposit had been made with the Excise Department of Government of Rajasthan for obtaining license to do business. On the aforesaid fact, the Tribunal held that this was a case of mere change of opinion and consequently the reopening notice was without jurisdiction. Besides, the impugned order also holds that the reasons recorded proceed on the basis that information had been received from Addl. DIT

dated 25 November 2008 which indicates that the respondent-assessee had explained the source of the deposit of Rs.1.40 Crores out of Rs.7.60 Crores deposited with the State Excise Department, State of Rajasthan. Thus the note states that no explanation was forthcoming with regard to source of the balance amount of Rs.6.20 Crores. However on examining the report of Addl. DIT, the Tribunal finds that there is no mention of failure to explain the source of Rs.6.20 Crores by the respondent-assessee, but the failure is of an individual to explain his source of deposit. Moreover, the Tribunal records the fact that the deposit made with the State of Rajasthan was in February 2002 i.e. much before the respondent-assessee came into existence in April 2002. Thus, the impugned order records that the reasons recorded do not provide the link between the information obtained and the conclusion that income chargeable to tax has escaped assessment. In these circumstances, the appeal of the respondent-assessee was allowed by holding that the Assessing Officer has no jurisdiction to issue a notice for reopening the assessment.

7. Mr. Malhotra, the learned Counsel appearing for revenue urges that the impugned order has completely ignored the fact that although the amount of Rs.7.60 Crores was paid to the Excise Department, Rajasthan, in an earlier year, the same was reflected in the

books of the respondent-assessee only in the subject assessment year. Therefore the respondent-assessee has to explain the source of the credit reflected in its books of account.

8. As pointed out above, the Tribunal has noticed the fact that during the regular assessment proceedings, detailed enquiries were made by the Assessing Officer leading to the order dated 27 February 2006 about the source of the capital introduced by various members of the respondent-assessee. In fact the Assessing Officer has also prepared a note with regard to the same during the regular assessment proceeding. It was only on satisfaction with the explanation that the Assessing Officer passed the assessment order dated 22 February 2006 determining the appellant's income to Rs.72.65 Lakhs. This would indicate that there is clear change of opinion on the part of the Assessing Officer in issuing the impugned notice. Moreover, the reasons recorded indicate that the material obtained from the Additional DIT, Jaipur was to the effect that the respondent-assessee had not explained the source of its capital contribution to the extent of Rs.6.20 Crores. This, the Tribunal found was factually incorrect as a report of the Additional DIT, Jaipur makes no mention of any explanation offered by the respondent-assessee but the entire report is on the statement made by an individual and refers to his conduct. Consequently, the reasons recorded for issuing the impugned

notice proceed on factually erroneous basis with the result that the live link necessary to be provided between the tangible material and the conclusion that income has escaped assessment is not found in the present case. In these circumstances, we find that the impugned order of the Tribunal is a well reasoned order and the view taken by the Tribunal is a possible and a reasonable view on the facts as existing before it.

9. Accordingly, we see no reason to interfere with the impugned order as no substantial question of law arises for our consideration. Therefore, the appeal is dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**