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

\+ ITA 1070/2017

THE PR. COMMISSIONER OF INCOME TAX -21 ..... Appellant
Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

versus

METAL INDIA ..... Respondent
Through: Mr. Pranjal Srivastava, Advocate.

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

O R D E R

% **07.02.2018**

Admit.

The question of law that arises for consideration is:-

> *(1) Whether the Income Tax Appellate Tribunal (ITAT) fell into error in holding that re-assessment notice and further proceedings under Section 147 of the Income Tax Act, 1961 were invalid?*

The assessment in respondent-assessee's case was completed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the A.Y. 2006-07, on 30.03.2007. Based upon information received, a notice was issued to the respondent-assessee proposing re-assessment under Section 147 of the Act on

19.03.2013. The "Reasons to believe" supplied to the respondent-assessee disclosed that the rationale for re-assessment was fresh information alleged to have been received in respect of the accommodation entries received by the four entities. These in turn were based upon disclosure/statements made in the course of search and seizure operation of the third parties. The re-assessment proceedings were completed and additions were made. These additions were challenged before the CIT(A) who upheld the reopening of the assessment and also confirmed the additions on their merits. The ITAT, however, set aside these orders on the ground that the reassessment was invalid.

This Court has considered the submissions. The "Reasons to believe" in this case recorded by the ITAT are as follows:-

> "Kindly find enclosed herewith letter dated 13/03/2013 of ACIT, Central Range-IV, along with its enclosures on the subject mentioned above.
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> 1. The assessment of search cases of Sh. Rakesh Gupta, Sh. Vishesh Gupta, Sh. Navneet Jain & Sh.Vaibhav Jain are under process with the ACIT, Central Circle 10. During the assessment proceedings u/s 153A in the aforesaid cases, details regarding accommodation entries given by the above entry.
> 2. This list of accommodation entry recipients has been obtained from Sh. Rakesh Gupta and Sh.Vishesh Gupta. This list gives the name of the firm which has provided the accommodation entry along with the name and address of the recipients of accommodation entry.

3. Sh. Navneet Jain & Sh. Vaibhav Jain has provided accommodation entry through thirty seven paper entities. The list, of the firms giving accommodation entry is enclosed as annexure-B. The list of accommodation entry recipients, has been obtained from Sh. Navneet Jain & Sh. Vaibhav Jain. It does not give year wise bifurcation. Hard copy of the list is enclosed as annexure-C, duly signed by Sh.Vaibhav Jain. Thus, the firms mention in the list 'B' have provided accommodation entries to the firms mentioned in list ‘C’.
4. The soft copy of the information in respect to annexure A, B and C is also enclosed.
5. The information of accommodation entry includes AY 2006-07 also, which is a time barring year for taking action u/s 148.
6. This information is forwarded to you for early dissemination to various field offices in Delhi (Soft copy also enclosed)."

This Court is of the opinion that the reassessment in this case was validly based on fresh material in the form of information received by the concerned authorities during the course of search assessment and disclosures made. They would fit the description of “tangible material” unavailable with the Revenue at the time the original assessment was completed. Furthermore, in the present case, the original assessment was not completed under Section 143(3) of the Act, rather, merely framed under Section 142(1) of the Act.

Having regard to these facts, the impugned order is clearly untenable and set aside.

The ITAT is directed to examine the merits of the respondent/assessee's appeal and decide it in accordance with law after hearing counsel for the parties.

The parties are directed to be present before the ITAT on 26.02.2018 for further directions/appropriate query.

The question of law is answered in favour of the Revenue and against the respondent-assessee. The appeal is allowed in the above terms.

Registry is directed to communicate the order directly to the Registrar of the ITAT, Delhi Bench 'C', New Delhi.

Order *Dasti* to the parties as well.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 07, 2018
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