

\$~15-19

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

%

DECIDED ON: 04.01.2017

+ **W.P. (C) 3675/2004, 3893/2004, 3894/2004, 3895/2004 & 3896/2004**

M/S HB STOCKHOLDINGS LTD.

..... Petitioner

Through: Mr. S.K. Aggarwal with Mr. V.P. Gupta,
Advocates.

versus

THE ASST. COMMISSIONER OF I.T.

..... Respondent

Through: Mr. Rahul Chaudhary with Ms. Lakshmi
Gurung, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S.RAVINDRA BHAT, J.(ORAL)

W.P. (C) 3675/2004

1. In view of the common order we have made today in W.P.(C) 3893-3896/2004, this petition has been rendered infructuous and is, therefore, dismissed.

W.P. (C) 3893/2004, 3894/2004, 3895/2004 & 3896/2004

2. In these petitions, reassessment notice dated 27.11.2002 (in respect of assessment years 1994-95, 1995-96) and 15.01.2003 (pertaining to assessment years 1996-97) have been challenged.

3. The brief facts are that the search was conducted in the assessee's premises on 07.08.1997. At that point of time, regular assessment for the years 1996-97 and 1997-98 were pending; they were eventually completed

on 24.03.1999 and 22.03.2000. The block assessments for the four years in question were completed on 31.08.1999.

4. The block assessments were by and large confirmed by the CIT (A) who granted relief in respect of certain amount of disallowance. The ITAT, however, was of the opinion that fresh material of the kind warranting the block assessment concluded had not been discovered. It, therefore, set aside the block assessment completed on 31.08.1999 for the four years in question. At the same time, the ITAT also observed in its order that having regard to the fact that no material was forthcoming which could be assessed for such block assessment if the Revenue was of the opinion that a fresh look was needed it could seek other provisions of the law including reassessment. Those observations formed the basis of the reassessment notice which are challenged in this case.

5. The petitioner contends that so far as the reassessment notice pertaining to the years 1994-95 and 1995-96 (both dated 27.11.2002) are concerned, they are plainly outside the permissible time period under Section 147/148 of the Income Tax Act, 1961. It is stated that since the notice was issued on 27.11.2002, i.e., well beyond the six years limitation imposed for both assessment years, the impugned notices are illegal and all proceedings continued thereafter cannot be sustained. So far as the other two notices (which are subject matter of W.P.(C) 3895-3896/2004) are concerned, it is contended that after the completion of the search on 07.08.1997, the AO could well have taken note of whatever lapses were discerned in the course of enquiry and completed the assessments by making such additions as were necessary after due enquiry. It is emphasized that since regular assessments were completed on 24.03.1999 and 02.03.2000

without making any enquiries in respect of the materials that were disclosed, the Revenue could not again seek to reopen the same on the ground of search and seizure proceedings leading to a failed block assessment. It was argued, in other words that having failed to bring to tax any additional amount over and above the originally assessed amounts, in the course of the block assessment, the Revenue could not have tried to improve its case in the particular facts and circumstances of the case.

6. Counsel for the Revenue relied upon Section 158B (b) and urged that the latter part, i.e., the reference to non-disclosure of “any expense, deduction or allowance claimed under this Act which is found to be false” was inserted by the Finance Act, 2002 with retrospective effect from 1.7.1995 and that in the circumstances of the case, the reassessment notices were justified.

7. This Court is of the opinion that so far as the petitioner’s claim with respect to the notice being time barred in W.P.(C) 3893 & 3894/2004 are concerned, there is really no answer. The notice was indefensible when looked at from any angle. The period of limitation prescribed by Section 147 (1) in respect of the time within which notice can be issued is absolute and does not call for any exception. Having regard to this incurable nature of the provision, the notice for assessment years 1994-95 and 1995-96 both dated 27.11.2002 have to be quashed.

8. So far as the other two years are concerned, it is a fact that the assessment was completed in respect of assessment years 1996-97 on 24.03.1999, i.e., before the block assessment was completed. For the other years, i.e., assessment years 1997-98 it was completed on 22.03.2000 which is after the completion of the block assessment. However, in both cases, the

regular assessments were completed after the search and seizure proceedings took place on 07.08.1997. If in fact the search and seizure proceedings alerted the Revenue as to the possibility of the assessee having practiced deceit as is being alleged now, there was nothing which prevented it from carrying out proper investigation and enquiry during the regular assessments which were completed but after the search. Having failed to do so, it cannot now merely at the instance of the ITAT through stray and casual observations seek to revisit the same issues as it were. There is no dispute that apart from the ITAT's observations there was in fact no tangible or objective material within the meaning as understood for the purposes of Section 147/148 of the Act which could have validly triggered the reassessment notices for these years. Consequently, the reassessment notices for assessment years 1996-97 and 1997-98 too are invalid.

9. For the forgoing reasons, all the impugned reassessment notices and the proceedings emanating therefrom are hereby quashed.

10 The writ petitions are allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

JANUARY 04, 2017
/vikas/