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

\+ **W.P.(C) 8162/2010**

HCL TECHNOLOGIES LTD. ..... Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with Ms. Kavita Jha and Mr. Vaibhav Kulkarni, Advocates.

Versus

ASST COMMISSIONER OF INCOME TAX & ANR.... Respondents

Through: Mr. Rahul Choudhary and Mr. Raghvendra Singh, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**O R D E R**

**% 23.11.2016**

1. The assessee/petitioner questions a reassessment notice under Sections 147/148 of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act'), issued to it on 30.03.2010 in respect of AY 2004-05. Three issues were sought to be highlighted against the petitioner by the AO who recorded his reasons to believe that reopening was essential. It was stated – in the AO's opinion that the claim of set-off under Section 72 of the Act of losses of the exempt unit under Section 10A of the Act as against the profits of the non-exempt unit was unjustified. The other two grounds relate to deduction of software licence fee and interest payable to ABN Amro Bank. According to the AO, either disclosure was not adequate or not made, and that in respect of these, the assessee had not made true and complete disclosure of material facts.

2. The Revenue which has filed its counter-affidavit justifies the reassessment notice contending that losses of a legible exempt unit cannot

be set-off and relies upon various judgments of the Court. It highlights that the assessee filed Form 56F alongwith its returns which was not justified. In this respect, learned counsel relied upon the text of Sections 10A(1) and 10A (5) of the Act together with Rule 16F and submitted that the question of reporting losses does not arise because the profits from the exempt unit are to be disclosed in Form 56F. Elaborating on this part of the "reason to believe", counsel for the Revenue submitted that the filing of the Form itself resulted in misleading the AO into permitting the losses and the set-off as per the Act which is completely incorrect. Justifying the reasons to believe upon which the reassessment notice was premised, the Revenue urges that the full, complete and true disclosure in the circumstances would have meant that the assessee should have desisted from filing Form 56F in respect of the unit which reported losses.

3. The petitioner who relied upon the grounds highlighted that in the course of the scrutiny assessment, queries were specifically raised by the AO with respect to the eligibility of the assessee's claim for set-off losses of Section 10A unit as against the profits earned by the other units. Learned counsel highlighted the extracts of the AO's questionnaire which were duly answered/replied by the assessee and the relative conclusion in the form of permissibility of the set-off as against the total profits recorded in the other units. It was submitted that this itself represented the conscious view of the AO and that the assessment should not have been re-opened on a re-appreciation or a better appreciation of the law.

4. As far as the other two questions are concerned, learned counsel submitted that the decision of this Court in ***Commissioner of Income Tax-II Vs. Maruti Suzuki India Ltd., LAWS (DLH)-2012-10-307*** concludes that

the expenses towards software were justified and fell in the Revenue's stream and that the decision in ***Moser Baer India Ltd. Vs. DCIT & Ors., 2012 (12) TMI 456*** supports it with respect to the interpretation of Section 43B of the Act vis-a-vis Section 10A of the Act. The assessee had together with its original return filed a note which specifically stated as follows:-

> *"5. The following 5 STP units of the Company are eligible for a deduction under Section 10A of the Act:-*
> *a) 445, Udyog Vihar, Phase-II, Gurgaon, Haryana;*
> *b) 5, 6 & 7, Udyog Vihar, Phase-II, Gurgaon, Haryana;*
> *c) 3rd Floor, 43-44, Montieth Road Egmore, Chennai; and*
> *d) E-33, 34, 35 Sector-11 Noida, UP, and*
> *e) No. 8 & 9 G.B. Palya, Off Hosur Road, Bangalore.*
> *However, these units have suffered a loss during the year and accordingly, no relief has been claimed by the Company in respect of these units for the assessment year 2004-05. The said units are eligible for a relief under section 10A of the Act and such relief will be claimed in respect of export profile of these units in the subsequent assessment years."*

5. The Revenue's contention is that Form 56 F itself was a misleading document that should not have been presented alongwith the return. A careful reading of the queries raised by the AO in the form of a questionnaire – which has been annexed together with the writ petition in this case (dated 22.08.2006), especially queries 1 and 32 to 34 and the reply of the assessee dated 04.09.2006 would reveal that the question of losses of the exempt unit vis-a-vis the profits of the non-exempt unit was present in the mind of the AO. That he did not choose to elaborate on this discussion would, in our opinion, mean that he accepted it, as is evident from his conclusion whereby set-off was permitted.

6. What really is the impugned "reason to believe" blows down therefore to the AO's opinion, at the fag end of the six years' period, that the Form 56F should not have been filed at all. Unfortunately, the AO does not categorically say that; he only states that if there are losses, Form 56F is unwarranted. That, in our opinion, is insufficient to uphold the Revenue's contention that there was no true and material disclosure of facts – there was material disclosure of all the facts, which was even considered by the AO in this case. That the AO did not correctly draw the inference or that his conclusion is based on incorrect premises is not sufficient for a justified reassessment notice, which has to be based on something objective outside of the record. In the present case where a contrary view was expressed by the AO, that just is not enough to fall within the calculus of permissible reassessment notice in terms of ***CIT Vs. Kelvinator of India Ltd. 320 ITR 561 (SC).***

7. As far as the other issues are concerned, it is plain that both of them are covered by the decisions of this Court.

8. For the foregoing reasons, the impugned notice and further proceedings cannot be upheld; they are hereby quashed.

9. The writ petition is allowed in the above terms.

**S. RAVINDRA BHAT, J.**

**NAJMI WAZIRI, J.**

**NOVEMBER 23, 2016**
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