$~137

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

\+ W.P.(C) 11235/2024

ELNOVA PHARMA

(ACTING THROUGH ITS PARTNER) .....Petitioner

Through: Mr. Ved Jain, Mr. Nischay Kantoor & Ms. Soniya Dodeja, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 43(1), DELHI & ORS. .....Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar & Mr. Rishabh Nangia, Advocates
Mr. Badar Mahmood, SSC with Mr. Ammar Ahmad, Advocate for UOI

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **13.08.2024**

CM APPL. 46494/2024 (for exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

W.P.(C) 11235/2024 & CM APPL. 46493/2024 (for interim relief)

1. This writ petition impugns the reassessment action as initiated in terms of a notice referrable to Section 148 of the Income Tax Act, 1961 [‘**Act**’] dated 30 March 2024.

2. As is manifest from the objections which were filed by the writ petitioner and which have also been taken note of by the Assessing

Officer ['**AO'**] while passing the final order under Section 148A(d), it was the categorical case of the petitioner that the allegation, that there was a failure to disclose, was wholly incorrect. This becomes evident from a reading of the reply submitted by the petitioner and which is reproduced herein below:-

> "We thankfully acknowledge the receipt of Notice under Clause (b) of section 148A of the Income Tax Act, 1961.vide DIN& Notice No. ITBAIAST/F/148A (SCN)/2023-24 /1061055036(1)
>
> Please find the following documents as per your requirements.
>
> 1. Interest on FDR received during the financial year 2019-2020 amounts Rs. 265311/- in Our Profit and Loss account (Amount Rs. 578301- from Union Bank of India and Amount Rs. 207481/-from Bank of India.
> 2. Total Sale reported under GSTR-1 amount Rs. 98,65,30,519/- Sales as per trading and manufacturing account for the period ending 31.03.2020 is rs.98,68,30,519I-.
> 3. Total Sale reported under GSTR-3B amount Rs. 98,65,30,519/- Sales as per Trading and Manufacturing account for the period ending 31.03,2020.
> 4. Purchase of Vehicle from Capital Vehicles Sales Limited amount Rs. 31,70,000/- shows in our Fixed Assets.
> 5. Purchase of Foreign currency from union bank of India amount Rs. 67, 55, 4501- (Rs. 58,59,200/ -is for Import of Machinery from Sky Softgel Co. Ltd. Korea and Rs. 896250/- is for Purchase of Raw Material from Kaneka Corporation Japan.
> 6. Statement filed by authorized dealers sending of foreign remittance from union bank of India amount Rs. 8962501- is for purchase of Raw Material from Kaneka Corporation.
> 7. Interest on FDR received during the financial year 2019-2020 amounts Rs. 265311/- in Our Profit and Loss account (Amount Rs. 57830/- from Union Bank of India and Amount Rs. 207481/-from Bank of India).
> 8. Total Interest on securities received during the financial year 2019-2020 amounts Rs. 56531/- from Himachal Pradesh State Electricity Board Limited.
>
> The above mentioned amount properly considered in calculation of income for the Financial Year 2019-2020 and Assessment Year 2020- 2021 in our Profit and Loss statement. Copy attached. So we hereby requesting you please close the proceedings."

3. Faced with the aforesaid, the AO has thereafter and on consideration of the reply which was submitted, observed that there

appears to be a need for "*elaborated explanation for the transactions made by the assessee*".

4. We find ourselves unable to sustain the view so expressed bearing in mind the disclosures which were made by the writ petitioner and which have been extracted hereinabove.

5. Prima facie we also note that while the original notice under Section 148A(b) of the Act was based solely on the allegation of a failure to disclose, the Section 148A(d) order proposes to carry forward what clearly appears to be an exercise of verification. In that sense, the AO has clearly changed the basis and the foundation on which the reassessment was originally proposed.

6. We note that while dealing with the aforesaid aspect, we had in **ATS Infrastructure Limited v. Assistant Commissioner of Income Tax Circle 1 (1) & Ors.** [2024 SCC OnLine Del 5048] held as follows:-

> "**23.** It becomes evident that the Court in *Ranbaxy Laboratories Ltd.*, firstly took into consideration Section 147 of the Act, embodying the phrase "*and also*" prefixed to the expression "*any other income chargeable to tax which has escaped assessment*". It thus came to the conclusion that, while an assessment may be reopened based on certain grounds which may have led the AO to be of the opinion that income chargeable to tax had escaped assessment, once it is found that the reassessment power had been validly invoked, the power of the AO would not stand confined only to those aspects which may have been noticed in the original notice issued under Section 148 of the Act but would also extend to any other income which may be found to be exigible to tax.
>
> **24.** This clearly appeals to reason, since Section 147 of the Act embodies a power to assess, reassess as well also to recompute. Consequently, and once that power is validly invoked, the original assessment would cease to exist in the eyes of law. Undoubtedly, once an assessment already made comes to be reopened, the AO stands empowered statutorily to undertake an assessment afresh in respect of the entire income which may have escaped assessment. However, the only additional caveat which *Ranbaxy Laboratories Ltd.* enters is with respect to a situation where, in the course of

reassessment, the AO ultimately comes to the conclusion that no additions or variations were warranted in respect of the heads or items of income which had formed the basis for initiation of action under Section 148 of the Act. It is in the aforesaid backdrop that the Court in *Ranbaxy Laboratories Ltd.* proceeded on facts to hold that since no additions had ultimately been made in respect of items such as club fees, gifts and presents, and which constituted the basis for initiation of reassessment, it would not be open to the AO to revise or modulate findings on any other head or items that may have been dealt with in the original assessment.

25. The position in law which emerges from the aforesaid discussion is that while it is true that the AO would have to establish that reassessment is warranted on account of information in its possession which appears to indicate that income chargeable to tax had escaped assessment, once the assessment itself is reopened it would not be confined to those subjects only. This would, however, be subject only to one additional rider and that being if, in the course of reassessment, the AO ultimately comes to conclude that no additions or modifications are warranted under those heads, it would not be entitled to make any additions in respect of other items forming part of the original return.

xxxx xxxx xxxx

27. For the sake of completeness, we may note that a Division Bench of this Court had expressed certain doubts with respect to the view taken by the Court in *Ranbaxy Laboratories Ltd*. This becomes evident upon a consideration of the opinion expressed by the Court in *Principal Commissioner of Income Tax v. Jakhotia Plastics Pvt. Ltd*. The Court in *Jakhotia Plastics* had expressed certain reservations with respect to what it viewed as undue importance having been placed by the Bombay High Court on the words "and also" in *Jet Airways (I) Ltd*.

28. In light of the above, the Court in *Jakhotia Plastics* had observed that since there was some doubt as to the accuracy of the interpretation accorded in Ranbaxy Laboratories Ltd., it would be appropriate for the matter being placed for the consideration of a larger Bench. This becomes evident from a reading of paragraphs 13, 14 and 15 of the report and which are extracted hereinbelow:-

xxxx xxxx xxxx

29. In our considered opinion, and bearing in mind the import of Explanation 3 as well as the language in which Section 147 of the Act stands couched, we find no justification to differ from the legal position which had been enunciated in *Ranbaxy Laboratories Ltd.* We also bear in consideration the said decision having been affirmed and approved subsequently in

Commissioner of Income-tax (Exemption) vs. Monarch Educational Society and *Commissioner of Income-tax vs. Software Consultants*.

30. We thus, come to the conclusion that the enunciation with respect to the indelible connection between Section 148A(b) and Section 148 A(d) of the Act are clearly not impacted by Explanation 3. As we read Sections 147 and 148 of the Act, we come to the firm conclusion that the subject of validity of initiation of reassessment would have to be independently evaluated and cannot be confused with the power that could ultimately be available in the hands of the AO and which could be invoked once an assessment has been validly reopened.

31. Explanation 3, or for that matter, the Explanation which presently forms part of Section 147, would come into play only once it is found that the power to reassess had been validly invoked and the formation of opinion entitled to be upheld in light of principles which are well settled. The Explanations would be applicable to issues which may come to the notice of the AO in the course of proceedings of reassessment subject to the supervening requirement of the reassessment action itself having been validly initiated.

32. Explanation 3, cannot consequently be read as enabling the AO to attempt to either deviate from the reasons originally recorded for initiating action under Section 147/148 of the Act nor can those Explanations be read as empowering the AO to improve upon, supplement or supplant the reasons which formed the bedrock for initiation of action under the aforenoted provisions."

7. We also bear in mind that the order under Section 148A(d) or the power to reassess cannot possibly rest on the need of the AO to carry out a verification. The power stands conferred on the AO to reopen assessments, where it be of the opinion that income liable to tax has escaped assessment.

8. In view of the undisputed position which emerges from the record, it was suggested that the matter may be remitted to the AO for passing a fresh order under Section 148A(d) of the Act, bearing in mind the objections which are noticed above.

9. We accordingly allow this writ petition and quash the notice referrable to Section 148 as well as order under Section 148A(d), both

dated 30 March 2024. The matter shall stand remitted to the AO, who shall examine the issue afresh, bearing in mind the disclosures made by the writ petitioner as well as the challenge made to the very foundation of formation of opinion and which according to the writ petitioner is factually incorrect.

10. All other rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 13, 2024/*vp*