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

\+ W.P.(C) 10664/2015

DHARAMVIR SINGH RAO ..... Petitioner

Through : Mr. Sanjeev Sabharwal, Senior Advocate with Mr.Abhimanyu Jhamb, Mr. Mohit Jhamb, Advocates.

versus

ASSTT. COMMISSIONER OF INCOME TAX ..... Respondent

Through : Mr. P. Roy Chaudhari, Senior Standing Counsel with Mr. Ruchir Batra, Advocate.

\+ W.P.(C) 11692/2015

DHARAMVIR SINGH RAO ..... Petitioner

Through : Mr. Sanjeev Sabharwal, Senior Advocate with Mr.Abhimanyu Jhamb, Mr. Mohit Jhamb, Advocates.

versus

ASSTT. COMMISSIONER OF INCOME TAX ..... Respondent

Through : Mr. P. Roy Chaudhari, Senior Standing Counsel with Mr. Ruchir Batra, Advocate.

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

O R D E R

% **18.10.2016**

The assessee/writ petitioner is aggrieved by the re-assessment notice issued by the respondents i.e. the Income Tax Authorities under Sections 147/148 of the Income Tax Act on 09.06.2014. The re-assessment notice impugned *inter alia* for two years i.e. 2008-09 and 2010-11, read as follows:-

"Return of Income declaring total income of

Rs.1,21,24,950 was filed by the assessee on 30.09.2008. the case was selected for scrutiny under CASS. Assessment u/s 143(3) was completed in this case on 29.12.2010 at an income of Rs.2,25,69,580 as against return income of Rs.1,21,24,950/- by the then Ld. Addl. Commissioner of Income tax, Range-20, New Delhi.

An information in respect of a suspicious transaction has been received from the office of DDIT (Inv), Unit IV-3, New Delhi that huge unexplained cash deposits/ other deposits amounting to Rs.3,59,03,066 have been made by the assessee in his bank Current a/c No 1135914, in the RBS/ABN AMRO Bank, N.V. Vatika, First India Place, Tower-B, Block A, Sushant Lok, PH-1, M G Road, Gurgaon 122002 during the FY 2007-08. Amount of Rs.5,47,89,347 has also been deposited in Current a/c No 1103472, RBS/ABN AMRO Bank v. Vatika, First India Place, Tower-B, Block A, Sushant Lok, PH-1, M G Road, Gurgaon 122002 (in the name of M/s Nirvan Services, an entity owned by Sh. Dharam Vir Singh Rao) during the FY 2007-08. The above cash deposites were withdrawn through cash by Sh. Dharamvir Singh Rao".

For the assessment year 2010-11, an identically worded notice was issued, which reads as under :

"Return of income declaring total income of RS.92,35,990/- was filed by the assessee on 15.10.2010. The return was processed u/s 143(1) on 08.05.2011. The case was selected for scrutiny under CASSo Assessment u/s 143(3) was completed in this case on 26.03 .2013 at an income of RS.1,00,41,200 as against return income of RS.92,35,990/by then A.O., Circle-20(1),New Delhi. During the course of audit Scrutiny by office of the .

DCIT, SAP-II , New Delhi, it was seen that interest u/s 234B had been short charged by Rs.48,218/-. Order u/s 154/143(3) was passed in the case on29.11.2103 at an income of RS.1 00,41,200/- charging correct amount of interest u/s234B as pointed out in audit para raised .

An information in respect of a Suspicious Transaction has been received from Office of the DDIT(lnv.) , Unit-IV(3), New Delhi that huge unexplained cash deposits/other deposits amounting to Rs.7,47,979/- have been made by the assesse in his Bank Current A/c No.1135914, in the RBS/ABN AMRO Bank, NV Vatika, First India Place, Tower-B Block-A Sushant Lok, PH-1, M.G Road, Gurgaon-122 022 during the F.Y. 2009··10. The grounds of suspicion in the said STR wa's that there was cash deposits Of around . RS.50.96 lakh during the period October 2008 till 29.10.2009 which was followed by inter-account transfers to related party accounts pertaining to customer's son Sanjeev Yadav, Nirvan Infrastructure Pvt. Ltd., and Nirvan Services an entity owned by Sh. Dharamvir Yadav. The cash deposits in the related accounts werearound Rs.45.94 lakh during that period which was entirely with.drawn through cash by the customer.

An amount of RS.11 ,84,345/- has also been deposited in Current A/c NO.1103472, RBS/ABN AMRO Bank, N.V. Vatika , First India Place, Tower-B. Block-A, Sushant Lok, PH-1, M.G Road Gurgaon-122022 (In the name of M/s Nirvan Services, an entity owned by Sh. Dharamvir Singh Rao) during the F.Y. 2009-10."

Learned senior counsel for petitioner argues that the reasons recorded for issuing reassessment notice cannot stand up to the scrutiny of a valid "opinion" based upon tangible material, an essential requirement spelt out by the Supreme Court in *Commissioner of Income Tax v. Kelvinator Ltd.*

320 ITR 561.

Learned counsel for the respondent submits that reference to information and further inquiries made pursuant to it are sufficient to constitute "reasons to believe" within the meaning of the expression under Section 147 (1) of the Act. Learned counsel also relied on the relevant file notings which were produced in court.

We have considered the submissions made before us and the material on record. Neither is the notice containing the reasons nor is the official file forthcoming about what the Assessing Officer meant by "an information in respect of a suspicious transaction" to qualify for a valid re-assessment notice in terms of the Supreme Court ruling in *Kelvinator (supra)*.

The notice or the materials should be objective i.e. apart from what exists. The ruling in *Kelvinator (supra)* is also clear that a change of opinion or review as it were based upon the existing materials with no more, is inadequate to justify reopening of a completed assessment. Furthermore, the materials on record show that in both the cases, the original assessments were completed under Section 143 (3).

Having regard to all these facts, the court is of the opinion that the impugned notices and further proceedings cannot stand the test of law; they are hereby quashed.

These writ petitions are allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 18, 2016