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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 3-12-2018 in WPT Nos.234, 237 & 235 of 2018

Order reserved on 4-12-2018 in WPT No.238 of 2018

Order delivered on 05-04-2019

WPT No. 234 of 2018

1. M/s Precision Engineering A Proprietorship Firm Having Its Office At HIG-14, SBVP Nagar, SADA Colony, Jamnipali, Korba Chhattisgarh, Through Its Proprietor Idicula Jacob, Aged About 65 Years, S/o Shri Idicula R/o HIG-14, SADA Colony, Jamnipali, Korba, Chhattisgarh.

2. Iducula Jacob S/o Shri Idicula Aged About 65 Years R/o HIG-14, SADA Colony, Jamnipali, Korba, Chhattisgarh.

---- Petitioner

Versus

1. Assistant Commissioner Of Income Tax Circle-Korba Office Of Assistant Commissioner Of Income Tax Circle-Korba, Mahanadi Complex, Niharika Road, Korba, Chhattisgarh.

2. Joint Commissioner Of Income Tax Range-Korba Office Of Joint Commissioner Of Income Tax, Range-Korba, Mahanadi Complex, Niharika Road, Korba, Chhattisgarh.

3. Union Of India Through Its Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi 110001

---- Respondent

WPT No. 235 of 2018

1. M/s Aaditya Construction A Partnership Firm Registered Under The Indian Partnership Act, 1932 Having Its Office At 56, Indira Commercial Complex, Transport Nagar Korba, Chhattisgarh, Through Its Partner Mr. Amit Kumar Dalmia, Aged About 40 Years, S/o Mr. Sumer Mal Dalmia, R/o B-7, Housing Board Colony, Balco Nagar, Korba, Chhattisgarh.

2. Mr. Amit Kumar Dalmia S/o Mr. Sumer Mal Dalmia Aged About 40 Years R/o B-7, Housing Board Colony, Balco Nagar, Korba, Chhattisgrah.

---- Petitioner

Versus

1. Principal Commissioner Of Income Tax Bilaspur Office Of Principal Commissioner Of Income Tax, Bilaspur, Aaykar Bhawan, Vyapar Vihar , Bilaspur, Chhattisgarh.

2. Income Tax Officer Ward-1, Korba, Office Of Income Tax Officer Ward-1, Korba Mahanadi Bhawan, Niharika Road, Korba, Chhattisgarh

3. Joint Commissioner Of Income Tax Range-2, Bilaspur, Office Of Joint Commissioner Of Income Tax, Range-2, Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur, Chhattisgarh.

4. Union Of India Through Its Secretary Department Of Revenue, Ministry Of Finance, North Block, New Delhi 110001.

---- Respondent

<u>WPT No. 237 of 2018</u>

1. M/s Precision Engineering A Proprietorship Firm Having Its Office At HIG-14, SBVP Nagar, SADA Colony, Jamnipali, Korba Chhattisgarh, Through Its Proprietor Idicula Jacob, Aged About 65 Years, S/o Shri Idicula R/o HIG-14, SADA Colony, Jamnipali, Korba, Chhattisgarh.

2. Iducula Jacob S/o Shri Idicula Aged About 65 Years R/o HIG-14, SADA Colony, Jamnipali, Korba, Chhattisgarh

---- Petitioner

Versus

1. Assistant Commissioner Of Income Tax Circle-Korba Office Of Assistant Commissioner Of Income Tax Circle-Korba, Mahanadi Complex, Niharika Road, Korba, Chhattisgarh.

2. Joint Commissioner Of Income Tax Range-Korba Office Of Joint Commissioner Of Income Tax, Range-Korba, Mahanadi Complex, Niharika Road, Korba, Chhattisgarh.

3. Union Of India Through Its Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi 110001

---- Respondent

WPT No. 238 of 2018

1. M/s Precision Engineering A Proprietorship Firm Having Its Office At HIG-14, SBVP Nagar, SADA Colony, Jamnipali, Korba Chhattisgarh, Through Its Proprietor Idicula Jacob, Aged About 65 Years, S/o Shri Idicula R/o HIG-14, SADA Colony, Jamnipali, Korba, Chhattisgarh.

2. Iducula Jacob S/o Shri Idicula Aged About 65 Years R/o HIG-14, SADA Colony, Jamnipali, Korba, Chhattisgarh

---- Petitioner

Versus

1. Assistant Commissioner Of Income Tax Circle-Korba Office Of Assistant Commissioner Of Income Tax Circle-Korba, Mahanadi Complex, Niharika Road, Korba, Chhattisgarh.

2. Joint Commissioner Of Income Tax Range-Korba Office Of Joint Commissioner Of Income Tax, Range-Korba, Mahanadi Complex, Niharika Road, Korba, Chhattisgarh.

3. Union Of India Through Its Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi 110001

---- Respondent

For Petitioners	Shri Siddharth Dubey, Advocate
For Respondent/Revenue	Ms Naushina Ali, Advocate

C A V Order

By

Prashnat Kumar Mishra, Ag. CJ.

1. In WPT Nos.234, 237 & 238 of the 2018 the petitioner would call in question the re-assessment notices under Section 148 (1) of the Income Tax Act, 1961 (for short 'the Act') and the orders passed by the Assistant Commissioner of Income Tax/Deputy Commissioner of Income Tax rejecting the petitioner's objection to the show cause notice. In WPT No.235 of 2018 the petitioner has additionally challenged the sanction/approval accorded under Section 151 of the Act based on which the notice under Section 148 (1) has been issued against the petitioners.

2. Since challenge to the reasons recorded under Section 151 and the show cause notice issued under Section 148 (1) are based on common grounds all the four writ petitions are disposed of by common order albeit three of them were reserved on one day and fourth i.e. WPT No.238 of 2018 was reserved a day after.

3. Learned counsel appearing for the petitioners would argue that re-assessment notice is required to have prior sanction

under Section 151 (1) by satisfying the condition prescribed in the said provision, however, proper reasons to believe for issuance of notice being absent in both the cases the sanction under Section 151 of the Act and the consequent notices are illegal and without jurisdiction.

4. Learned counsel would further argue that there is only reason to suspect that income has escaped without there being any foundational fact or tangible material withheld by the petitioner at the time of assessment. Mere suspect that the companies in question were paper companies by itself is insufficient to re-open the assessment unless the Assessment Officer had further information that these companies were non-existent after making further enquiries into the matter. Learned counsel would next submit that the petitioners having made true and full disclosure at the time of assessment, the reasons recorded and the consequent re-assessment notice is only change of opinion, which is not permissible in law. Learned counsel wold also argue that while disposing of the objection preferred by the petitioner the ACIT has not recorded proper and cogent reasons thus, the said disposal is by a non-speaking order.

5. To buttress his contention, learned counsel would place reliance upon the decision rendered by the High Court of Madhya Pradesh in **CIT, Jabalpur v M/s S. Goyanka Lime and Chemicals Ltd.**[1] and other connected matters (affirmed by the Supreme Court in Special Leave to Appeal (C) No.11916 of 2015 by order dated 8-7-2015), decision of the Supreme Court in **Commissioner of Income Tax, Gujarat v A. Raman & Co.**[2], decision of Calcutta High Court in **Commissioner of Income-Tax v Anand and Company**[3], and the Delhi High Court in **Commissioner of Income Tax-VI, New Delhi v Usha International Limited**[4].

6. Learned counsel appearing for the Revenue, *per contra,* would submit that the Principal, CIT has recorded cogent reasons as required under Section 151 (1) read with Section 148 (2) of the Act before granting sanction for re-opening of assessment. Learned counsel would further submit that there are tangible material as is referred in the order under Section 148 (2), therefore, it is not a case of change of opinion.

7. Further contention of the learned counsel for the Revenue is that re-assessment proceedings having already been done, the

1 ITA No.82 of 2012 and other connected matters (decided on 14-10-2014)
2 AIR 1968 SC 49 : (1968) 67 ITR 11 : (1968) 1 SCR 10
3 1990 SCC Online Cal 421 : (1991) 191 ITR 82 : (1992) 101 CTR 276
4 2012 348 ITR 485 (Del) (FB)

petitioner has remedy of filing an appeal, therefore, the present petitions are not maintainable. Learned counsel would next submit that whether or not the income has escaped re-assessment is to be decided by the Assessment Officer and the same cannot be questioned in a writ petition.

8. In support of her contention, learned counsel would refer to the law laid down by the Supreme Court in **Raymond Wollen Mills Ltd. v Income-Tax Officer and Ors.**[5]. Reference is also made to the Division Bench decision of the Gujarat High Court in **Lalita Ashwin Jain v Income Tax Officer**[6], the Single Bench judgment rendered by this Court in **Arun Kumar Agrawal v The Principal, Commissioner of Income Tax & Others**[7] and the decision of the High Court of Delhi in **Sonia Gandhi v Assistant Commissioner of Income Tax, Circle 52(1) and Ors.**[8]

9. The law as to when exercise of power to record reasons under Section 151 (1) read with Sections 147 & 148 (2) of the Act for issuance of re-assessment of notice under Section 148 (1) would be treated as a valid exercise of power has been dealt with by the Supreme Court, time and again.

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5 (1999) 236 CTR SC 34 : 1999 236 ITR 34 SC
6 2014 SCC Online Guj 2021 : (2014) 363 ITR 343
7 WPT No.163 of 2016 & Other connected matters (decided on 1-12-2016)
8 WPC No.8482 of 2018 and other connected matters (decided on 10-9-2018)

10. In Assistant Commissioner of **Income-Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.**[9] the Supreme Court spelt out the twin requirements which had to be satisfied as a sine qua non for a valid reassessment notice:

> "firstly the AO must have reason to believe that income profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under Section 148 read with Section 147(a). But under the substituted Section 147 existence of only the first condition suffices. In other words, if the assessing officer for whatever reason has reason to believe that income has escaped assessment, it confers jurisdiction to reopen the assessment."

11. The Supreme Court in **Phool Chand Bajrang Lal and Another v Income Tax Officer and Another** emphasised on the veracity of information supplied previously be the assessee during the course of the regular assessment, while considering the validity of a reassessment notice; it stated as follows:

> "From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under Section 147(a) read with Section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and

9 [2007] 291 ITR 500 (SC)

> relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming this belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non- specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."

12. In **Income Tax Officer, Calcutta v Selected Dalubrand Coal Co. Pvt. Ltd.**[10], the Supreme Court held as follows:

> "At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was a invalid. Inasmuch as, as a result of our order, the reassessment proceedings have

10 (1997) 10 SCC 68

> now to go on, we do not and we ought not to express any opinion on merits."

13. In all the four cases at hand, the ITO has recorded reasons that the issue under consideration were never examined by the Assessment Officer during the course of regular assessment/ re-assessment and have, thus, escaped assessment because material facts relevant for the assessment on the issue under consideration were not filed during the course of assessment proceeding or were not considered during the assessment.

14. In **Phool Chand Bajrang Lal** (supra) the Supreme Court has held that the Assessment Officer may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. It is held therein that since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming this belief is not for the court to judge.

15. In all the cases there exists material to infer that income has escaped assessment, therefore, issuance of notice under Section 148 of the Act is based on such reasons as is permissible in law, therefore, reassessment notice itself cannot be set aside at this stage.

16. In view of the above discussion, this Court is satisfied that the notice under Section 148 of the Act or the reasons recorded for issuance of such notice do not suffer from any illegality or infirmity.

17. As a sequel, all the writ petition *sans* merit are liable to be and are hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Gowri