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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 92/2017

PRINCIPAL COMMISSIONER OF
INCOME-TAX – 8

..... Appellant

Through: Mr. Rahul Kaushik, Advocate

versus

M/S SNG DEVELOPERS LIMITED

..... Respondent

Through: Mr. Inder Pal Bansal and Mr. Vivek
Bansal, Advocates

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

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12.07.2017

Dr. S. Muralidhar, J.:

1.This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the order dated 29th July, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 735/Del./2012 for the Assessment Year ('AY') 2003-04.

2. While admitting the appeal on 15th February, 2017, the following question of law was framed by the Court for consideration:

Did the ITAT and the CIT(A) fall into error in holding that the reassessment was not justified in law in the circumstances of the case?

3.The Assessee filed its return of income on 25th November, 2003 for AY 2003-04 declaring an income of Rs. 76,340.

4. On 31st March, 2010, the Assessing Officer ('AO') served a notice on the Assessee under Section 148 of the Act stating that he has reasons to believe that income of Rs. 95,65,510 had escaped assessment which was based on a report of the Directorate of Income-Tax (Investigation). The 'reasons to believe' as noted by the AO and as supplied to the Assessee read as under:

"Return of income in this case was filed on 25/11/2003 declaring total income of Rs.76,340 which was processed vide order u/s 143(1) dated 16/02/2004.

The directorate of Income Tax (Inv.), New Delhi has carried out a detailed enquiry about the persons /companies engaged in the business of providing accommodation entries to various companies. Information has been received along with the statements of persons who had admitted that they were in the business of providing accommodation entries and they were not doing any business but were engaged in the activity of providing accommodation entries to other concerns. These persons used to issue cheques in lieu of cash received after deducting their commission and these cheques were generally issued as share application money/ unsecured loans.

As per the information received, the above named assessee M/s. SNG Developer Ltd. (earlier known as S N JEE Developers (P) Ltd.) has also received the accommodation entries during the F.Y. 2002-03 as per annexure -B attached.

These accommodation entries involving total amount of Rs. 95,65,510 represent the assessee's own unaccounted money.

In view of above, I have reason to believe that an income of Rs. 95,65,510 has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.

Since, as per the available records the assessment was not made in this case u/s 143(3) or 147 of the Act and period of 4 years has elapsed, proposal is hereby submitted along with the relevant assessment records to the Addl. Commissioner of Income Tax,

Range-9, New Delhi for consideration and necessary approval in accordance with the provisions of section 151 (2) of the IT Act, 1961 for issuance of notice u/s 148 of the I.T. Act.

5. Annexure B to the reasons set out the details of the entries which were 19 in number totalling Rs. 95,65,510/-.

6. The objections raised by the Assessee were rejected by the AO by an order dated 24th September, 2010. The AO proceeded to pass an assessment order under Section 144 read with Section 147 of the Act on 16th December, 2010 making an addition of Rs.95,65,510 to the declared income of the Assessee.

7. The Assessee then went in appeal before the CIT (A), who by order dated 19th August, 2011 allowed the appeal filed by the Assessee. The CIT (A) held that the re-opening of the assessment was “without any satisfaction, without verifying the information received from Directorate of Investigation” and that the “AO has not applied his mind. There is no satisfaction on the part of the AO regarding escapement of any income.”

8. The Revenue then went in appeal before the ITAT which was dismissed by the impugned order. The ITAT concurred with the CIT (A) that the jurisdictional requirement for re-opening of the assessment under Section 147 read with Section 148 of the Act had not been satisfied. In particular, the ITAT observed that the AO “has not given details what was stated by the so-called entry operators in respect of the entries related to the assessee”. Further, from the table of accommodation entries produced by the Assessee, the ITAT found that “there are five instances, where entries have been

repeated”.

9. Two decisions are relied upon by Mr Rahul Kaushik, learned counsel for the Revenue. The first is decision dated 5th December, 2012 in Writ Petition (Civil) No.7538/2012 (***Pratibha Finvest Pvt. Ltd. v. ITO Ward 14(3), New Delhi***). As far as this decision is concerned, the limited question that was sought to be urged by the Assessee which was in appeal before this Court was whether the ITAT had fallen in error in upholding the addition of Rs.1, 10,896 as income earned by way of commission for providing accommodation entries, when in fact this particular item did not feature as part of the reasons to believe recorded by the AO in that case in support of the notice issued under Section 147 of the Act. The Court had analysed the material placed on record and found that the total amount of alleged accommodation entries worked out to Rs.55,44,816 and in that regard the Assessee’s explanation “was somewhat accepted”. It was to the limited extent of Rs.1, 10,896/- that was held to constitute the commission that could be said to be reasonably earned by the Assessee. Therefore, this was not a case of non-application of mind by the AO to the material available with him prior to the reopening of the assessment.

10. The second decision relied upon by Mr Kaushik is ***A.G. Holdings Pvt. Ltd. v. Income Tax Officer [2013] 352 ITR 364 (Del)***. There the Court took note of the fact that the investigation report referred to the “specific information that the petitioner company had received an amount of Rs.4,50,000/- from M/s Quality Security Services (P) Ltd. The report also mentions that this is an accommodation entry given by the said company to

the petitioner company. The relevant bank account particulars, instrument number, etc. have all been reported.” In the circumstances, the Court concluded that “the investigation report is a pointer and casts grave doubts on basis of evidence/material on the genuineness of the share contribution.”

11. In the considered view of the Court, neither of the above two cases come to the aid of the Revenue in the present case where the facts speak for themselves. The reasons for reopening the assessment have already been set out hereinbefore. The Court has again perused Annexure – B thereto. As already noticed by the ITAT, there is a repetition of at least five entries. In other words the total amount constituting the so-called accommodation entries would therefore not work out to Rs.95,65,510. On the face of it, therefore, there is a non-application of mind by the AO. What is further unacceptable is that the AO persisted with his “belief” that the said amount had escaped assessment not only at the stage of rejecting the Assessee’s objections but also in the re-assessment proceedings where he proceeded to add the entire amount to the returned income of the Assessee. This is a classic case of non-application of mind by the AO.

12. In a recent decision in *Principal Commissioner of Income Tax-6 v. Meenakshi Overseas (P) Ltd.* [2017] 82 taxmann.com 300 (Delhi), this Court observed as under:

“22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which

is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.”

13. In view of the said decision, the Court has no hesitation in concluding in the present case that the reasons recorded by the AO for reopening the assessment under Section 147 of the Act do not meet the requirement of the law. The ITAT was, therefore, perfectly justified in confirming the order of the CIT (A) and holding the reopening of the assessment to be bad in law.

14. The question framed is, accordingly, answered in the negative i.e. in favour of the Assessee and against the Revenue.

15. The appeal is dismissed but in the circumstances with no orders as to costs.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 12, 2017
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