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

\+ W.P.(C) 9990/2017 & CM APPL. 40736/2017 (stay)

ISHAN EDUCATIONAL RESEARCH SOCIETY ..... Petitioner

Through: Dr. Rakesh Gupta, Ms. Monika Ghai and Mrs. Aarti Saini, Advocates.

versus

INCOME TAX OFFICER (EXEMPTION) & ANR. ..... Respondents

Through: Mr. Deepak Anand, Jr. Standing Counsel for Revenue.

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

O R D E R

% **16.07.2018**

Basing itself on a narrow premise that the original returns for the Assessment Year 2007-08 did not disclose true and material particulars/statements with respect to the accumulated surplus, the Revenue sought to re-open the completed scrutiny assessments for the concerned year. This Court had therefore issued notice to the respondents on the grievance of the petitioner, who complained that without any tangible material the Revenue could not have issued the impugned notice.

The reasons to believe in this case read, *inter alia,* as follows:-

> *"The above assessee society is registered u/s 12A vide order no.125/94-95 dated 01-07-1994 and u/s 19(23C)(vi) vide order no.DGIT(E)/10(23C)(vi)/2009-10/1128 dated 18-03-2010.*

The assessee filed original return of income for the AY 2013-14 on 17-09-2013 at nil income. Subsequently revised return was filed on 19-09-2013 declaring nil income. The return was processed u/s 143(1) of the I.T. Act, 1961.

Subsequently, it has been noticed from the assessment records of A.Y. 2007-08 that the assessee had accumulated Rs.38,92,274/- as per provisions of clause (a) to third proviso to section 10(23C) of the I.T. Act. As per provisions of the Act, the assessee should have applied this accumulated amount for specific purpose on or before 31-03-2012 or in the year immediate following this period. However, the assessee has failed to apply this accumulated amount for the specified purpose on or before 31-03-2012 and during F.Y. 2012-13. So this amount should have been offered for tax in the ITR of A.Y. 2013-14. However, the assessee has not offered this unutilized amount for taxation in ITR of A.Y. 2013-14.

In view of the above facts, I have reasons to believe that income chargeable to tax amounting to Rs.38,92,274/- has escaped assessment for which notice u/s 148 is required to be issued within the meaning of sec 147 of the IT Act, 1961 for the AY 2013-14".

It was submitted on behalf of the Revenue that the "reasons to believe" in this case are germane and relevant because during the concerned year the assessee did not, in fact, disclose the correct position vis-a-vis the accumulated surplus. Learned counsel endeavours to establish this argument by relying on the responses made by the assessee during the course of subsequent assessment proceedings and stating that the answers given were completely untrue. The petitioner/assessee has produced the relevant records relating to the concerned A.Y., which clearly show that the relevant schedule to the returns, clearly disclose the position vis-a-vis the accumulation of surplus. In these circumstances, "the reasons to believe" recorded were unsustainable as they amounted to an attempt to form a second opinion or carry out a review, which are both impermissible in law in view of the three Judges Bench decision in the case of Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd., 320 ITR 561.

In the light of the above discussion, the petition deserves to succeed. The impugned re-assessment notice under Section 147/148 of the Income Tax Act dated 25.04.2017 and all further proceedings emanating from it are hereby quashed.

The writ petition is allowed in the above terms along with the pending application.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 16, 2018
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