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

\+ W.P.(C) 7325/2024 & CM APPL. 30567/2024 (Stay)
CM APPL. 30568/2024 (Exemption)

HCL TECHNOLOGIES LTD ..... Petitioner
Through: Mr. Ajay Vohra, Sr. Advocate with Mr. Aditya Vohra, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Through: Mr. Abhishek Maratha, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MS. JUSTICE TARA VITASTA GANJU

O R D E R

% **21.05.2024**

CM APPL. 30568/2024 (Ex.)

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 7325/2024 & CM APPL. 30567/2024 (Stay)

1. This writ petition has been preferred seeking the following reliefs:-

> "a) a writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing the **notice dated 19.03.2024** issued under section 148A(b) of the Act for assessment year 2017-18;
>
> b) a writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing the **order dated 30.03.2024** passed by Respondent No.1 under section 148A(d) and the consequent initiation of reassessment proceedings vide **notice**

> **dated 30.03.2024** issued under section 148 of the Act for assessment year 2017-18;
>
> c) grant ad-interim stay of the reassessment proceedings undertaken by Respondent No.1 under section 148 read with section 148A pursuant to notice dated 30.03.2024 issued under section 148 of the Act for assessment year 2017-18 pending final disposal of the present writ petition; and
>
> d) pass such further or other order/ direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The challenge essentially is to the initiation of reassessment proceedings pursuant to the impugned order and notice dated 30 March 2024. The principal allegation pertains to certain credit card transactions amounting to INR 93,25,65,657/- which were made in the Assessment Year in question.

3. Although and undisputedly, the proceedings were initially commenced against the amalgamated entity, the same was ultimately rectified pursuant to a subsequent SFT report which was submitted by Citibank.

4. However, and insofar as the expenditure incurred in respect of credit card transactions are concerned, the AO has observed as follows:-

> "Thus, it is evident that during the course of assessment proceedings u/s 143(3) against HCL Technologies Ltd. (AAACH1645P), the amount of Rs. 93,25,65,657 was not shown as the income of HCL Technologies Ltd. as the order u/s 143(3) was passed dated 27.09.2019. Moreover, there is nothing on record to show that the HCL Technologies Ltd has shown the amount as a part of its income during the course of the assessment proceedings. It is also not clear whether any audit note was issued or whether this amount is accounted for in the ITR of HCL Technologies Ltd. for the relevant AY. Thus, the fact of erroneous SFT reporting was not covered during the assessment proceedings."

5. We note that prima facie there is no material which may establish that the aforesaid transaction was duly examined in the

course of the assessment proceedings. We in this regard bear in mind the following pertinent observations as were rendered by the Full Bench of our Court in **Commissioner of Income-tax vs. Usha International Ltd.** [2012 SCC OnLine Del 4995]:-

> "**24.** Distinction between disclosure/declaration of material facts made by the assessee and the effect thereof and the principle of change of opinion is apparent and recognized. Failure to make full and true disclosure of material facts is a precondition which should be satisfied if the reopening is after four years of the end of the assessment year. The Explanation stipulates that mere production of books of account and other documents, from which the Assessing Officer could have with due diligence inferred facts does not amount to full and true disclosure. Thus, in cases of reopening after four years as per the proviso, conduct of the assessee and disclosures made by him are relevant. However, when the proviso is not applicable, the said precondition is not applicable. This additional requirement is not to be satisfied when reassessment proceedings are initiated within four years of the end of the assessment year. The sequitur is that when the proviso does not apply, the reassessment proceedings cannot be declared invalid on the ground that the full and true disclosure of material facts was made. In such cases, reassessment proceedings can be declared invalid when there is a change of opinion. As a matter of abundant caution we clarify that failure to state true and correct facts can vitiate and make the principle of change of opinion inapplicable. This does not require reference to and the proviso is not invoked. The difference is this ; when the proviso applies the condition stated therein must be satisfied and in other cases it is not a prerequisite or condition precedent but the defence/plea of change of opinion shall not be available and will be rejected.
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> **25.** Thus, if a subject-matter, entry or claim/deduction is not examined by an Assessing Officer, it cannot be presumed that he must have examined the claim/deduction or the entry, and, therefore, it is the case of "change of opinion". When at the first instance, in the original assessment proceedings, no opinion is formed, the principle of "change of opinion" cannot and does not apply. There is a difference between change of opinion and failure or omission of the Assessing Officer to form an opinion on a subject-matter, entry, claim, deduction. When the Assessing Officer fails to examine a subject-matter, entry, claim or deduction, he forms no opinion. It is a case of no opinion."

6. In view of the aforesaid, we find no justification to entertain the

challenge at this stage.

7. We accordingly dismiss the writ petition. All rights and contentions of respective parties are kept open.

YASHWANT VARMA, J

TARA VITASTA GANJU, J

MAY 21, 2024/neha