IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14645 of 2021

M/S Messina Beej Private Limited, A company incorporated under Indian Companies Act, 1956 having Registered office at Tajpur Road, District- Samastipur, Bihar- 848101 through its Managing Director, Anil Kumar Misra Gender- Male S/O- Late Data Ram Misra, Tajpur Road, District- Samastipur, Bihar- 848101

... ... Petitioner/s

Versus

1. The Principle Chief Commissioner, Income Tax, Central Revenue Building Virchand Patel Path, Patna.
2. The Principal Commissioner/Commissioner-2, Income Tax, Central Revenue Building, Veerchand Patel Path, Patna.
3. The Joint Commissioner of Income Tax, Range-2, Lok Nayak Bhavan, Dakbanglow, Patna.
4. The Income Tax Officer, Ward 2(1), Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 4093 of 2020

M/s Messina Beej Private Limited, Tajpur Road, Samastipur, Bihar-848101 through its director Anil Kumar Mishra, aged about 72 years, Gender-Male, Son of Data Ram Mishra, Resident of E-24, Marg one, P.O.- Greater Kailash-2, Grater-Kailash, P.S.- Neharu Marg, South Delhi, Delhi-110048

... ... Petitioner/s

Versus

1. The Principal Chief Commissioner Income Tax, Central Revenue Building, Virchand Patel Path, Patna
2. The Principal Commissioner/Commissioner-2 Income Tax, Central Revenue Building, Virchand Patel Path, Patna
3. The Joint Commissioner of Income Tax, Range-2, Lok Nayak Bhavan, Dakbanglow, Patna
4. The Income Tax Officer, Ward 2(1), Patna

... ... Respondent/s

Appearance :
(In Civil Writ Jurisdiction Case No. 14645 of 2021)
For the Petitioner/s : Mr. Krishna Mohan Mishra, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC. Income Tax Dett.
(In Civil Writ Jurisdiction Case No. 4093 of 2020)
For the Petitioner/s : Mr. Krishna Mohan Mishra, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC. Income Tax Dett.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-08-2023

The writ petitions are concerned with the assessment years 2012-13 and 2013-14, and they challenge the re-assessment proceedings taken under Section 147 and 148 of the Income Tax Act-1961 (for brevity the Act). The return of income filed for the respective years are produced by the identical petitioner as Annexure-P/2 in C.W.J.C. No. 4093 of 2020 and C.W.J.C. No. 14645 of 2021, concerned with the assessment years 2012-13 and 2013-14.

2. For the assessment year 2012-13, which is the subject matter of C.W.J.C. No. 4093 of 2020, a notice was issued dated 29.03.2019 under Section 148 of the Act. By Annexure-P/4, the petitioner sought for the reasons which prompted the Assessing Officer to issue the notice, relying on the judgment of the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd. V. I.T.O (2002) 259 ITR 19.*** By Annexure- P/5, the petitioner was informed the reasons to entertain the belief of escaped assessment which also spoke about the necessary approval having been obtained from the Principal Commissioner of Income-Tax-1, Patna. The reasons

for the belief entertained by the Assessing Officer were that the information available on record shows the assessee company having taken fresh unsecured loan of Rs. 10,82,563/- and returned an agricultural income of Rs. 18,96,114/-. It is stated that information was called for under Section 133 (6) of the Act with prior approval of the Principal CIT. The information called for, were the copy of the balance sheet for the assessment year 2012-13, the full details of the person/persons from whom the unsecured loan was availed, the relationship with such persons and the details of lands from which agricultural income was earned. The assessee failed to furnish the requisite information and hence, the unsecured loan and the agricultural income were proposed to be treated as having escaped assessment.

3. The assessee filed a petition under Section 144A before the Joint Commissioner of Income Tax, by Annexure-P/6, which was partly allowed, but the addition of agricultural income, upheld. The Assessing Officer passed an assessment order as Annexure-P/1, in accordance with Annexure-P/6; which is impugned in C.W.J.C. No. 4093/2020.

4. Similarly in C.W.J.C. No. 14645/2021 for the assessment year 2013-14 an identical addition was made of agricultural income coming to Rs. 5,68,302/-, by assessment

order produced along with I.A 1/2022 as Annexure P/1 dated 26.03.2022.

5. The learned counsel for the assessee claimed that the assesse had been deriving agricultural income and returning it right from the assessment year 1998-1999 and hence there is no question of any further proof being produced of the lands from which such income was earned.

6. The learned counsel also relied on the decision of the Division Bench of this Court in ***Ravindra Kumar (HUF) v. CIT; (2019) 419 ITR 0308***. It was held, on identical circumstances, that re-assessment cannot be made without any tangible material. The mere reason of the default of the assessee to produce evidence in support of agricultural income returned and accepted earlier, cannot be the reason for a proceeding under Sections 147 & 148 of the Act.

7. We do not think that, the mere fact of the agricultural income having been accepted in the earlier assessment years would restrict the Assessing Officer from calling for details regarding the agricultural income derived, in a subsequent assessment year; since every assessment year gives rise to a separate cause of action. However, we are definite in our minds that the said enquiry has to be conducted at the initial

stage and does not fall for consideration under Section 148, since it would lead to a mere change of opinion.

8. The challenge is confined to the reassessment initiated for the purpose of disallowing the exemption claimed of agricultural income, treating it as escaped income. In the present cases, in both the assessment years, the petitioner was called upon to provide information about the agricultural land from which income was derived under Section 133(6) of the Act, after the assessment was completed on the basis of the return filed. The Assessing Officer had at the first instance accepted the income returned by the assessee and allowed the exemption with respect to the agricultural income. In the re-assessment proceedings, the Assessing Officer had again called for the details regarding the lands from which such agricultural income was derived. The absence of any details having been supplied to the Assessing Officer would not result in a tangible material being available with the Assessing Officer for the purpose of issuing a notice under Sections 147 & 148 of the Act.

9. ***CIT v. Kelvinator of India Ltd., reported in (2010) 2 SCC 723*** considered the effect of the amendment brought about to Section 147 by Amendment Act 1987, and the Amendment Act, 1989. Section 147 as it existed before the

amendments enabled the income tax officer to proceed under Section 147, *inter-alia,* if there is reason to believe that, in consequence of information in his possession income chargeable to tax has escaped assessment; even if there is no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment in a given year. By the Direct Tax Laws (Amendment) Act, 1987, Section 147 stood amended and the Assessing Officer was enabled to proceed, for reasons to be recorded by him in writing if he is of the opinion that any income chargeable to tax has escaped assessment for any assessment year, subject to the provisions of Sections 148 to 153.

10. Again by the Amending Act of 1989, the word opinion was omitted and the Assessing Officer was empowered to proceed under Section 147, only if he had reason to believe that any income chargeable to tax has escaped assessment for any assessment year, subject to the provisions of Section 148 to 153.

11. As per the amendment of 1987 and 1989 any income chargeable to tax, which the Assessing Officer notices in the course of the proceedings under Section 147 or re-computation of loss or depreciation allowance or any other

allowance, could also be reckoned for such assessment or reassessment, even if that was not a ground on which the Assessing Officer entertained the initial belief of escapement of income tax. However, this does not detract from the fact that the reason to believe to be entertained by the Assessing Officer should be of some tangible material in his possession, which he receives after the initial assessment is completed, for coming to a conclusion that there was an escapement of income chargeable to tax. The income so alleged; to have escaped assessment should thus have a live link with the formation of belief by the Assessing Officer.

12. In the present case as has been found in ***Ravindra Kumar (HUF)*** (supra), the belief entertained by the Assessing Officer is only on the premise that there was nothing produced by the assessee in pursuance of a notice under Section 133(6); regarding the agricultural income, which was shown as exempted income under the returns and accepted by the Assessing Officer. There was no tangible material on which the Assessing Officer proceeded under Section 147 and in that circumstance it is a mere change of opinion which is, as held in ***Kelvinator of India*** (supra), a review in the garb of reopening the assessment.

13. On the above reasoning, it has to be held for the two assessment years, that the proceedings were issued without jurisdiction, since the reassessment initiated under Section 147 was not on any tangible material and there was nothing available with the Assessing Officer to entertain a belief that the assessee had wrongly claimed exemption of the agricultural income or of the unsecured loans. The agricultural income shown as exempted in the return was accepted by the Assessing Officer initially and so were the unsecured loans. There is no scope for a review of the same and when there was nothing available with the Assessing Officer, there could not be a reopening of assessment, under Section 147. Both the assessment orders challenged in the writ petitions are set aside.

14. The writ petitions stand allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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CAV DATE	
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