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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2410 OF 2013

Director of Income tAx (IT)-II ..Appellant
Versus
M/s. Black & Veatch Prichard, Inc. ..Respondent

....

Mr. Tejveer Singh for the Appellant.
Mr. P. J. Pardiwalla, Senior Counsel, a/w Jas Sanghvi and A. Desai i/b. PDS Legal for the Respondent.

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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 12TH APRIL, 2016

P.C.:

1. This Appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 10th July, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 1999-2000.

2. This appeal raises the following question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that there was no addition in respect of the issue on the basis of which the proceeding under Section 148 of the Income Tax* Act, 1961 was initiated?"

3. On 31st March, 2005 the Assessing Officer issued a notice under Section 148 of the Act seeking to reopen the assessment for A.Y.1999-2000. The reasons has recorded in support of the impugned notice read as under:-

> *"A tax evasion petition has been received in the office of DIT(IT), Mumbai which was forwarded to the undersigned on 30.3.2005. On going through the same and the relevant material on record, it is apparent that Black & Veatch Prichard, Inc. USA having its address at P.O. Box 27-105, Kansas City, MO 64180-0105, U.S.A. in earning income from India from Reliance Petrochemicals Ltd. but is not filing its return of income in India. Accordingly under explanation 2 to Section 147 of the I.T. Act, I have reason to believe that the income chargeable to tax in India has escaped assessment for A.Y. 98-99, 99-00, 00-01, 01-02, 02-03 and 03-04. Notice u/s 148 of I.T. Act is, therefore required to be issued in this case.*
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> *2. As per section 151(2) of the I.T. Act, no notice u/s 148 may be issued by an officer below the rank of JCIT after four years from the end of assessment year. The Addl. DIT, Rg. 3 may kindly approve the proposal for issue of notice u/s 148 for A.Y. 98-99 and 99-00.*

3. Submitted for kind consideration and approval.

Sd/-
Rahul Navin."

4. Consequent to the notice dated 31st March, 2005 the Assessing Officer completed the reassessment by order dated 20th March, 2006 under section 143(3) read with section 147 of the Act. In the above order dated 20th March, 2006 the Assessing Officer computed the assessee's income from business and profession as under:-

" Income from Business and Professions:

(i)	*Royalty/fees for technical (included) services (as per statement)*	*Rs.1,93,02,773*
(ii)	*Consideration received from Bechtel France under the offshore Engineering Technical Services Contract (as discussed above) US$ 4.98 million = INR (49,80,000 X 42.28)*	*Rs.21,05,54,400*
	Gross Total Income	*Rs.22,98,57,173*
	Total Taxable Income	*Rs.22,98,57,170"*

5. The Respondent-Assessee being aggrieved, carried the issue in appeal to the Commissioner of Income Tax (Appeals) (CIT(Appeals)). It

was submitted by the Respondent-Assessee that as no addition had been made in the order dated 20^{th} March, 2006 of the Assessing Officer on account of any income received from Reliance Petrochemicals Ltd. i.e. the basis of the notice dated 31^{st} March, 2005 under Section 148 of the Act. Therefore in the absence of the above, no other income can be brought to tax in the order passed on assessment. However, the CIT (Appeals) sustained the order dated 20^{th} March, 2006 of the Assessing Officer.

6. On further appeal to the Tribunal the impugned order placed reliance upon the decision of this Court in ***CIT Vs. Jet Airways (I)Ltd. (2011) 331 ITR 236*** to hold that where no income has been assessed on the basis of the reasons recorded at the time of issuing the reopening notice, it is not open to the Assessing Officer even after invocation of Explanation 3 to section 147 of the Act to bring to tax any other income. In this case, the impugned order observes that the reasons recorded at the time of initiation of the reopening proceedings was escapement of income to tax income from M/s. Reliance Petrochemicals Ltd. Admittedly, no addition on account of income earned from M/s.Reliance Petrochemicals Ltd. has been made by the Assessing Officer in his order dated 20^{th} March, 2006. In the above view the impugned order of the Tribunal allowed the Respondent-Assessee's appeal.

7. Mr. Tejveer Singh, the learned counsel for the Revenue submits that the objection with regard to lack of jurisdiction was not taken before the Assessing Officer and therefore it is not open to the Tribunal to have applied the ratio of this Court's decision in Jet Airways (supra).

8. It is beyond our comprehension as to how the Respondent-Assessee could have foreseen during the Assessment proceedings that the Assessing Officer will not bring to tax the income alleged to have earned from M/s. Reliance Petrochemicals Ltd. to tax. In any case, so far as this Court is concerned, it is a settled issue that in the absence of the Assessing Officer bringing to tax any income earned from the source recorded in the reasons as having escaped assessment in support of the impugned notice, the Assessing Officer has no jurisdiction to bring to tax income earned/received from any other source by the assessee. This is a jurisdictional requirement as held by this Court in Jet Airways (supra). In view of the fact that the issue arising herein stands concluded by the decision of this Court in Jet Airways (supra) no substantial question of law arise for our consideration.

9. Accordingly, the Appeal is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**