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

+ **W.P.(C) 5143/2005**

AMSA INDIA PVT LTD. Petitioner

Through: Mr. M. S. Syali, Senior Advocate
with Mr. Mayank Nagi, Advocate.

Versus

COMMISSIONER OF INCOME TAX DEL Respondent

Through: Mr. Asheesh Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **09.03.2017**

1. The petitioner is aggrieved by a notice dated 13.01.2005 issued under Sections 147/148 of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act') by the Revenue proposing to reassess Assessment Year (AY) 1997-98 to 2001-02. The 'reasons to believe', upon which the impugned notice is premised, reads as follows:-

" M/s AMSA India P. Ltd. formerly known as M/s Aravali Medical Safety Appliances P. Ltd., is assessed to tax in this charge.

The Directorate of Income Tax (Inv.), New Delhi during the course of survey operation on the business premises of Sh. Sanjay Rastogi at 210, Wakil Chamber, A-115, Shakarpur, Delhi and subsequent investigation, found that Sh. Sanjay Rastogi and his associates had a number of companies for giving bogus entries and that one of these companies M/s Hallmark Healthcare Ltd. having bank Account Nos. CA833 in Khatri Cooperative Bank Ltd. had given bogus entries to M/s AMSA India P. Ltd. for the period relatable to A.Y.1997-98 as per details below:

<i>Date</i>	<i>Cheque No.</i>	<i>Debit Amt.(Rs.)</i>	<i>Credit (Rs)</i>
5-3-97	761030		4,00,000

From the facts stated above, I have reasons to believe that income chargeable to tax amounting to Rs.4,00,000/- has escaped assessment.

As the original assessment of M/s AMSA India P. Ltd. for the A.Y.1997-98 was made u/s 143(3) on 21-2-2000 and a period of four years from the end of the A.Y. 1997-98 has expired, the approval of CIT, Delhi-I is solicited for reopening of the case u/s 147 of the IT Act.”

2. The petitioner contends that the sole basis for the reassessment notice, i.e. the statement made by Mr. Sanjay Rastogi that he and his associates provided bogus entries to various entities, could not have been the basis for valid reassessment notice. It is pointed out that the reference to Rs.4,00,000/- claimed by the assessee as commission expenditure, for each successive AY, was a subject matter of inquiry for AY 1996-97. The Assessing Officer (AO) had on 05.02.1999, asked for details with respect to M/s Hallmarks Healthcare Ltd., which was a beneficiary of the commission paid by the petitioner. The petitioner has, apparently, replied on 16.02.1999, giving the explanation as to why the expenditure was genuine and ought to be treated as such. In that letter, the petitioner had explained that even though the Revenue’s personnel were unable to contact any individual at the given address of M/s Hallmarks Healthcare Ltd., nevertheless, that concern was an income tax assessee. The petitioner had, in fact, furnished a copy of

The assessment order, accepting the returns to the tune of over Rs.19,00,000/- (of M/s Hallmarks Healthcare Ltd.). It was further submitted that the Directors of the said concern had some internal disputes and as a consequence, apparently, the company was facing winding up. After satisfying himself as to the correctness of this explanation, the AO accepted the expenditure and completed assessment under Section 143(3) of the Act. In respect of the returns of the next five years, the AO did not, in the circumstances, deem it appropriate to question the expenditure and for AY 1997-98 and 1998-99, the AO finalized the assessment under Section 143(3) of the Act and for the other years, intimation was accepted under Section 143(1) of the Act.

3. Placing reliance upon the ruling in the cases of ***CIT Vs. Kelvinator of India (2003) 256 ITR 1 (Del)*** and ***Haryana Acrylic Manufacturing Vs. CIT (2009) 308 ITR 38 (Del)***, it was submitted that there is no live link between the so called fresh material relied upon by the Revenue and the assessee. Elaborating on this, the learned counsel argued that the nature of inquiry in AY 1996-97, about the expenditure, was regarding the genuineness of the concern i.e. M/s Hallmarks Healthcare Ltd.. Having satisfied himself that the said concern was a regular assessee and an existing company, the assessment was finalized. In the fresh materials sought to be used by the Revenue to reopen the assessment, all that it relies upon is the statement of Mr.Sanjay Rastogi, who does not even directly mention the petitioners as one of the beneficiaries of the bogus transactions he was involved in. In these circumstances says counsel, the reassessment notice is not valid.

4. Counsel for the Revenue on the other hand urges that there is a good rationale for reopening the assessment. The learned counsel relied upon 'reasons to believe' to say that it is not a change of opinion, but rather that the notice has placed reliance upon fresh material i.e. Sanjay Rastogi's statement, which pointed to suspect and bogus entries, resorted to by several entities with which he was associated. Pointing out that the petitioners had claimed expenditure in the form of commission paid to M/s Hallmark Healthcare Ltd., it is submitted that the circumstance that Sanjay Rastogi did not specifically mention the assessee in his statement, did not preclude the possibility of the expenditure being a sham. It was submitted that so long as the statement was outside the regular records it constituted fresh material to pass the test prescribed in ***Kelvinator's*** case (*supra*).

5. It is evident from the above factual discussion that the entire basis for the reassessment notice impugned by the petitioner is Sanjay Rastogi's statement. His questioning and his answers nowhere implicate the petitioner. He specifically names 2-3 concerns as the beneficiaries of the bogus entry business / activity that he was carrying on. However, the statement nowhere mentions the petitioner. The second aspect - and more crucially in this case-is that the issue with respect to the commission expenditure claimed by the petitioner had undergone a further fresh inquiry – *albeit* in one previous AY 1996-97. The Assessing Officer, on that occasion too felt that the expenditure needed more scrutiny or inquiry. The assessee / petitioner was able to show that M/s Hallmarks Healthcare Ltd. was an existing company which had filed returns

and was assessed to income tax. The statement of Sanjay Rastogi may have been the starting point for some kind of an inquiry but in the circumstances of this case, to hold or assume that the individual concern had some association and every transaction of that concern needed scrutiny, was too far at a distance to tread as to sustain as 'reasons to believe', under Sections 147/148 of the Act. *Kelvinator's* case (*supra*) is also authority to the proposition that the material should have a live or proximate link with the assessee's suspected/concealed income or non-disclosure of a material fact. Precisely that kind of live link is absent in the facts of this case.

6. In view of the foregoing discussion, the petitioner has to succeed. Accordingly, the impugned notice dated 13.01.2005 and all proceedings emanating therefrom are hereby quashed.

7. The writ petition is allowed on the above terms.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

MARCH 09, 2017

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