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

+ **ITA 756/2023**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL-1

.....Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Manu, JSC and Mr.
Pratyaksh Gupta, JSC

versus

JAGUAR BUILDCON PVT. LTD.Respondent

Through: Mr. Gaurav Jain and Mr.
Shubham Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

01.08.2024

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1. The appellant impugns the order of the **Income Tax Appellate Tribunal**¹ dated 13 April 2023 and posits the following questions of law for our consideration:

“2.1 Whether Ld. ITAT has erred on the facts and circumstances of the case in deleting the addition of Rs.58,18,50,000/- under section 68 of the Act on confirming the order of Ld. CIT(A) who concluded that when on the ground on which the reopening of assessment is based, whereas no additions are made by the Assessing Officer in the order of assessment, he cannot make addition on some other grounds which did not form part of the reasons recorded by him?

2.2 Whether Ld. ITAT has erred on the facts and circumstances of the case in not appreciating the explanation 3 of section 147 of the Income Tax Act, 1961 in which it is provided that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section,

¹ Tribunal



notwithstanding that the reasons for such issues have not been included in the reasons recorded under sub-section (2) of section 148?

2.3 Whether Ld. ITAT has erred on the facts and circumstances of the case in placing reliance of the case of Ranbaxy Laboratories Ltd, as the facts of the said judgment of Hon'ble Delhi High Court is different from the case of the assessee. Further, the Ld. ITAT has not gone through the merits of the case of the assessee and has relied upon the above judgment to delete the addition?

2.4 Whether Ld. ITAT has erred on the facts and circumstances of the case when the addition made were not due to roving and fishing enquiries, but rather due to concrete information received from Investigation Wing of the department, based on field enquiries?

2.5 Whether Ld. ITAT has erred on the facts and circumstances of the case, when the addition done with regard to accommodation entry in form of share premium, is connected, related and classified under the same head of income, similar to the reasons of reopening?"

2. We had while originally admitting the appeal taken note of the principal questions which arise in our order dated 02 February 2024 which reads thus:

“A. Whether Ld. ITAT has erred on the facts and circumstances of the case in not appreciating Explanation 3 of Section 147 of the Income Tax Act, 1961 and whether the same would empower the Assessing Officer to assess or reassess income in respect of any issue which has escaped assessment notwithstanding the reasons recorded under sub-section (2) of Section 148 having not alluded to the same or formed the basis for reopening?”

3. However and on hearing learned counsels for the parties, we note that the Tribunal while dealing with the question which is proposed had observed as follows:

“7. Upon careful consideration, we note that assessee’s case was reopened on the basis of information relating to accommodation entry received from TVH Trading Company Pvt. Ltd. of Rs.26,40,00,000/-. No addition was made in the assessment order on this account since the amount had already been added in the order u/s 153A dated 30.03.2014. The addition of Rs.58,18,50,000/- was made u/s 68 of the Act in respect of the amount received from 5 persons which did not form part of the reasons recorded for reopening of the case. In these circumstances, the case laws of Hon'ble Delhi High Court in the



case of Jet Airways (I) Ltd. (supra) are fully applicable and there is no infirmity in the well reasoned order of Id. CIT (A). Ld. DR tried to submit that there are some other High Court who have taken a contrary view. But, in our considered view, this is not an acceptable proposition in view of the decision of the Hon'ble jurisdictional High Court which is a binding. Hence, respectfully following the decision of Hon'ble jurisdictional High Court in the case of Ranbaxy Laboratories Ltd. (supra), we uphold the order of Id. CIT (A).”

4. The principal question which arises for our consideration is whether once the issue of accommodation entry and which alone formed the subject matter of the notice issued under Section 148 of the **Income Tax Act, 1961**² was ultimately dropped, any further additions could have been made thereafter. It was in the aforesaid context that the appellant had sought to press Explanation 3 of Section 147 as it stood prior to 1 April 2021.

5. The Tribunal rested its conclusions on the judgment rendered by a Division Bench of this Court in **Ranbaxy Laboratories Ltd. v. Commissioner of Income-tax**³ to hold that once the principal grounds on which reassessment was proposed are dropped, no further additions can be made even by taking recourse to Explanation 3.

6. We deem it apposite to extract the following pertinent observations rendered in the aforementioned decision:

“8. The crux of section 147 of the Act is the escapement of income which may be assessed or reassessed as well as any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Explanation 3 makes it clear that the Assessing Officer may assess or reassess the income in respect of issue which has escaped assessment, if such issue comes to his notice in the course of proceedings under this section even though the said issue did not find mention in the reasons recorded and the notice issued under section 148. Since there was a confusion prevailing with regard to the powers of the Assessing Officer to assess or reassess on the

² Act

³ 2011 SCC OnLine Del 2612



issues for which no reasons were recorded, this Explanation came to be inserted as clarificatory. The reasons for insertion of this clarificatory Explanation in clause (57) of the Memorandum Explaining the Provisions of the Finance (No. 2) Bill, 2009, of 2009 are the following (see (2009) 314 ITR (St.) 57, 206):

“Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, it is proposed to insert an Explanation in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.

This amendment will take effect retrospectively from April 1, 1989, and will accordingly apply in relation to the assessment year 1989-1990 and subsequent years.”

9. By virtue of Explanation 3 to section 147 interpretive confusion came to be clarified and thus the decisions rendered by the Punjab and Haryana High Court in the case of *Vipan Khanna v. CIT*, (2002) 255 ITR 220 (P&H) and the Kerala High Court in the case of *Travancore Cements Limited v. Asst. CIT*, (2008) 305 ITR 170 (Ker), no longer hold the field on the subject.

10. The ratio of both the aforecited cases was that upon the issuance of notice under section 148(2), when proceedings were initiated by the Assessing Officer on issues in respect of which he had formed a reason to believe that income had escaped assessment, it was not open to the Assessing Officer to carry out an assessment or reassessment in respect of other issues which were totally unconnected with the proceedings that were already initiated. To put it differently, once the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment and proceeds to issue a notice under section 148, it is not open to him to assess or reassess the income under an independent or unconnected issue, which was not the basis of the notice for reopening the assessment.

11. Now, after the insertion of Explanation 3, as noted above, the position is that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under section 147 though the reasons for such issue were not included in the reasons recorded in the notice under section 148(2) on the basis of which he had initiated proceedings under section 147. Similar question came for consideration before the Division Bench of the Bombay



High Court in *CIT v. Jet Airways (1) Limited*, (2011) 331 ITR 236 (Bom). The court held as under (page 242):

“The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows:

(i) the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148; (iii) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment 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 the section; and (iv) though the notice under section 148 (2) does not include a particular, issue with respect to which income has escaped assessment, he may none the less, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section.”

7. We find that the view that was expressed in *Ranbaxy Laboratories* was noticed by us recently in our decision in **ATS Infrastructure Limited v. Assistant Commissioner of Income Tax Circle 1 (1) & Ors.**⁴ and where the legal position was summarised in the following passages:

“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,

⁴ 2024 SCC OnLine Del 5048



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.

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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. Jakhota Plastics Pvt. Ltd.* The Court in *Jakhota 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 *Jakhota 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:-

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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 aforementioned provisions.”

8. In view of the aforesaid, we answer the question which stands posited in the negative and against the appellant. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 1, 2024

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