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

+ **W.P. (C) 1842/2015**

DHARAMVIR SINGH RAO Petitioner
Through: Mr. Sanjeev Sabharwal, Sr. Advocate
with Mr. Mohit Jhamb, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX Respondent
Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **ORDER**
21.03.2017

The petitioner is aggrieved by the reassessment notice issued to it for the assessment year 2007-08 on 29.03.2014. The “reasons to believe” recorded by the Assessing Officer reads as follows: -

“REASONS FOR THE BELIEF THAT THE INCOME HAS ESCAPED ASSESSMENT IN THE CASE OF SH. DHARAMVIR SINGH RAO, H-4/9, MODEL TOWN-II, DELHI-110009, PAN: AAAPY1522F FOR THE ASSESSMENT YEAR 2007-08.

Return of Income declaring total income of Rs.35,24,980/- was filed by the assessee on 31.10.2007. The return was processed u/s 143 (1) on 18.03.2009.

An information in respect of a Suspicious Transaction has been received from office of the DDIT (Inv.), Unit-IV(3), New Delhi that huge unexplained cash deposits/other deposits amounting

to Rs.3,65,74,000/- 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-122 022 during the F.Y. 2006-07. An amount of Rs.32,24,67,563.80/- 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-122 0 22 (In the name of M/s Nirvan Services, an entity owned by Sh. Dharamvir Singh Rao) during the F.Y.2006-07.

During the course of enquiries conducted by the office of the DDIT (Inv.), Unit-IV (3), New Delhi in respect of above mentioned cash deposits & withdrawals, the assessee had been confronted with financial year wise break up of unexplained deposits. However, he has failed to explain the same.

On perusal of bank statements and cash book provided by his counsel during the course of enquiry, it was also observed that cash book presented to explain the transactions, is unreliable.

In view of the above, I am satisfied that that income to the tune of Rs.35,90,41,563.80/- (Rs.3,65,74,000/- + Rs.32,24,67,563.80/-) has escaped assessment within the meaning of section 147 of the Income Tax Act. Hence, this is a fit case for issue of notice u/s 148.”

It is contended that the reassessment notice is unsustainable since the rationale is vague and does not measure up to the standards required of such a notice in terms of Section 147/148. To say this, the petitioner first argues that the notice was not preceded by valid approval based upon proper application of mind by the concerned Commissioner; secondly, that it was not served in the proper manner and was rather served allegedly through

affixation. Last and most importantly, it is urged that the “reasons to believe” furnished are not premised upon any tangible material, instead it vaguely refers to the report of the Investigation Wing.

Counsel for the respondent/Revenue urged that the petition should not be entertained. It was pointed out that unlike the other cases (which the petitioner had relied upon in the first instance for AY 2008-09 and 2010-11, W.P.(C) 10664 and 11692/2015 - both of which were decided on 18.10.2016) in the present assessment year, the proviso to Section 147 is inapplicable. For that, it is contended that the assessment was not completed after scrutiny, but was more of an acceptance of intimation of the return. It is next urged that so far as the question of approval is concerned, CIT (A) had clearly considered the “reasons to believe” that was put up to him and approved the notice. Lastly, it was urged that affixation is a known and accepted mode of service; counsel relied upon the decision cited as *Commissioner of Income Tax v. Thayaballi Mulla Jeevaji Kapasi* (1967) 66 ITR 147 (SC).

At this stage, this Court notices that for the two assessment years 2008-09 and 2010-11, the judgment rendered on 18.10.2016 clearly found that identical notices under Section 147/148 of the Income Tax Act, 1961 did not measure up to the standards of a valid opinion based upon tangible material, as clarified by the Supreme Court ruling in *Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd.* (2010) 320 ITR 561 (SC). The same logic in our opinion is applicable in the present case. Furthermore, the reference by the Revenue to the third paragraph of the “reasons to believe” in this case is of no consequence. The basic or

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necessary facts which led the AO to form the opinion are contained in the second paragraph of the impugned notice, i.e., the Investigation Wing's report. The wording and rationale in the impugned notice is identical to that in the previous years' case as well as for the AY 2010-11. The basic premise upon which the Revenue can issue a valid notice is if tangible material is unearthed after the completion of assessment - or intimation is made under Section 143 (1) in the given facts of the case. This is because of the non-obstante clause. In other words whether there is a completed assessment under Section 143 (3) or intimation under Section 143 (1), the essential pre-requisite for existence of tangible material has to be fulfilled. In the present case, clearly this pre-requisite was not fulfilled. Consequently, the impugned order cannot stand; it is hereby quashed. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 21, 2017

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