$~R-2, R-3 & R-4

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

\+ ITA 448/2005

COMMISSIONER OF INCOME TAX DEL

..... Appellant

Through: Mr.Deepak Anand, Jr. Standing Counsel and Mr.Zoheb Hossain, Sr. Standing Counsel.

versus

M/S AGR STEEL STRIPS P.LTD

..... Respondent

Through: None.

\+ ITA 449/2005

COMMISSIONER OF INCOME TAX DEL

..... Appellant

Through: Mr.Deepak Anand, Jr. Standing Counsel and Mr.Zoheb Hossain, Sr. Standing Counsel.

versus

M/S AGR STEEL TRIPS P. LTD.

..... Respondent

Through: None.

\+ ITA 564/2005

COMMISSIONER OF INCOME TAX DEL

..... Appellant

Through: Mr.Deepak Anand, Jr. Standing Counsel and Mr.Zoheb Hossain, Sr. Standing Counsel.

versus

M/S AGR STEEL STRIPS P.LTD.

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 16.07.2018

The grievance of the revenue is that the Income Tax Appellate Tribunal (ITAT), in the three orders impugned in these appeals, set aside the re-assessments carried out by it pursuant to notices under Sections 147/148 of the Income Tax Act.

In all these cases, the assessee is common. The assessments were completed based upon the returns filed for the relevant years, AY-1994-95 and 1996-97. Apparently, on 15.03.1996, the premises of the assessee were searched. This was followed by an appraisal report dated 12.06.1996.

On 08.05.1998, the Assessing Officer (AO) re-opened the assessments by issuing notices under Sections 147/148 of the Act for the assessment years 1994-95 and 1996-97. The reasons given are extracted below.

Assessment Year 1994-95

> *"A survey was conducted at the premises of M/s AGR Steel Strips P. Ltd. on 15.3.96 and as per the Appraisal Report dated 12.6.96 received from ADI (Inv.), Unit-VI, New Delhi there are enough reasons to believe that the income chargeable to tax has escaped assessment. Hence, notice U/s 148 of the I.T. Act, 1961 for the A.Y. 1994-95 is being issued."*

Assessment Year 1996-97

> *"A survey was conducted at the premises of M/s AGR Steel Strips P. Ltd. on 15.3.96 and as per the Appraisal Report*

dated 12.6.96 received from ADI (Inv.), Unit-VI, New Delhi, there are reasons to believe that the income chargeable to tax has escaped assessment. Hence, notice U/s 148 of the I.T. Act, 1961 for the A.Y. 1996-97 is being issued."

Likewise on 12.03.1999, the Assessing Officer (AO) re-opened assessments for the assessment years 1993-94, recording as follows:

"A survey was conducted at the premises of M/s AGR Steel Strips P. Ltd. on 15.3.96 and as per the Appraisal Report dated 12.6.96 received from ADI (Inv.), Unit-VI, New Delhi there are enough reasons to believe that the income chargeable to tax has escaped assessment. Notice U/s 148 of the I.T. Act, 1961on the above ground has already been issued by my predecessor for the A.Y. 1994-95, 1996-97. Accordingly, notice under Section 148 for Assessment Year 1993-94 is hereby being issued."

The Assessing Officer completed the assessments under Section 144 of the Act. The records disclose that the assessee had filed the return and furnished some particulars, but not responded to. Further, during the proceedings; questionnaires were issued to it which were not replied. The concluded re-assessment order led to addition of some income which were brought to tax. The assessee felt aggrieved approached the CIT (A), who deleted some of the amounts added. Its further appeal to ITAT was successful. The ITAT in its impugned order held that the re-assessments "reasons to believe" (on which form the re-assessment notices were premised), did not cite any rationale and could not be sustained. The material part of the ITAT reasoning is as follows:-

"13. If the aforesaid principles are applied to the facts of the present case, it becomes amply clear that the impugned notices

have been issued without jurisdiction as the revenue has failed to establish the jurisdictional fact of there being any omission or failure on the part of the assessee in disclosing full and true particulars of income necessary for the assessment of the Assessment Years Under Consideration. After the appraisal Report was received by the Assessing Officer instead of independent application of mind by him, the Assessing Officer merely chose to initiate action under section 148 without setting out the reasons in specific to show as to how there was any omission or failure on the part of the assessee to disclose fully and truly the particulars of income necessary for the assessment or that how prima facie there was any escapement of income from assessment which warrants issue of notice under section 148 of the Act. As the Assessing Officer has not stated any supporting reasons and also did not apply his mind before issuing notice under section 148, he had no reason to hold that there has been escapement of income from assessment and this basic condition for issue of notice is that not satisfied. Notice so issued is therefore, liable to be quashed.

14. There is one more aspect of the matter that in Assessment Year 1993-94 action under section 148 has been initiated on 12.3.1999 and the notice in terms of section 149(1)(a) of the Act was to be issued within four years from the end of the relevant assessment as the income of the assessee is not stated to have escaped assessment by the amount of Rs.1,00,000/- or more for that year and as such the notice should have been issued prior to 31.3.98. Failure to do so, the notice was barred by limitation and on that count also the notice for this year had to be quashed.

15. For the reasons as set out herein before, notices issued under Section 148 of the Act for all the three years in appeal before us are directed to be quashed and assessments so made become invalid. The same therefore stand annulled. As the assessment held to be invalid whatever follows thereafter is also to be held as invalid and we therefore do not consider it necessary to render any decision on merit in respect of the addition made in the assessment proceedings."

The revenue urges firstly that recourse to appraisal report to re-open the concluded assessments was sufficient and the justification for the notices impugned. It is urged that in the present case, the assessee did not co-operate during the re-assessment proceedings which led to additions under Section 144 of the Act. Learned counsel for the revenue sought to highlight the fact that the assessee never questioned the re-opening of the assessments even before the Commissioner of Income Tax (Appeals) - (CIT (A) and that the ITAT's decision in this regard, proceeding to plainly consider the issue of jurisdiction without considering the merits of the appeals was erroneous. As is evident from the "reasons to believe", there is a mere advertence to the appraisal report dated 12th June, 1996 received by revenue. The least that the AO should and ought to have done to invoke his powers under Sections 147/148 of the Act was to indicate, in the briefest possible terms was, what was or what were the issues that merited re-opening of the previously concluded assessments. The judgment in Commissioner of Income Tax vs. Kelvinator 320 ITA 561 is conclusive that in case the revenue wishes to seek re-opening of the assessments previously concluded, there must be cogent reasons based on tangible materials existing outside the record. Given the facts of this case, the appraisal report dated 12.03.1996 did constitute material outside the record and was, therefore, concluded and tangible. Nevertheless, the A.O was obliged to spell out as to material existed in the appraisal report that merited re-opening of the assessments of these years.

In these circumstances, this Court is of the opinion that the ITAT's approach and its findings cannot be faulted with. They conform to the law declared by the Supreme Court in its three-Judge ruling in Kelvinator' case (supra).

The question of law framed in these appeals is answered against the revenue and in favour of the assessee. The appeals are consequently dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 16, 2018
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