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

**WRIT PETITION NO. 763 OF 2015**
**WITH**
**WRIT PETITION (ST) NO. 458 OF 2015**
**WITH**
**WRIT PETITION (ST) NO. 459 OF 2015**

Sun Tan Trading Co. Pvt. Ltd. .. Petitioner

Vs.

The Deputy Commissioner of Income Tax
-1(3)(1), Mumbai and Ors. .. Respondents

.....

Mr. Percy Pardiwalla, Senior Advocate a/w Madhur Agarwal and Atul K. Jasani, Advocates for Petitioner.
Mr. P.C. Chhotaray, Advocate for Respondents.

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**CORAM : M.S. SANKLECHA &**
**N.M.JAMDAR, JJ.**
**DATE : 23 JULY 2015**

**P.C.:**

1. At the request of the Counsel, the petition is being disposed of at the stage of admission.

2. These three petitions challenge three reopening notices all dated 28 March 2014 issued under Section 148 of the Income Tax Act, 1961 (the 'Act') by the Assessing Officer. The impugned notices seek to reopen the assessment proceedings for the Assessment Years 2007-08, 2008-09 and 2009-10.

3. The reasons for reopening of the assessment for all the three years as furnished to the petitioners are identically worded (save the assessment year involved and the amount alleged to have escaped assessment) running into about five pages. The basic ground for reopening of assessment is the order passed by the Customs and Central Excise Settlement Commission enhancing the value of imported liquor for the period 2004-05 to 2009-10 resulted in payment of differential duty of customs of Rs.58.04 crores. It is on the above basis that the revenue seeks to disallow an expenditure of Rs.58.42 crores claimed for the Assessment Year 2005-06 to 2010-11 under Section 37 of the Act as advertisements, sales promotions expenses, etc. on the ground that it was incurred for the exporter of the liquor and appropriately forms part of the consideration payable for the imported goods by the petitioner.

4. The petitioners objected to the reasons by the letter dated 1 August 2014 seeking to establish that there is no reason to believe that income chargeable to tax has escaped assessment warranting reopening of assessment. The reply filed was a detailed reply running into about nine pages objecting to the exercise of jurisdiction to reopen the assessments.

5. The Assessing Officer by an order dated 15 January 2015 has disposed of the objections filed for the three assessment years under consideration by identically worded order except for the mention of different Assessment Years and it reads as under:

> "The notice u/s 148 dated 28/03/2014 was issued to your good self along with the reasons for reopening for A.Y. 2008-09; however you have filed an objection to the assessment proceedings raising certain contentions as mentioned in the submission filed as stated above.
>
> In this context this is to bring to your kind notice as-
>
> 1. Reasons for reopening have been issued to your goodself vide a letter dated 08/08/2014.
>
> 2. The administrative approval of CIT-1, Mumbai has been taken prior to issue of the said notice and this being the administrative sanction it is not mandatory on the undersigned to provide you the copy of the same.
>
> 3. As per the investigations carried on by the DRI and the customs department a penalty had been levied to the tune of Rs.58 crores and similar amount was debited across 6 years by the assessee on sales promotion, discounts, product displays (hereinafter Promotional expenditure) which proves a kind of nexus and these two events cannot be seen separately and all the expenses are to the tune of 25% to 30% approx over the years.

> The event as mentioned above requires in depth study and issue of notice u/s 148 is valid and good in law and your objections to the issue are hereby settled.
>
> Further, the claim of the promotional expenditure is at a higher side looking at the nature of brands sold by your company which is worldwide recognized and does not require any kind of brand promotion of any sort. It appears a case of diversion of funds in the garb of differential duty paid by the company to the customs department by way of nature of penalty and by which expenses are inflated.
>
> Hence, you are hereby show caused as to why a negative inference should not be drawn in your case for concealment of the facts and inflation of expenditure by way of debiting promotional expenditure.
>
> The above mentioned details should reach the office of the undersigned on or before 19/01/2015 at 4.30 p.m. so as to enable the undersigned to complete the assessment proceedings failure of which the assessment will be completed Ex-parte as per provisions of IT Act, 1961."
>
> (emphasis supplied)

6. We find that the above order disposing of the objections is a perfunctionary order. It does not deal with the objections filed by the petitioners. It is a axiomatic that an order passed by the quasi-

judicial authority should be a speaking order as a party is entitled to know the reason why its objections are not acceptable to the authority disposing of the objections. We understand that at this stage the order may not be a detailed order but nevertheless must at the very least show consideration of the objections raised by the objector/assessee. Further it is on the basis of the reasons recorded and the order disposing of the objections, that the revenue should be able to establish that the reopening notice is within jurisdiction.

7. In the above circumstances, we set aside the three orders dated 15 January 2015 and restore the issue to the Assessing Officer to enable disposal of the petitioner's objections in accordance with the law. So as to avoid the reassessment proceedings becoming time barred, we make clear that the period of 15 weeks from today would stand excluded for the purpose of computing period of limitation under Section 153 of the Act. It is made clear that in case the Assessing Officer disposes of the objections after 10 weeks from today, he would not initiate reassessment proceedings for further period of four weeks as from the date of communication of the order disposing of the objections.

This further period would also stand excluded for purposes of computing limitations to pass an order on assessment.

8. We notice that the petitioner had sought a copy of the sanction granted to the Assessing Officer in terms of Section 151 of the Act to issue the impugned reopening notices. The orders disposing of the objections records that as it is administrative sanction and the Assessing Officer is not obliged to provide a copy of the same to assessee. The affidavit-in-reply to the above petition filed by the revenue also does not contain a copy of this sanction, although it does mention that the necessary sanction has been obtained. Mr. Chhotaray, the learned Counsel for the revenue submits that revenue cannot be compelled to give a copy of the sanction to the assessee. We find this attitude of the revenue rather strange. The law requires the sanction to be obtained while issuing notice under Section 151 of the Act as in the absence of appropriate sanction, the proceedings itself are without jurisdiction. We would have expected the revenue to have made a copy of sanction available to the assessee, when sought, of its own. This is the minimum fair play expected of the State. The assessee is not an

enemy. The attitude of the revenue seems to be that the assessee has to be taxed and to achieve that object, fair play could be jettisoned. The revenue is certainly expected to ensure that every paisa due to the State is collected but the same has to be only in accordance with law and in compliance with rules of fair play.

9. In view of the above, the Assessing Officer is directed to give a copy of the sanction obtained under Section 151 of the Act for the relevant assessment years to the petitioner before disposing of the objection.

10. All the three petitions are accordingly disposed of in the above terms.

**[N.M.JAMDAR, J.]** **[M.S.SANKLECHA, J.]**