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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) 729/2017 & CM 3307/2017

PHI SEEDS PVT. LTD.

..... Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with
Ms. Kavita Jha and Ms. Roopali Gupta, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR Respondent

Through: Mr. Rahul Kaushik, Senior Standing
Counsel

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

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28.07.2017

1.This writ petition filed by the Assessee challenges the re-assessment order dated 31st December, 2016 passed by the Assessing Officer ('AO') in respect of Assessment Year ('AY') 2009-10 under Section 147 read with Section 143(3) of the Income Tax Act, 1961 ('Act').

2. The Petitioner states that it is carrying on agricultural activities to develop and cultivate seeds which are then subjected to processes such as cleaning, drying, sorting, conditioning treatment and packing. The Petitioner claims to have been producing and marketing high-yielding hybrid seeds.

3. For the AY in question, the Assessee filed its return of income on 30th September, 2009 declaring an income of Rs.9,96,09,675. The return was picked up for scrutiny and an assessment order under Section 143(3) of the

Act was passed by the Assessing Officer (AO) on 15th February, 2013 assessing the total income of the Assessee at Rs.129,67,68,810.

4. On 1st March, 2013, the Petitioner filed an application before the AO under Section 154 of the Act, for rectification of the assessment order dated 15th February 2013, *inter alia*, on the ground of wrongful addition on account of its closing stock.

5. It may be mentioned at this stage that until March 31, 2008, the agricultural seeds processed by the Petitioner for production of hybrid seeds, had been valued on the basis of the cost of cultivation and processing costs without considering the parent seed charges. However, for AY 2009-10, while computing the valuation of closing stock, the agricultural seeds were valued on the basis of the cost of cultivation and processing costs including parent seed charges. The result of this change was that the inventory and the profit for the year increased to Rs. 17,46,05,000. In its notes to the accounts, this was specifically mentioned in the following manner:

“2 Change in Accounting Policy/Estimate until March 31, 2008, agricultural seeds were valued based on cost of cultivation and processing costs without considering parent seed charges. However at March 31, 2009, agricultural seeds have been valued based on cost of cultivation and processing costs including parent seed charges. As a result of this change the inventory and the profit for the year have increased by Rs 174,605,000.

6. It appears, however, that while passing the assessing order, the AO overlooked the aforementioned change. This led to the Petitioner filing an application under Section 154 of the Act for rectification of the assessment

order.

7. On the said application, the AO passed an order dated 4th March 2013, allowing the plea of the Petitioner with regard to the additions made on account of closing stock, as under:

“7. Allowability of addition made on account of closing stock It was stated by the company that there has been a change in accounting policy of the company and the it had included parent seeds cost in valuation of its closing stock .Thus the company should be allowed a deduction of Rs. 14,29,95,311/- being closing stock of AY 2008-09 and the addition made during AY 2009-10 of Rs. 7,33,48,340/- needs to be deleted.

The claim of the company was verified from its books of accounts and found to be correct. Accordingly it needs to be allowed a deduction of Rs. 142995311/- and addition of Rs. 7,33,48,340/- made in original assessment order needs to be deleted.”

8. On 9th March 2016, another AO issued a notice under Section 147 of the Act to the Petitioner stating that he had reason to believe that the Petitioner’s income chargeable to tax for the AY in question had escaped assessment. In response to this notice, on 5th April 2016, the Petitioner, while protesting against the assumption of jurisdiction under Section 148 of the Act, asked that the earlier return of income be treated as a return in response to the notice under Section 148 of the Act. The Petitioner sought the reasons for reopening the assessment. The reasons furnished to the Petitioner on 16th November, 2016 read as under:

“Since the assessee did not make his claim of change in policy of valuation of closing stock in the original return of income or by filing a revise return as required u/s 139(5), the claim of the assessee in this respect was not admissible and therefore the income has been

underassessed by a sum of Rs. 14,29,95,311/-.”

9. Strangely, in the present case, the procedure of passing a separate order on the objections filed by the Assessee to the reopening of the assessment, was not followed by the AO. In other words, the AO straightaway proceeded to pass the re-assessment order on 31st December, 2016 by making an addition on the above score.

10. While directing notice to issue in this petition on 25th January 2017, in the presence of learned counsel for the Respondent, the Court, *inter alia*, observed as under:

“7. The applicant/petitioner is aggrieved by the reassessment order made without rejecting its objections to the notice dated 09.03.2016. It is submitted that the reasons for reopening the assessment were furnished on 07.11.2016, after which it lodged its objections on 16.11.2016. The Assessment Officer did not pass any separate order but instead proceeded to conclude the reassessment on 31.12.2016.

8. The Court has considered the "reasons to believe" forming the basis for reopening the assessment under Sections 147/148 of the Income Tax Act, 1961 (for short 'the Act'). Prima facie they do not disclose any tangible material and are rather premised upon the calculation claim made by the assessee/petitioner in the course of a rectification application under Section 154 of the Act.

9. In these circumstances, the respondents are hereby directed not to enforce the directions pursuant to the assessment order impugned in these proceedings till the next date of hearing.

10. List on 24.03.2017.”

11. Thereafter, the matter was adjourned to 24th March, 2017 when time was sought for filing counter affidavit. However, till date, no counter-affidavit

has been filed. Considering that two opportunities have already been granted, the Court is not inclined to grant any further time to the Revenue to file its counter affidavit.

12. The Court has heard the submissions of Mr. Ajay Vohra, learned Senior Counsel for the Petitioner/Assessee Mr. Rahul Kaushik, learned Senior Standing Counsel for the Revenue.

13. The reopening of the assessment in the present case is sought to be made after four years after the original assessment order was passed under Section 143(3) of the Act. The first proviso to Section 147 of the Act is straightaway attracted. It mandates that there must be failure on part of the Assessee to make a full and true disclosure of all material facts necessary for the assessment.

14. It is pertinent to note here that with regard to the addition sought to be made by the impugned order, the Petitioner did make a full and true disclosure of all material facts. Note-2 to the accounts which have been extracted hereinbefore explained the change in the method of valuation of the closing stock. In fact, the AO himself acknowledged the mistake of overlooking that note. He, therefore, accepted the application filed by the Petitioner under Section 154 of the Act and rectified the assessment order by the subsequent order dated 4th March, 2013. These facts have been completely overlooked by the AO while seeking to reopen the assessment. The observation that the Assessee did not make a disclosure of the changed method of valuation is plainly contrary to the records. On the face of it, the reopening is unsustainable in law.

15. There is another question urged by the Petitioner regarding the failure of the AO to comply with the procedure explained by the Supreme Court in ***GKN Driveshafts (India) Ltd v. Income Tax Officer 259 ITR 19*** is left open for decision in an appropriate case.

16. For the above reasons, the reopening of the assessment for the AY in question by the impugned order dated 31st December, 2016 passed by the AO is, hereby, set aside.

17. The writ petition is allowed in the above terms but in the circumstances, with no orders as to costs. The pending application is disposed of.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

JULY 28, 2017

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