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

% *Date of Decision: 07.11.2023*

+ **ITA 46/2020**

THE PR. COMMISSIONER OF INCOME
TAX -CENTRAL -1

..... Appellant

Through: Mr Aseem Chawla, Sr Standing
Counsel with Ms Pratishtha
Chaudhary and Mr Aditya Gupta,
Advs.

versus

SHRI GAUTAM BHALLA

..... Respondent

Through: Mr C S Aggarwal, Sr Adv. with Mr
Ravi Pratap Mall and Mr Uma
Shankar, Advs.

+ **ITA 47/2020**

THE PR. COMMISSIONER OF INCOME
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..... Appellant

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Ravi Pratap Mall and Mr Uma
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CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]



RAJIV SHAKDHER, J. (ORAL)

CM Appl.3869/2020 in ITA 46/2020

1. Allowed, subject to just exceptions.

ITA 46/2020

ITA 47/2020

2. These appeals concern Assessment Years (AYs) 2011-12 [ITA 46/2020] and 2010-11 [ITA 47/2020], respectively.

3. *Via* the aforementioned appeals, the appellant/revenue seeks to assail a common order dated 03.09.2019 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

4. The Tribunal *via* the impugned order dated 03.09.2019 has quashed the reassessment proceedings triggered against the respondent/assessee under Section 148 of the Income Tax Act, 1961 [in short, “Act”].

4.1 In reaching this conclusion, the Tribunal has taken recourse to the third proviso appended to Section 147 of the Act.

5. The appellant/revenue, being dissatisfied, has consequently lodged the above-captioned appeals.

6. To adjudicate the instant appeals, the following broad facts are required to be noticed:

6.1 Upon the Return of Income [ROI] being filed by the respondent/assessee, additions amounting to Rs.4,95,00,000/- and Rs.4,62,94,000/- were made *qua* the respondent/assessee for AYs 2010-11 and 2011-12, respectively.

6.2 The assessment order dated 30.03.2015 was framed under Section 153A, read with Section 143(3) of the Act. It is required to be noticed that recourse to Section 153A was taken by the appellant/revenue in the backdrop of search and seizure proceedings initiated in and about



16.01.2013 against Vatika Group as also the respondent/assessee.

6.3. The respondent/assessee being aggrieved, preferred an appeal with the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] against the assessment order dated 30.03.2015.

6.4. The CIT(A), *via* the order dated 07.03.2017, deleted the aforementioned additions made *qua* the respondent/assessee principally on the ground that since no incriminating material was found and the assessments for the AYs in issue stood completed, the Assessing Officer (AO) had no jurisdiction to frame an assessment order. In reaching this conclusion, the CIT(A) relied upon a judgment of the coordinate bench rendered in ***Commissioner of Income Tax vs. Kabul Chawla***, (2016) 380 ITR 573 (Del). That said, the CIT(A) made the following observations which were common in both AYs, except for the difference in the amount that was believed to have escaped the assessment:

"However, the information so received does prima facie indicate a case of escapement of income in the hands of the appellant. The AO may, using this information, consider if she has reason to believe that income of Rs.4,95,00,000/- (for AY 10-11) has escaped assessment, and if so, may consider issuing notice u/s 148 for this assessment year to bring the amount to tax."

In AY 2011-12, the addition made was Rs.4,62,94,000/-.

6.5. This propelled the appellant/revenue to trigger reassessment proceedings against the respondent/assessee. Accordingly, a notice dated 29.03.2017 was issued *qua* the respondent/assessee under Section 148 of the Act.

6.6. Pending further progress of the reassessment proceedings, both the appellant/revenue as well as the respondent/assessee preferred appeals before the Tribunal *vis-à-vis* the order dated 07.03.2017 passed by the



CIT(A). These appeals were lodged in and about June 2017.

6.7. While the appeals were pending before the Tribunal, two separate orders dated 28.12.2017 were passed under Section 148, read with Section 143(3) of the Act. Consequently, the respondent/assessee's income for AY 2010-11 was assessed at Rs.5,88,09,223/-. Likewise, insofar as the AY 2011-12 was concerned, the respondent/assessee's income came to Rs.5,43,83,644/-.

6.8. Being aggrieved, the respondent/assessee preferred appeals before the CIT(A). The CIT(A) *via* two separate orders of even date i.e., 14.01.2019 confirmed the additions made in the aforesaid AYs under Section 68 of the Act.

6.9. The orders passed by CIT (A) were carried in appeal, which resulted in the Tribunal passing the impugned order i.e., the order dated 03.09.2019. It is against the decisions rendered by the Tribunal that the instant appeals have been preferred.

7. Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the appellant/revenue, has attempted to assail the impugned order by placing reliance upon the explanatory note appended to the provisions of Finance Act, 2008 contained in Circular no.1 of 2009 dated 27.03.2009.

7.1 According to Mr Chawla, in the situation which arose in the present matters, if recourse had not been taken to the provisions of Section 148, only because the appeals were pending before the Tribunal, it may have resulted in the reassessment proceedings being time-barred.

8. On the other hand, Mr C S Aggarwal, learned senior counsel, who appears on behalf of the respondent/assessee, has submitted that the third proviso appended to Section 147 squarely applied in the instant cases, and



therefore, no interference is called for with the impugned order passed by the Tribunal. In support of his plea, Mr Aggarwal sought to place reliance on the following judgments:

- (i) ***Commissioner of Income Tax, New Delhi (Central) vs. Edward Keventer (Successors) P. Ltd.*** [1980] 123 ITR 200.
- (ii) ***Alcatel Lucent France vs. ADIT*** [2016] 69 taxmann.com 379 (Delhi).

9. We have heard learned counsel for the parties and perused the record.

10. The facts set forth hereinabove are not in dispute. The only issue that the Tribunal has dealt with and based on which the reassessment order was quashed, concerns the applicability of the third proviso appended to Section 147 of the Act. Therefore, before we proceed further, it would be helpful to extract the relevant parts of Section 147:

“147. Income escaping assessment. - If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped



assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

[Emphasis is ours]

11. A careful perusal of the third proviso appended to Section 147 of the Act reveals that the AO is free to assess or reassess such income which is chargeable to tax, provided he has reason to believe that income has escaped assessment, other than income which is the subject matter of any appeal, reference or revision.

12. Therefore, in order to appreciate as to which is the income that the AO cannot subject to assessment or reassessment, one would have to examine the grounds incorporated in the appeal [i.e., for AY 2010-11] which the appellant/revenue had preferred with the Tribunal. For convenience, the grounds contained in the appeal are extracted below:

- “1. The order of Ld. CIT(A) is not correct in law and on facts.
2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition u/s 68 of the Act amounting to Rs.4,95,00,000/-.
3. On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of Hon'ble Delhi High Court in case of Kabul Chawla as Sec. 153A does not restrict the assessment to seized documents.”

13. We may note that identical grounds were raised *qua* AY 2011-12, except for the difference in the amount that was added to the respondent's/assessee's income under Section 68 of the Act.

14. Clearly, a perusal of the grounds of appeal would show that the appellant/revenue had directed its appeal towards the additions made under Section 68 of the Act. The reassessment proceedings, concededly, also dealt with the additions made under Section 68 of the Act.



15. According to us, while the appeals preferred were pending adjudication with the Tribunal, the AO could not have triggered reassessment proceedings against the additions which were the subject matter of the appeal. The dicta of the two judgments cited by Mr Aggarwal [i.e., *Commissioner of Income Tax, New Delhi (Central) vs. Edward Keventer (Successors) P. Ltd.* and *Alcatel Lucent France vs. ADIT*] is squarely applicable.

15.1. Both judgments enunciate the principle that for zeroing down on matters which the AO cannot subject to assessment or reassessment proceedings under the third proviso to Section 147 of the Act the best way would be to examine the grounds of appeal.

16. Thus, having regard to the aforesaid, in our view, no interference is called for with the impugned orders, as no substantial question of law arises for our consideration.

17. The appeals are, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 7, 2023/pmc