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

+ **ITA 291/2016**

CONSTELLATION CAPITAL LTD. Appellant
Through : Sh. Arvind Kumar, Advocate.

versus

INCOME TAX OFFICER, WARD-10(4) & ANR..... Respondents
Through : Sh. P. Roychaudhari, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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22.08.2016

The question of law sought to be urged in this appeal is as to the correctness of the order of the Income Tax Appellate Tribunal (ITAT) rejecting the assessee's cross-objection.

The brief facts are that the assessee is engaged in the business of finance, investment and trading of shares. Its assessment for AY 2001-02 completed under Section 143(3) of the Income Tax Act, 1961 [hereafter "the Act"] was sought to be reopened under proviso to Section 147(1). The Assessing Officer (AO) concerned formed his opinion that reassessment was necessary on account of information received with respect to the assessments in relation to one M/s. H.B. Relan and Company (hereafter "the company"). It first alleged that the said company was engaging in entry operator transactions. The relevant part of the opinion of the AO, reopening the assessment, furnished to the assessee reads as follows:

“5. In the instance case of the assessee, CONSTELLATION CAPITAL (P) LTD. the following credits have been shown in the bank account maintained by it in Punjab and Sind Bank, Daryaganj, New Delhi from account no.CA 3373 maintained by M/s. H.B. Relan and Company.

<i>Date of Clearing</i>	<i>Particulars</i>	<i>Ch. No.</i>	<i>Amount</i>
<i>7-FEB-01</i>	<i>TO CLEARING CONST. CLL</i>	<i>865230</i>	<i>10,00,000/-</i>
<i>10-FEB-01</i>	<i>TO CLEARING CONSTELL.C AP</i>	<i>865253</i>	<i>10,00,000/-</i>

In view of the totality of facts and findings of the investigation report, the person who have given credit entry in this case, have been proved to be men/parties of no creditworthiness. Therefore the aforesaid credit entries are squarely hit by section 68 of the IT Act. I therefore have reasons to believe that this amount of Rs.20,00,000/- represents income of the assessee chargeable to tax which has escaped assessment for A.Y. 2001-02.”

The assessee appealed against the final reassessment order made by the AO which had added a sum of ₹30 lakhs and brought it to tax under Section 68. The appeal also questioned the reopening of assessment under Section 147(1).

The CIT(A) allowed the appeal on merits, holding that the addition was unwarranted in the circumstances. At the same time, however, CIT(A) rejected the contention that the reassessment notice was wrongly issued and was not in accordance with law. The revenue

appealed against the CIT(A)'s order. By the impugned order, the ITAT remitted the matter with respect to the deletion of the amounts sought to be taxed under Section 68. The assessee's cross objection questioning the reopening of the assessment was, however, tersely dismissed without much discussion.

It is urged by the assessee firstly that the requirements of proviso to Section 147(1), i.e. non disclosure by reason of failure on its part is not discernable in the reassessment notice having regard to the opinion of the AO. Learned counsel relied upon a Division Bench judgment of this Court in *Haryana Acrylic Manufacturing Company v. CIT* 308 ITR 38 (Del) and another Division Bench decision of Bombay High Court in *Hindustan Lever Limited v. R.B. Wadkar, Assistant* 268 ITR 332 (Bom).

Learned counsel for the revenue urged that the appeal is not merited and that the assessee's contentions can be considered by the CIT(A) to which the ITAT has remitted the matter. In the present case, the assessee, which is engaged in the business of share broking and finance transactions was subject to Section 143(3) assessment. The law as to the appropriateness of an order reopening assessments is now well settled by the ruling of the judgment in *CIT v. Kelvinator India Ltd.* 320 ITR 561. The Supreme Court has ruled that "tangible material" should be disclosed or forthcoming to persuade the AO to reopen the assessment and that the text of the statute in that regard as to the satisfaction that the assessee had failed to disclose particulars in the return which resulted in income escaping assessment, should be clear.

In the present case, the opinion of the AO which is placed on the record discloses that his part of the order is entirely concerned with the transactions to which M/s. H.B. Relan and Company was exclusively a party to. Thereafter, in para 5, the opinion discusses the two transactions whereby the shares of M/s/ Constellation Capital (P) Ltd., were sold by the assessee. The mere circumstance that in respect of this company, M/s. H.B. Relan and Company too had transacted earlier or that it had maintained a bank account does not *ipso facto* lead to an inference that the assessee's undisclosed income had escaped assessment due to failure on its part to provide particulars. If such wide margins were to be provided to the AOs, possibly, thousands of entries would lead to reopening of assessment of careless assessees. The link between the assessee's returns and the amounts said to have escaped assessment had to be necessarily shown. Now, the opinion which led to the reopening of assessment nowhere shows that the assessee had in fact failed to report the transaction itself. In completely omitting to see this aspect, we are of the opinion that the ITAT fell into fundamental error of law. The question of law is accordingly answered in favour of the assessee and against the revenue. The appeal is accordingly allowed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 22, 2016/ajk