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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DECIDED ON: 09.02.21015

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ITA 58/2015

TULIP ENGINEERING PVT. LTD.

..... Appellant

Through: Mr. Om Prakash Pahuja with Ms. Indu
Pahuja, Advocates.

versus

INCOME TAX OFFICER

..... Respondent

Through: Ms. Suruchi Aggarwal,
Sr. Standing Counsel with Mr. Amir Aziz,
Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The assessee is in appeal before us and challenges an order of the Income Tax Appellate Tribunal (hereafter referred to as "ITAT") dated 30.06.2014 in ITA 410/Del/2013.
2. The assessee was subjected to re-assessment proceedings; the initiation of which has been challenged under Section 147. The second ground urged is with respect to the absence of notice under Section 143 (2) and the third is with respect to the merits of addition of Rs.4,84,000/-.
3. Briefly, the facts are that for AY 2008-09, the assessee had reported an income of Rs.444/-. This was processed under Section 143 (1). Upon an enquiry and investigation report, the AO issued notice under Section 148, doubting a transaction based upon the transfer of shares and purchase by two subsequent transferees i.e. Raghubir Singh and Simranjeet Kaur.

The assessment was completed with the addition of that amount to the assessee's final income. The matter was carried in appeal unsuccessfully to the CIT (A), and later, to the ITAT as well. The assessee was unable to persuade both the authorities to accept its submissions that the reassessment proceedings were without jurisdiction. On the merits as well, the ITAT confirmed the view of the Assessing Officer and the CIT (A) that the amount had to be added to the assessee's income and brought to tax.

4. Learned counsel urges that re-assessment proceedings were unjustified and emphasized that the approval, in the circumstances of the case, was accorded mechanically. He highlighted that the "reasons to believe", forming the basis for reopening of assessment, did not disclose any particulars as to how the information triggering notice was received and who furnished that information. It was next urged that the AO did not even issue notice under Section 143 (2), but rather completed the assessment. Highlighting that absence of notice vitiates the entire proceedings, learned counsel states that both the CIT (A) and the ITAT erred in not returning the findings on this aspect. Arguing on the merits, learned counsel submitted that the additions under Section 68 were unwarranted because the identity of the purchasers of the shares had been established. In fact, the AO had noted that both the purchasers had filed returns and the assessee deposited the amounts received in the bank. Learned counsel complained that if the findings of the ITAT are not reversed, all the assessees in the like circumstances would be placed under an unbearable burden of proving not only the genuineness of the transaction, but also the genuineness of the transaction which preceded the one in question.

5. This Court has considered the submissions. So far as the first issue

urged, i.e., legality of the notice goes, the reasons to believe recorded by the AO and duly communicated to the assessee had noted that its name figures as one of the beneficiaries of alleged bogus transactions, which had cropped up during the investigation carried out by the Directorate of Investigation, Jhandewalan. The entries relating to the transactions and the sums of money were also included in tabular statement as part of the note. *CIT v. M/s Kelvinator of India Ltd*, (2010) 320 ITR 561 (SC) states that the reassessment can be resorted to if there is “tangible material” justifying such move. The receipt of the investigation report in the opinion of the Court, undoubtedly constituted such tangible material outside the record, which were received by the AO after the assessment was processed under Section 143 (1). In the circumstances, the first ground urged is insubstantial and, therefore, rejected.

6. As to the second ground, the Court holds that the assessee is precluded from arguing on the validity or nullity of the order, in view of the bar enacted under Section 292 (BB) which reads as under: -

“Notice deemed to be valid in certain circumstances.

292BB. *Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was -*

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner:

Provided *that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.]”*

7. The assessee sought to urge that the above provision is inapplicable in the circumstances of the case because notice in the present case was not issued at all under Section 143 (2). The Court rejects this contention in view of the express terms of Section 292BB, which overrides all arguments, so long as the assessee appears in any proceedings or cooperated in any enquiry related to assessment or reassessment. In the present case, there is no doubt at all that the assessee cooperated and appeared both in the assessment as well as reassessment proceedings. Therefore, it had deemed notice of the re-assessment proceedings. Its contentions were taken into account. In such circumstances, issuance of notice is a mere empty formality. Thus, the non-issuance of notice, in the opinion of the Court, shall not vitiate the assessment proceedings after due service of notice under Section 147. This argument was not urged in the first instance at all either before the AO or before the CIT (A).

8. So far as the last ground, i.e., the merits as to the addition of Rs.4,84,000/- goes, the basis for introducing Section 68 is understood in *CIT v. Lovely Exports*, 216 CTR 195 to say that the assessee not only has to establish the identity of the share applicant or investor, as the case may be, but also of the third party. It has to be *prima facie* established that such third party was credit worthy and the transaction was genuine. Whilst the acquisition of the shares of Galaxy Commercial was not doubted by the AO, what ultimately fell for his consideration was the sale consideration. The AO's discussion in paragraph 3 of his order is significant in this regard; both the purchasers did not respond to notices issued by the income tax authorities. Furthermore, the AO's enquiry reveal that these purchasers had insubstantial means and could not reasonably be said to possess the means to make the investments that they did, in purchasing the assessee's shares for the amounts reported by it. Besides, as to whether

the transaction was genuine or not is a pure finding of fact which has concurrently been rendered against the assessee.

9. For the above reasons, this Court finds no ground for interference and holds that there is no substantial question of law.

10. The appeal is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**R.K. GAUBA
(JUDGE)**

FEBRUARY 09, 2015
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