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

%   Judgment Reserved on: 11th December, 2015
Judgment Delivered on: 12th May, 2016

\+   **WP(C) 2526/2015**

ALLIED STRIPS LIMITED   ..... Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-15   ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Salil Aggarwal and Mr Prakash Kumar, Advocates.
For the Respondents: Mr Rohit Madan and Mr Akash Vajpai, Advocate for the Income Tax.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. This writ petition pertains to the assessment year 2007-08 and seeks quashing of notice dated 27.03.2014 issued by respondent under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the said 'Act') and the consequent proceedings thereto including the order dated 23.02.2015 dismissing the objections filed by the petitioner.

2. The main challenge raised in the writ petition is that the re-assessment proceedings have been initiated after a period of 4 (four) years from the end of the relevant assessment year and the pre-condition for such initiation that there was failure on the part of the assessee to fully and truly disclose all the material particulars necessary for the assessment is absent. It is contended that there was true and full disclosure of all material particulars made by the assessee and the reasons for re-opening do not even show that there was any such failure on the part of the assessee. It is further contended that it is a clear case of change of opinion, in as much as, the issue sought to be raked up by way of the impugned notice under Section 148 of the Act had been duly considered by the Assessing Officer during the original assessment under Section 143(3) of the Act.

3. The original assessment under Section 143(3) of the Act was completed on 07.10.2009. The return of income was filed on 16.11.2007. On 15.07.2009 a detailed questionnaire was issued by the Assessing Officer during the original proceedings under Section 143(3) of the Act raising specific queries with regard to share application money. The specific query raised by the questionnaire dated 15.07.2009 pertaining to the share application money is as under:-

> *"B.1 For share capital, loans other than banks and inter corporate deposits, introduced/taken during the year and*

also in the period after passing of last order U/s' 1 43(3) give list, source genuineness, identity of the same. Please note you are to give confirmed copy of ledger A/c. from the credit or/party including confirmation of mode, date, address and acknowledgement of return etc' from the said party along with source and relevant bank entries. Same information may please be given in respect of squared up loans if any during the year.

Please give a detailed note with regard to advance from customer vis-a-vis the policy of company with regards to recognition of income and treatment in accounts.

Complete detail of fresh security deposits made by you during the year. File copy of ledger account and purpose of making deposit and of interest earned thereon, if any."

4. In response to the said query raised in the questionnaire, the assessee vide its response dated 07.08.2009 furnished the details of the share capital raised during the year. Alongwith with the response complete details of the shareholders, their addresses, PAN numbers and number of shares were furnished. In addition thereto, a confirmation letter from each of the shareholders was filed, providing the details of the shares, investment made, mode of payment and the bank through which the payment was made. In addition thereto, the acknowledgement of e-returns of each of the shareholders was also furnished. The following annexures were annexed to the response dated 07.08.2009:-

Name of Shareholder	Address	PAN	No. of Shares
M/s Monisha Granit Ltd.	2A/65, Ground Floor, Ramesh Nagar, New Delhi-110 015	AABCM7083P	26700
M/s Monisha Impex Ltd.	2A/65, Ramesh Nagar, New Delhi-110 015	AAFCM0694J	66700
M/s Bhalotia Agro Industries Ltd.	WZ-241/S, Ground Floor, Inderpuri, New Delhi	AABCB0388G	60000
M/s Elbee Portfolio Ltd.	WZ-134, Plot No. 170, Vishnu Garden, New Delhi-110018.	AABCH0899D	50000
M/s First Hi-Fin Ltd.	73, Triloki Apartment, Plot No. 85, I.P. Extn. New Delhi-110 092	AAACF2099M	56700
M/s Salwan Developers & Promoters (P) Ltd.	A-4/181, Sector-17, Rohini, Delhi-110085	AAACS1320E	13400
M/s Paras Infotech (P) Ltd.	E-71, Amar Colony, Lalpat Nagar, New Delhi-110024	AACCP9931C	60000
M/s Rubik Export Ltd.	Shop No. 20, Krishna Market, Bawana Road, Pooth Khurd, Delhi.	AABCR8845A	93400
M/s M.V. Marketing Pvt. Ltd.	WZ-134, Plot No. 170, Vishnu Garden, New Delhi-110018.	AAACM8918J	56700

M/s U.P. Electricals Ltd.	2A/55, Ground Floor, Ramesh Nagar, New Delhi-110 015	AAACU0290M	33400
M/s B. Fin-Lease Pvt. Ltd.	1/16 Ist Floor, Asaf Ali Road, New Delhi-110002	AAACB6410C	43400
M/s Tashi Contractors (P) Ltd.	Shop No. 20, Krishna Market, Bawana Road, Pooth Khurd, Delhi	AAACT6039R	33400
M/s Akshay Sales Pvt. Ltd.	2A/65, Ground Floor, Ramesh Nagar, New Delhi-110 015	AAICA6630Q	16700
M/s G.C. Technology (India) Pvt. Ltd.	B-348, IIIrd Floor, Hari Nagar, New Delhi.	AABCG3647B	73400
M/s Arun Finvest Pvt. Ltd.	50/12, Ashok Nagar, New Delhi-110 018	AABCA3510H	83400
M/s Maestro Mktg. & Advg. Pvt. Ltd.	A-4/181, Sector-17, Rohini, Delhi-110085	AACCM0826H	40000
M/s Polo Leasing & Finance Pvt. Ltd.	A-24, IInd Floor, Tagore Market, Kirti Nagar, New Delhi-110015	AABCP8345D	23400
M/s Shashi Sales & Mktg. Pvt. Ltd.	RZ-41A, Mohan Nagar, Pankha Road, New Delhi	AAFCS8352R	83400
M/s Rajkar Electri & Elect (P) Ltd.	5012, Ashok Vihar, New Delhi-110 018	AABCR4897G	70000

M/s Shattarchi Finance & Leasing Ltd.	726, Pocket IIIrd Sector-19, Dwarka, New Delhi-110045.	AAFCS8159Q	15900
			1000000

5. The confirmation letters issued by the shareholders are similar and one such letter is extracted herein below. The same reads as under:

*"**<u>TO WHOM SO IT MAY CONCERN</u>***

This is confirm that we have made investment in shares, the particulars of which are given hereunder, our own declared sources.

Name of Company No. of Shares	:	*Allied Strips Ltd.*
No. of Shares	:	*26700 Equity Shares of Rs. 10/- each At a premium of Rs. 20/- per share*
Amount invested in Rupees	:	*8,01,000/-*
Particulars of Remittance	:	
Cheque /DD/Pay Order No.	:	*453976, 453977*

Dated	*:*	*29/01/2007*
Amount	*:*	*4,00,000/- each and 1,000/- each*
Bank Particulars	*:*	*The Bank of Rajasthan Ltd. Vikaspuri, Delhi*
PAN/GIR No.	*:*	*AABCM 7083 P*
Share Certificate Received	*:*	
Share Certificate No.	*:*	
Share Distinctive No.	*:*	

I hereby confirm that the information furnished above is correct.

For Monisha Granite Ltd.

For MONISHA GRANITE LTD.

DIRECTOR"

6. After the above-mentioned information was received by the Assessing Officer, the assessment was framed under Section 143(3) of the Act on 07.10.2009. In the assessment order, the AO has recorded as under:

"Assessment Order

Return declaring an income of Rs. 46,42,540/- was filed on 16.11.2007 and the same was processed u/s 143(1) at returned income on 21.02.2009. Subsequently, the case was selected for scrutiny. Notice u/s 143(2) & 142(1) along with detailed questionnaire was issued to the assessee. In response to this notice, Shri N.C. Jain, CA/AR attended from time to time and filed details as called for vide letter dated 07.08.2009, 20.08.2009, 31.08.2009, 09.09.2009, 23.09.2009 and 07.10.2009 (Details are in part-I, II & III of record).

The assessee is engaged in the business of Re-rolling in C.R. Strips. The Company has got its accounts audited u/s 44AB of the I.T. Act, 1961 as per audit report dated 31.08.2007 filed with the return of income.

After discussion and considering the details filed by the assessee in support of the balance sheet and profit & loss account, the taxable income declared by the assessee is accepted."

7. Perusal of the questionnaire along with the response furnished and the assessment order reveals that the Assessing Officer after examining the aspect of share application money received by the assessee through the issuance of the questionnaire and notices framed the assessment under Section 143(3) on 07.10.2009. The returned income was accepted and no addition was made on account of the share application money.

8. In ***CIT vs. Usha International Ltd. (2012) 348 ITR 485 (Delhi) (FB)***, a full bench of this Court held:-

> *"Re-assessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The re-assessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons."*

9. On 27.03.2014, the impugned notice under Section 148 of the Act has been issued. The reasons supplied to the assessee for re-opening of the case dated 24.03.2014 record as under:-

> *"M/s Allied Strips Pvt. Ltd. (AABCA0609D)*
>
> *Assessment in this case was completed u/s 143(3) at an income of Rs. 46,42,540/- on 07.10.2009. An information has been received from the Dy. Director of Income Tax (Inv.), Unit-V(2), New Delhi that a search & seizure operation was carried out in the case of Allied Strips Limited on 17.12.2013. It has been observed by the Investigation Wing that M/s Allied Strips Ltd. has taken accommodation entry in the form of share premium/share capital from various non-existent paper companies. During the course of enquiry the alleged investors are not found to be existing at the given address. The list of such parties is as under:-*

Name of Shareholder	Address	Date	No. of Shares	Premium (Rs.)	Share capital received (including premium (Rs.)	Nominal Value (Rs.)
M/s Monisha Granit Ltd.	2A/65, Ground Floor, Ramesh Nagar, New Delhi-110 015	31.03.2007	26700	20	2001000	10
M/s Monisha Impex Ltd.	2A/65, Ramesh Nagar, New Delhi-110 015	31.03.2007	66700	20	801000	10
M/s Bhalotia Agro Industries Ltd.	WZ-241/S, Ground Floor, Inderpuri, New Delhi	31.03.2007	60000	20	1800000	10
M/s Elbee Portfolio Ltd.	WZ-134, Plot No. 170, Vishnu Garden, New Delhi-110018.	31.03.2007	50000	20	1701000	10
M/s First Hi-Fin Ltd.	73, Triloki Apartment, Plot No. 85, I.P. Extn. New Delhi-110 092	31.03.2007	56700	20	1500000	10
M/s Salwan Developers & Promoters (P) Ltd.	A-4/181, Sector-17, Rohini, Delhi-110085	31.03.2007	13400	20	402000	10
M/s Paras Infotech (P) Ltd.	E-71, Amar Colony, Lalpat Nagar, New Delhi-110024	31.03.2007	60000	20	1800000	10
M/s Rubik Export Ltd.	Shop No. 20, Krishna	31.03.2007	93400	20	2802000	10

	Market, Bawana Road, Pooth Khurd, Delhi.					
M/s M.V. Marketing Pvt. Ltd.	WZ-134, Plot No. 170, Vishnu Garden, New Delhi-110018.	31.03.2007	56700	20	1701000	10
M/s U.P. Electricals Ltd.	2A/55, Ground Floor, Ramesh Nagar, New Delhi-110 015	31.03.2007	33400	20	1002000	10
M/s B. Fin-Lease Pvt. Ltd.	1/16 Ist Floor, Asaf Ali Road, New Delhi-110002	31.03.2007	43400	20	1302000	10
M/s Tashi Contractors (P) Ltd.	Shop No. 20, Krishna Market, Bawana Road, Pooth Khurd, Delhi	31.03.2007	33400	20	1002000	10
M/s Akshay Sales Pvt. Ltd.	2A/65, Ground Floor, Ramesh Nagar, New Delhi-110 015	31.03.2007	16700	20	501000	10
M/s G.C. Technology (India) Pvt. Ltd.	B-348, IIIrd Floor, Hari Nagar, New Delhi.	31.03.2007	73400	20	220000	10
M/s Arun Finvest Pvt. Ltd.	50/12, Ashok Nagar, New Delhi-110 018	31.03.2007	83400	20	2502000	10
M/s Maestro Mktg. & Advg. Pvt. Ltd.	A-4/181, Sector-17, Rohini, Delhi-110085	31.03.2007	40000	20	1200000	10
M/s Polo	A-24, IInd	31.03.2007	23400	20	7020000	10

Leasing & Finance Pvt. Ltd.	Floor, Tagore Market, Kirti Nagar, New Delhi-110015					
M/s Shashi Sales & Mktg. Pvt. Ltd.	RZ-41A, Mohan Nagar, Pankha Road, New Delhi	31.03.2007	83400	20	2502000	10
M/s Rajkar Electri & Elect (P) Ltd.	5012, Ashok Vihar, New Delhi-110 018	31.03.2007	70000	20	2100000	10
M/s Shattarchi Finance & Leasing Ltd.	726, Pocket IIIrd Sector-19, Dwarka, New Delhi-110045.	31.03.2007	15900	20	477000	10
	Total		1000000		3,00,000/-	

The DDIT (Inv.) has further submitted that the investors have been verified from ITD and none of them reflect receipt of nay dividend on the investment made by them. The returns declaring meagre income/nil/loss income create suspicion on the creditworthiness of the investors.

> *"it is evidently clear that the undisclosed income of these beneficiary companies which has been introduced by them in the form of share capital /premium/loan has escaped taxation. Therefore it is requested that there amounts be brought to tax by initiating action under section 148 of the Income Tax Act, 1961 for the A.Y. 2007-08 in the case of above mentioned beneficiary companies."*

Since the creditworthiness and genuineness of the above investors remained unverified I therefore reason to believe that an income to the extent of Rs. 3,00,00,000/-

> *has escaped assessment and to assessee the income mentioned above and to verify the genuineness/creditworthiness of the above investors. I propose to issue notice u/s 148 of the Income Tax Act, 1961 for the assessment year 2007-08.*
>
> *Therefore, I have reason to believe that THE ASSESSEE COMPANY M/s Allied Strips Limited has concealed the particulars of income to the extent of Rs. 3,00,00,000/- which has not been disclosed in its return of income for the assessment year 2007-08. In view of this, I am satisfied that it is a fit case for reopening u/s 148 as the case of the assessee is fully covered as per the provisions of the I.T. Act, 1961 Section 147."*

10. It is clear from the above, that the present case is one of change of opinion. The questionnaire and particularly question B.1 specifically raise the issue with regard to share capital. It requires the petitioner to give a list, source, genuineness, identity of the share holders along with confirmation copies of the ledger account of the party including confirmation of the mode, date, address and acknowledgement of return, etc. from the said party along with source and relevant bank entries. The said information was provided by the assessee. After receipt of the said information, Assessing Officer did not think it fit to make an addition and, under these circumstances, no addition itself amounts to forming an opinion as has been held in ***Usha International Ltd. (supra).***

11. Therefore, in our view, the present exercise of issuing the notice under Section 148 of the Act would amount to nothing but a change of opinion, which is not permissible.

12. Another reason why the impugned notice under Section 148 and the proceedings consequent thereto have to be set aside is that the pre-condition of there being a failure on part of the assessee to fully and truly disclose all the material particulars necessary for assessment has not been made out.

13. Perusal of the reasons for initiating re-assessment shows that there is not even an allegation that there has been failure on the part of the petitioner/assessee to fully and truly disclose all the material particulars necessary for re-assessment.

14. In ***Haryana Acrylic Manufacturing P. Ltd. Co. Vs. CIT 2009 (308) ITR 38 (Delhi)***, this Court held as under:-

> *"29. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the*

part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in Wel Intertrade Private Ltd. [2009] 308 ITR 22 (Delhi) we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania [2004] 269 ITR 192 that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing Officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated March 29, 2004, under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated March 2, 2005, are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above."

15. In the present case also, there is not even a whisper of any allegation that there has been a failure on the part of the assessee to disclose fully and truly all material particulars necessary for assessment.

16. Thus the petition is liable to succeed. The writ petition is allowed and the impugned notice under Section 148 of the Act dated 27.03.2014 and all proceedings consequent thereto including the order dated 23.02.2015 are quashed /set aside. There shall be no order as to costs.

SANJEEV SACHDEVA, J.

BADAR DURREZ AHMED, J.

MAY 12, 2016
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HIGH COURT OF DELHI
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