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

\+ W.P. (C) 7307/2016

D.J.SURFACTANTS ..... Petitioner

Through: Mr. Tapas Ram Misra with Mr. R. Ramachandran and Mr. Shashank Sharma, Advocates.

versus

THE COMMISSIONER OF INCOME TAX-12 & ANR. ..... Respondents

Through: Mr. Asheesh Jain, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **02.11.2016**

The assessee's grievance in this proceeding under Article 226 of the Constitution of India is that the reassessment notice issued under Proviso to Section 147 of the Income Tax Act for assessment year 2009-10 is without jurisdiction. The original assessment was completed under Section 143 (3); the assessee had claimed deduction under Section 80IC of the Act in respect of its Himachal Pradesh (Baddi) Unit.

The assessee contends that the reassessment notice is invalid because though it ostensibly relies upon reasons, the same cannot stand up to legal scrutiny because they are not based upon any tangible or objective material. It is urged that the rationale in reopening assessment is in fact re-appreciation of the existing materials and, therefore, amounts to an impermissible change of opinion.

The revenue, on the other hand, seeks to justify reassessment contending that the evaluation of the returns and materials disclosed that the Assessing Officer had not taken note of the fact that substantial expansion was discernable in the assessment and documents relating thereto for assessment year 2009-10.

The reasons relied upon by the Assessing Officer for entertaining the belief that income had escaped assessment - under Section 147 is extracted below: -

> *"REASONS FOR BELIEF THAT THE INCOME HAS ESCAPED ASSESSMENT IN THE CASE OF MS / D J SURFACTANTS FOR THE AY 2009-10."*
>
> *The assessee is a partnership firm and is engaged in the business of manufacturing of Acid Slurry at Plot No.15B HPSIDC, Industrial Area (SFS) Baddi, Solan, Himachal Pradesh. The Firm has units at Udaipur, Delhi and Ropar as well. The assessee claims deduction u/s 80IC for the Baddi Unit.*
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> *2. During scrutiny proceeding for Ay 2013-14 it was found that the assessee has commenced operational activity in A.Y.2004-05 and is claiming deduction u/s 80IC of the Act. Assessee has made substantial expansion of its plant and machinery in the AY 2009-10 and started claiming 100% deduction since AY 2009-10 treating AY 2009-10 as the initial assessment year. The Assessee has been claiming a 100% deduction since AY 2004-05 till AY 2013-14.*

3. The firm has been assessed u/s 143 (3) for AY 2013-14 and 25% deduction has been allowed for the Baddi Unit instead of 100% as claimed by the assessee. Reliance has been placed on the judgment of Chandigarh ITAT in case of Hycron Electronics (ITA No.798/CHD/2015) in making the disallowance of 75% of the profit and allowing only 25% as per provisions of the Act.

4. The same applies to AY 2009-10, where the assessee has claimed 100% deduction u/s 80IC of Rs.2,88,21,503/-. The allowable deduction as per Sec 80IC of the IT Act, 1961 is 25% i.e. Rs.72,05,376/-. Thus, I have sufficient reason to believe that Rs.2,16,16,127/- (75% of the entire claim u/s 80IC of Rs.2,88,21,503/-) has escaped assessment under the meaning of sec 147 of the IT Act, 1961."

The Supreme Court in its binding ruling in *Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd.* (2010) 320 ITR 561 (SC) has ruled that a valid re-assessment notice can be issued based upon fresh objective material termed as "tangible evidence". Such fresh material may be in the form of documents or disclosures made during the subsequent period but relating directly to the year in question. It may be any other piece of evidence or information received by the Assessing officer. However, the important condition attached to the exercise of discretion to reopen a completed assessment is that it should not be a change of opinion based upon the existing material. This Court has no doubt in its mind that the impugned order falls in the category of impermissible notice as it is not based upon any tangible or fresh objective material indicating that the assessee had suppressed or withheld material facts which led to escape of income.

As a result, the impugned notice and all further proceedings are hereby quashed.

Writ Petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 02, 2016
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