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

INCOME TAX APPEAL NO. 398 OF 2013

The Commissioner of Income Tax-8 ..Appellant

Vs.

M/s Tejaskiran Pharmachem Industries Pvt. Ltd. ..Respondent

....

Mr. Arvind Pinto, Advocate for Appellant.
Ms. Percy Pardiwalla, Sr. Advocates i/b Mr. Atul Jasani for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 18 FEBRUARY 2015

P.C.:

1. This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') by the revenue challenges the order dated 26 June 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The impugned order of the Tribunal allows the respondent/assessee's appeal in respect of Assessment Year 1996-97.

2. The appellant/revenue has raised the following question of law for our consideration:

> *"(a) Whether on the facts and in the circumstances of the case and law, the Tribunal was justified in quashing the proceedings u/s 147 of the Act, ignoring the fact that the reassessment was made by the Assessing Officer under Section 150 of the Act, where a reassessment is required to*

be made in pursuance of a direction by the CIT(A)?
(b) Whether the Tribunal was justified in quashing the proceedings u/s 147 of the Act without considering that the return had been merely processed u/s 143(1)(a) of the Act and, therefore, the initiation of proceedings u/s 147 of the Act was valid in terms of the decision of the Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers (P) Limited., 161 Taxman 316?"

3. The brief facts leading to this appeal are as under:

(a) On 13 November 1996, the respondent-assessee filed its return of income for the Assessment Year 1996-97 declaring its income at Nil. The return of income as filed was duly processed on 30 November 1996 under Section 143(1)(a) of the Act.

(b) Thereafter on 7 March 2000, the Assessing Officer issued a notice under Section 148 of the Act seeking to reopen the assessment for the Assessment Year 1996-97. The reasons in support of the above notice read as under:

> "During the course of assessment proceedings in the case of the assessee company for A.Y. 1997-98, it was found that the assessee has taken loan from Virtuous Finance Ltd. All the conditions as stipulated u/s. 2(22)(e) was found satisfied. The loan taken during the year 1997-98 was treated as dividend as per provisions of section 2(22)(e). From the records it is seen that the period relevant to A.Y. 1996-97 also assessee has taken loan of Rs.14,73,380/- from Virtuous Finance Ltd. In this year also the provisions of section 2(22)(e) is attracted."

4. The assessing officer by an order dated 28 March 2002 passed under Section 143(3) r/w Section 147 of the Act assessed the petitioner

to income of Rs.26.91 Lakhs after interalia making addition on account of deemed dividend. On appeal, the Commissioner of Income Tax (Appeals) (the 'CIT(A)') quashed the assessment order dated 28 March 2002 on the ground that the reopening of assessment was without jurisdiction. The revenue accepted the same.

5. Thereafter on 10 February 2003 a fresh notice under Section 148 of the Act was issued by the Assessing Officer seeking to reopen the assessment for the Assessment Year 1996-97. The reasons recorded as supplied to the respondent-assessee in support of the notice dated 10 February 2003 reads as under:

> *The reasons for reopening the assessment for A.Y. 1996-97 in the case of M/s Tejaskiran Pharmachem Inds. (P) Ltd.*
>
> *On the basis of the information gathered on record, it is seen that the assessee company has received loans from following three group companies.*
>
> *A. M/s Family Investment Pvt. Ltd.*
> *B. M/s Bonnaire Exports Pvt. Ltd.*
> *C. M/s Virtuous Finance Pvt. Ltd.*
>
> *2. All these loans are hit by the provisions of section 2(22)(e) and taxable in the hands of the assessee company as deemed dividend. The assessee company has not shown these deemed dividends in the return of income. In these circumstances I have reasons to believe that income of rupees more than 1 lac has escaped assessment. Therefore, this case need to be reopened to be completed u/s. 147 of the I.T. Act."*

6. During the course of assessment proceedings, the respondent-assessee objected to the reopening on the ground that there was no

reason to believe that income chargeable to tax has escaped assessment and the same was without jurisdiction. However the Assessing Officer did not accept the same and determined the income at Rs.26.94 Lakhs in his order dated 26 March 2004 passed under Section 143(3) r/w Section 147 of the Act. In appeal, the CIT(A) by an order dated 27 March 2006 upheld the order dated 26 March 2004 passed by the Assessing Officer for the subject assessment year.

7. On further appeal to the tribunal, the respondent-assessee urged that on merits the issue is covered in their favour by the decision of this Court in CIT Vs. Universal Medicare reported in 324 ITR 364. However it was also urged that the impugned notice dated 10 February 2003 is completely without jurisdiction as the reasons recorded do not indicate the reason to believe that any income chargeable to tax has escaped assessment and/or there was failure on the part of the respondent to disclose truly and fully all material facts necessary for assessment. Moreover, the respondent also urged that the entire proceedings seeking reopen the assessment was done at the behest and/or directions of CIT(A). In support thereof, reliance was placed upon the letter dated 13 January 2003 written by the Assessing Officer to the Commissioner of Income Tax while seeking sanction to reopen the assessment proceedings for the Assessment Year 1996-97 on the basis of

the directions by the CIT(A).

8. By the impugned order, the Tribunal allowed the respondent/assessee's appeal. This on the basis that the reasons as recorded do not indicate that there was no failure on the part of the respondent to disclose truly and fully all material facts necessary for assessment. Moreover the impugned order also records the fact that the Assessing Officer has acted at the behest and/or as per the direction of the CIT(A) in issuing notice dated 10 February 2003 under Section 148 of the Act.

9. We find that the reasons as recorded in support of the reopening notice dated 10 February 2003 merely states that loans were taken by some companies but that does not indicate in what manner those loans would be hit by the provisions of deemed dividend. The reasons must indicate live link between the material and the belief. (see ***ITO Vs. Lakhmani Mewal Das*** *in* ***103 ITR 437*** *and* ***CIT Vs. Kelvinator India Ltd.*** *in* ***320 ITR 561***). The material here is that the respondent-assessee has received a loan from three private limited companies but that by itself does not make it deemed dividend leading to reason to believe that income chargeable to tax has escaped assessment. Moreover, we also notice that the Assessing Officer in issuing the notice dated 7 March 2000 has acted at the directions of the CIT(A). This

seems to be an admitted position. This is more than evident from Question 1 as formulated by the revenue hereinabove which states that the assessing officer was required to carryout the reassessment in view of the Section 150 of the Act i.e. in pursuance of the direction by the CIT(A). This itself an indication of the assessing officer acting as per the direction of the CIT(A) in issuing the impugned notice.

10. So far as the section question is concerned, it is a settled position in law that even though the assessment has been processed under Section 143 (1)(a) of the Act for the purposes of reopening of assessment, the condition stipulated for invoking jurisdiction under Section 147/148 of the Act has to be satisfied.

11. In view of the above, we see no reason to entertain the present appeal as the Tribunal by the impugned order has correctly held that the notice for reopening dated 10 February 2003 was without jurisdiction.

12. Accordingly, the appeal is dismissed. No order as to costs.

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