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

\+ W.P.(C) 9465/2007

JAGUAR OVERSEAS LTD. THR. THE MANAGING DIRECTOR

..... Petitioner

Through : Dr. Rakesh Gupta, Sh. Somil Agarwal and Ms. Monika Ghai, Advocates.

versus

UOI & ORS.

..... Respondents

Through : Sh. Raghavendra Singh, Advocate.

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

O R D E R

% 09.02.2017

The petitioner’s complaint in these proceedings under Article 226 of the Constitution is that the notice to reopen assessment proceedings for AY 2001-02 are contrary to the express intendment of Sections 147/148 of the Income Tax Act, 1961. The assessee had claimed benefit of deduction under Section 80HHC and was subjected to scrutiny assessment which was completed on 30.01.2004. The Assessing Officer (AO) alleged that the income had escaped assessment since the disclaimer certificate did not include deductions pursuant to export incentives and hence the petitioner was allowed excess deductions under Section 80HHC.

The "Reasons to Believe" issued pursuant to the notice, proposing re-assessment dated 31.07.2007 reads as follows:

"***Reasons recorded in the case of M/s Jaguar Overseas Limited***
Assessment year 2001-02

The original assessment was completed in the above referred case under section143(3) of Income Tax Act, 1961 on 30.01.2004 on total income of Rs.4,52,98,935/- against returned income of Rs.4,49,80,720/-.

2. In the assessment order passed by the Assessing Officer, the deduction was allowed at Rs.2,95,73,978/- after giving effect to the disclaimer issued to the supporting manufacturer to the extent of Rs.2,94,07,687/-.

3. It has been found that the excess deduction emanates from the effect given on account of the disclaimer issued to the supporting manufacturer. It is seen that the deduction on account of disclaimer did not include the deduction in pursuance of the export incentives at Rs.2,87,32,458/- which includes substantia lpart of DEPB. The assessee company has been allowed excess deduction under section 80HHC of Income Tax Act 1961 by Rs.147.52 lakhs.

4. It is to be examined whether the assessee company has sold the DEPB benefits in the open market so as to consider the admissibility in view of the 2nd, 3rd and 4th proviso of sub-section (3) of section 80 HHC of Income Tax Act, 1961.

At this stage, more than four years have elapsed *from the end of relevant assessment year, therefore, the approval of Learned Commissioner of Income Tax-Delhi-II, New Delhi, is mandatory in view of the provisions of section 151 of Income Tax Act, 1961 which are reproduced below:*

The provisions of section 151 are reproduced as under:-

"151. ***Sanction for issue of notice***
(1) In a case where an assessment under sub- section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148[3] *by an Assessing Officer, who is below the rank of Assistant Commissioner, unless the Deputy Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice]:*
Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Deputy Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Deputy Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]

Accordingly, a fresh proposal is submitted to Learned Commissioner of Income seeking permission to issue notice under section 148 of Income Tax Act 1961 in *assessment year 2001-02."*

It is urged that the notice which was issued during the extended period nowhere discloses that the assessee had failed to disclose material facts or that there was any tangible materials or evidence, which persuaded the Revenue to reopen the assessment. Learned counsel for the Revenue justified the reassessment notice, stating that loss of Revenue was sufficient ground in the circumstances. There is sufficient authority – especially after the ruling of the Supreme Court in *CIT v. Kelvinator of India Ltd.* 320 ITR 561 that in the absence of any tangible or sufficient material outside the existing record, the Revenue cannot be permitted to reopen the settled assessments during the extended period under Section 147.

In this case, the assessment year in question was 2001-02. The notice was issued at the fag end of the period in 2007. The notice nowhere discloses the existence of materials to justify a valid reopening. Accordingly, the impugned notice and further proceedings emanating are quashed. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 09, 2017/ajk