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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2037/2016 & CM No. 8769/2016**

SMART CUBE INDIA PVT. LTD. Petitioner
Through: Mr. Rupesh Jain, Mr. Neeraj Jain and
Mr. Aniket D. Agrawal, Advs.

versus

ASSISTANT COMMISSIONER OF
INCOME TAX & ORS. Respondents
Through: Mr. P. Roychaudhuri, Adv.

+ **W.P.(C) 2136/2016 & CM No. 9156/2016**

SMART CUBE INDIA PVT. LTD. Petitioner
Through: Mr. Rupesh Jain, Mr. Neeraj Jain and
Mr. Aniket D. Agrawal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME
TAX & ORS. Respondents
Through: Mr. P. Roychaudhuri, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **06.12.2016**

1. The petitioner in both these proceedings is aggrieved by re-assessment notices issued by the respondent-Revenue on 05.06.2015 for Assessment Year (AY) 2008-09 and 2009-10.
2. The brief facts are that the assessee was and continued to claim deduction under Section 10B of the Income Tax Act, 1961 (in short

the Act) in respect of a unit, based upon approval from the STPI (Ministry of Communication and Information Technology, Department of Information Technology, Noida) since inception. The assessee's returns were processed and framed for both the assessment years upon the materials furnished.

3. While so, the impugned notices, in identical terms, were issued by the Assessing Officer (AO) on the ground that the appropriate approval from the Inter-Ministerial Standing Committee, notified on 22.02.1993, had not been obtained. The reasons to believe for AY 2008-09, which is fairly repeated for both cases reads as follows:

“..... During the course of assessment proceedings for the A.Y. 2010-11 in the case of M/s. Smart Cube India Pvt. Ltd. it is noticed that the assessee has been claiming constantly deduction / exemption u/s 10B of the Income Tax, 1961, During the assessment year 2008-09 the assessee company has claimed Rs. 76,89,396/- deduction/exemption u/s 10B of the Income Tax Act. The assessee company has been taking constantly its approval from STPI (The Ministry of Communication and Information Technology, Department of Information Technology, Noida, since its incorporation. In view of details filed by the assessee during the course of assessment proceedings for the AY 2010-11 the assessee company is not entitled to claim deduction u/s 10B of the Income Tax Act. The assessee company has to be approved by the inter ministerial standing committee constituted under the power conferred by section 14 of the IDR Act, 1951 read with Sub-rule (2) of rule 10 of the Registration and Licensing of Industrial undertakings Rules, 1952, as specified by the notification No. 117(E) dated 22.02.1993, which

has not been taken by the assessee company and the taken its approval for deduction/ exemption u/s 10B, from STPI Noida which is not a competent authority to approve the assessee for deduction /exemption u/s 10B of income Tax Act, 1961. It is also held by the courts in various cases that merely received from STPI is not full fill the condition laid down for claim of deduction u/s 10B.

2. In view of the above discussed facts I have reasons to believe that the assessee has escaped assessment to the tune of Rs. 76,89,396/- chargeable to tax with the meaning of section 147 of the Income Tax Act, for A.Y. 2008-09 since the assessment has escaped due to failure on the part of the assessee company to disclose material facts truly and fully necessary....”

4. We have considered the submissions of the parties. The Revenue contends that clearance of the Inter-Ministerial Standing Committee specified under the Industries (Development and Regulation) Act, 1951 was essential in terms of the notification dated 22.02.1993 and since the AO noticed this omission in a subsequent year i.e. 2010-11, the re-assessment notice was justified.

5. This Court is of the opinion that to trigger a valid re-assessment notice, there should be tangible material or evidence pointing to withholding of material information, in the return of any particular year. Whilst, as to what is the tangible material is a fact dependent on inquiry which a Court would conduct where a re-assessment notice is challenged. What is definite is the obligation of the assessee to disclose all facts relevant to the assessment in any given year. In the facts of this case there is no dispute that the assessee had claimed and

was granted exemption under Section 10B on the basis of the STPI approval given at the relevant time. The AO framed assessment under Section 143(3) of the Act. There was no additional requirement cast upon the assessee in the sense, as understood by law, as pointed out earlier by the Supreme Court in ***Calcutta Discount Co. Ltd. vs ITO (1961) 41 ITR 191 (SC)***. The obligation always was and continues to be disclosure of full and true facts. That the assessee did disclose is not in doubt at all. That it did not disclose something which it did not have, i.e. the approval from the Inter-Ministerial Standing Committee, therefore, cannot be a valid ground for re-opening the assessment.

6. Consequently this Court is of the opinion that the re-assessment notices impugned in both these cases cannot be enforced. They are, hereby, quashed along with all proceedings arising therefrom. In addition, the assessee has urged that a further re-assessment notices for AY 2008-09 and 2009-10 are issued which are also the subject matter of these proceedings. These notices tread on common ground and do not refer to any new fact and tangible material. Besides, during the pendency of re-assessment under Section 148 a fresh re-assessment notice on the same facts, as it were, is impermissible in view of the decision of the Supreme Court in ***Trustees of H.E.H. The Nizam's Supplemental Family Trust vs CIT (2000) 242 ITR 381 (SC)***. On this ground as well, the subsequent re-assessment notices dated 13.05.2015 cannot survive. The impugned notices dated 26.03.2015 and 13.05.2015 are hereby quashed. The writ petitions

are allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 06, 2016^{/kk}