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

\+ W.P. (C) 13297/2009, CM APPL.14552/2009

KALAWATI AGGARWAL ..... Petitioner

Through: None.

versus

CIT AND ANR ..... Respondents

Through: Mr. P. Roychoudhuri, Sr. Standing Counsel with Ms. Vibhooti Malhotra, Jr. Standing Counsel.

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

ORDER

% **10.01.2017**

The petitioner seeks quashing of the notice dated 30.03.2009 seeking to reopen assessment for the assessment year 2002-03 which was completed under Section 153A/143(3) of the Income Tax Act, 1961 on 29.12.2006. It is urged that the rationale for reopening the assessment is unfounded and that the impugned notice is contrary to Section 147/148 of the Income Tax Act, 1961.

The Assessing Officer calculated long term capital gains from sale of shares. In these circumstances, on 30.03.2009, the impugned notice under Section 147/148 was issued. Reasons for the impugned notice read as follows: -

"REASONS U/S 147 FOR ISSUANCE OF NOTICE UNDER SECTION 148 OF THE INCOME TAX ACT, 1961

The assessment order under section 153A/143 (3) of the I.T. Act 1961 was made in this case on 29.12.2006 at an income of

Rs.13,97,754/-. It is observed that the assessee was claimed exemption u/s 54F on the amount of capital gain without including the portion of long term capital loss which was allowed to be carried forward separately. The deduction should have been allowed on the net amount of capital gain. This mistake result in claim of excess exemption u/s 54F of Rs.9,12,140/- by the assessee. The assessee has claimed excess exemption u/s 54F of Rs.9,12,140/-. Thus I have reason to believe that income to the tune of Rs.9,12,140/- for the assessment year 2002-03 has escaped assessment on account of the assessee's failure to disclose the facts in this regard fully & truly.

In view of the above facts, this is a fit case for issuance of notice under section 148 of the Income Tax Act, 1961."

The assessee urges that the relevant assessment year ended on 31.03.2003 and consequently issuance of notice beyond the period of six years is bad in law. In addition, it is also argued that the notice is based on a mere change of opinion. The assessee/petitioner has relied upon several judgments to that effect and states that in the absence of any non-disclosure or any other tangible material, reopening of assessment is unjustified. It is additionally urged that the notice is based upon an audit objection and is, therefore, untenable.

The Revenue in its counter affidavit urges that the Court should not interfere and submits that the assessment was completed in December 2006, after notice under Section 153A was issued on 22.03.2006. The AO framed the assessment @ ₹13,97,754/- and computed loss at ₹3,61,997/- after allowing exemptions under Section 54F. It is contended that the AO should have deducted on the basis of net amount of capital gains and mistakenly allowed excess exemption under Section 54F.

The pre-condition for the reopening of a completed assessment - in this case of one under Section 153A/143(3) - is that the assessee should have been *prima facie* guilty of suppression of material facts. In the facts of this case, there is nothing to show that there was material non-disclosure - rather the AO appears to have formed a mistaken opinion. In the present case, at the end of relevant assessment year on 31.03.2003, four year period ended on 30.03.2007. In such a case, the Proviso to Section 147 (1) applies; the AO is permitted to reopen the assessment *inter alia* by reasons of failure on the part of the assessee to submit full disclosure of the relevant documents and income. In the present case, as is evident from the notice itself, the AO does not refer to any failure on the part of the assessee, but rather proceeds to reopen the completed assessment because the original assessment was based on a mistaken interpretation of the law and its application to the facts of the case. Clearly, therefore, the reassessment notice cannot be sustained and is accordingly quashed along with all the proceedings emanating therefrom.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 10, 2017/*vikas/*