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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 11596/2017, CM APPL. 47222/2017**

**SHRI SANJEEV GHEI** ..... Petitioner  
Through: Appearance not given.

versus

**INCOME TAX OFFICER, WARD - 12(2)** ..... Respondent  
Through: Mr. Ashok Manchanda & Mr.  
Raghvendra Singh, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

% **17.08.2018**

The petitioner is challenging the reassessment notice issued for AY 2010-11, by the respondent (hereafter referred to as the "Revenue") on 30.03.2017 under Sections 147/148. After examination of the bank account, information was received from the investigation unit by the Revenue on 28.03.2017 that the assessee-petitioner was a share holder to the extent of over 20% in M/s Indo Nucleomet (P) Ltd. and that he had received a sum of ₹ 70 lac from that company. The AO recorded his "reasons to believe" and satisfaction for reopening the assessment in a following term:

*"On examination of the bank account statement of M/s Indo Nucleomet Pvt. Ltd. (Bank A/c NO.600030100020114 and 600020110000353 in Bank of India), it is found that the following payments from the said bank accounts were*

*transferred to the personal saving bank account of Sh. Sanjeev Ghei (Bank A/c NO.82432010005366 with Syndicate Bank), in the F.Y.2009-10.*

| <i>From account No.</i> | <i>Transaction pertain to F.Y.</i> | <i>Amount (₹ in lacs )</i> | <i>Date</i>    | <i>To bank account/cash/ Cheque payments</i>   |
|-------------------------|------------------------------------|----------------------------|----------------|------------------------------------------------|
| 6000300<br>020114       | F.Y.2009-10                        | 10.00                      | 04/11/2<br>009 | Syndicate Bank<br>A/c<br>No.824320100<br>05366 |
|                         |                                    | 15.00                      | 05/11/2<br>009 | Syndicate Bank<br>A/c<br>No.824320100<br>05366 |
|                         |                                    | 25.00                      | 06/11/2<br>009 | Syndicate Bank<br>A/c<br>No.824320100<br>05366 |
|                         |                                    | 20.00                      | 09/11/2<br>009 | Syndicate Bank<br>A/c<br>No.824320100<br>05366 |
| <i>Total</i>            |                                    | 70.00                      |                |                                                |

*It is evident from the facts that the amount of RS.70,00,000/- was transferred in personal saving account of Sh. Sanjeev Ghei, Director. Since Sh. Sanjeev Ghei's shareholding in the above said company is more than 20%, therefore, the total transferred amounts of Rs.1 Crore is liable to be treated as deemed dividend income in the hands of Sh. Sanjeev Ghei u/s 2(22)(e) of the IT Act, 1961.*

*In view of the above facts, I have a strong reason to believe that income of Sh. Sanjeev Ghei, Director the assessee company to the tune of Rs.70,00,000/- received by him in his personal capacity from the company, has been escaped assessment. Therefore, it clearly attracts the provisions of clause (b) of Explanation 2 to section 147 of the I.T. Act, 1961 and it is a fit case for*

*initiating proceedings u/s 147/148 of the I.T. Act, 1961 and for issue of notice u/s 148 of the I.T. Act, 1961.”*

Attacking the reassessment notice, learned counsel relied upon the original scrutiny assessment proceedings, stating that full and material disclosure of amounts received including ₹ 70 lacs that triggered the impugned reassessment notice had been made in the return for the concerned Assessment Year 2010-11. He also relied upon the questionnaire issued by the AO at the relevant time, with respect to the specific bank accounts and the explanation afforded. The reply to the queries of the AO was made on 18.10.2012; reply to it was furnished soon thereafter. The record also would show that for the relevant period, the bank accounts statements of Punjab National Bank and Syndicate Bank, where the petitioner had personal accounts were furnished.

It is submitted on behalf of the petitioner that since there was full and material disclosure, the AO's inability to analyze the facts and bring to tax the amounts which are now sought to be taxed cannot afford it a second chance as it were to review its order. It was emphasized that the so called fresh material is nothing but what existed on the record and was a subject matter of query by the AO. Learned counsel submitted, therefore, that the bank accounts statements, which were available with the Revenue at the relevant time, during the completion of scrutiny assessment, did not metamorphose into “tangible material” merely because the

investigation report pointed out the petitioner's relationship as a shareholder in one of the companies. It was further stated that the petitioner had in fact disclosed by letter during the course of the assessment that he was 50% share holder of the M/s Indo Nuclement Pvt. Ltd.

Learned counsel for the Revenue submitted that this Court should not interfere with the reassessment notice. He relied upon the assessment order (page 44) and highlighted that the AO had at that time taken cognizance of only the personal accounts with the Punjab National Bank, Gurgaon. Learned counsel relied upon the following extract of the scrutiny assessment made at the relevant time on 01.11.2012 (page 45).

Emphasizing that it is not mere disclosure but proper disclosure, and the characterization of income wherever assessable that would exclude application of the provisions of the reassessment. Learned counsel relied upon the first explanation to Section 147(1) emphasizing that the mere supply of account books etc. would not absolve the assessee of his primary duty to disclose the taxable nature of any particular receipt.

This Court has considered the submissions as well as the materials on record. The queries directed to the assessee, especially at Serial No.74 in the questionnaire to which reply was furnished soon thereafter, along with Annexure II of the letter (by the assessee) furnished the details of the amounts received in the Syndicate Bank account. A sum of ₹70 lakhs was credited to the account of the

petitioner. The AO appears to have proceeded with the inquiry even after being told that the petitioner was a substantial shareholder of M/s. Indo Nucleomet Pvt. Ltd. In these circumstances, the inability of the AO to take appropriate action to bring to tax those amounts and (unlike in the case that the amounts credited in the PNB which was so brought to tax by addition in the final assessment), in the opinion of the Court would not afford the Revenue a second chance. The Supreme Court ruling in *Commissioner Of Income Tax, Delhi v. M/s. Kelvinator Of India Ltd.* 361 ITR 563 has stated that it is only tangible material outside the record based upon fresh information which can afford a window or a second chance to the Revenue, to look into an assessments originally completed. *Calcutta Discounts Ltd. v. Income Tax Officer* (1961) 41 ITR 191 underlines that if full disclosure is made, the AO is under an obligation to bring to tax all amounts; his inability to do so, would not clothe the Revenue with the power to reassess the income which could and should have been brought to tax in first instance if such full disclosure were made. For these reasons the Court is of the opinion that the first explanation of Section 147 cannot be restored to by the Revenue in this case.

In view of the above findings, the writ petition has to succeed. The impugned reassessment notice and all consequent proceedings are hereby quashed.

The writ petition is allowed in the above terms.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**AUGUST 17, 2018/akv**