$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
4.
+ **ITA 86/2015**

COMMISSIONER OF INCOME TAX -4 ..... Appellant
Through: Mr Ashok Kr. Manchanda, Senior Standing Counsel.

versus

G.K. CONSULTANTS LIMITED ..... Respondent
Through: Ms Rashmi Chopra, Advocate and Mr Ruchesh Sinha, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **24.05.2016**

1. The question of law framed by this Court while admitting this appeal against the impugned order dated 27th June 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1502/Del/2013 for the Assessment Year 2004-05 reads as under:

> "Did the Income Tax Appellate Tribunal ('ITAT') fall into error in holding that the opening of assessment under Section 147/148 was not justified and legal in the circumstances of the case?"

2. The reasons for reopening of the assessment of the Respondent Assessee for AY 2004-05 has been set out in the assessment order dated 28th December 2008 passed by the Assessing Officer ('AO'). A survey was conducted in the case of one Mr Subodh Gupta, Chartered Accountant ('CA') on 30th October, 2003. During the course of that survey it transpired

that the Director of the Respondent Assessee was involved in providing bogus accommodation entries. Specific reference was made to the reply given by Mr Gupta to question No.24 in which he is said to have admitted that the companies floated by him, including the Assessee company, did not possess any statutory records that were mandatorily required to be maintained. He is supposed to have further admitted that the companies were being maintained for the purposes of providing accommodation entries to his clients. The reasons to believe thus conclude that income of the Assessee Company had escaped assessment. Mr Gupta also stated that for all the effort, his income from the transactions was only 0.5% to 1.5% of the entry amount. Mr Gupta then proceeded to also give an example as under:

> "I, elaborate—suppose entity 'A' requires fund of Rs.1 crore, it is asked to give Rs.1,00,50,000/- crore. This amount is then routed in the system by way of selling already acquire shares of other companies. Once, this money of Rs.1 crore enters the account of my company that entries are parted/given to 'A'. In this way unaccounted money of 'A' goes in his hands as loan/share application money/share money etc. in the name of my company which practically and reality did not have any asset. **In this process my income is only Rs. 50,000/- received as commission.**" (emphasis supplied)

3. The above statement of Mr Subodh Gupta was retracted by him on 4th November 2003. Nevertheless the AO proceeded to hold that the "Total amount given during the year by way of loans and advances, investment in equity and share application money comes to Rs.2,42,13,808/- which is being held to be in the nature of accommodation entries given to the above mentioned parties and in view of the statement of Shri Subodh Gupta that he was charging a premium of 0.50/0 to 1.50/0 on the amount of entry given, it

would thus be fair to estimate amount of premium received on such investment at 1% which will be added to the income to the assessee." The AO further held that the amount of investment made by the assessee company during the year would also added to the income of the Assessee company as income from undisclosed sources on 'protective basis' till the amount of the accommodation entries was assessed in the hands of the respective beneficiaries on substantive basis.

4. The above addition was upheld by the Commissioner of Income Tax Appeal (Appeals) by the order dated 9th January, 2013. The Assessee then filed an appeal before the ITAT. In the impugned order dated 27th June 2014, the ITAT concluded that "there may be substantive assessment without any protective assessment but there cannot be protective assessment/addition without a substantive assessment/addition, meaning thereby there has to be some substantive assessment/addition first which enables the AO to make a protective assessment/addition. In the present case, the AO proceeded to make protective assessment by way of reopening of assessment of the assessee appellant company without being a substantive assessment on the date of assumption of jurisdiction u/s 147 of the Act which is not permissible as per decision of ITAT, Mumbai in the case of ***M.P. Ramchandran v DCIT (2009) 32 SOT 592 (Mumbai)*** and ***Sursh K Jajo v. ACIT (2010) 39 SOT 514 (Mumbai)***." Accordingly, it was concluded that the AO erred in assuming jurisdiction under Section 147 (1) of the Income Tax Act, 1961 ('Act') in reopening the assessment.

5. This Court has heard the submissions of Mr Manchanda learned counsel

for the Revenue and Ms Rashmi Chopra counsel for the Petitioner.

6. The reasons for the reopening of the assessment have been perused by the Court. Mr Manchanda tried to impress upon this Court that since Mr. Gupta was the Director of the Assessee company, he was responsible for the money earned by it as commission for providing accommodation entries and, therefore, it should be taken to be money earned by the Assessee company.

7. The Court is unable to agree with the above submission. The statement made by Mr Gupta in response to question No.24 and the illustration given by him show that the commission was earned by Mr Gupta and not the Assessee. The addition of the commission amount, if at all, had to be made substantively in the hands of Mr Gupta and of the amount of investment in the hands of the beneficiaries of the accommodation entries. Consequently, the Court is of the view that the reasons to believe as recorded by the AO did not satisfy the requirement of Section 147 (1) of the Act as regards the formation of opinion that the income of the Assessee had escaped assessment.

8. The question framed is answered in the negative i.e. in favour of the Assessee and against the Revenue. The appeal is dismissed with no order as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 24, 2016/pkv