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

+ ITA 1482/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-1

.....Appellant

Through: Mr. Sunil Kumar Agarwal, Sr.
Standing Counsel with Mr.
Shivansh B. Pandya, JSC, Mr.
Viplav Acharya, JSC and Mr.
Utkarsh Tiwari, Adv.

versus

M/S MIDEAST INTEGRATED STEELS LTD.....Respondent

Through: Mr. Salil Aggarwal, Sr. Adv.
with Mr. Madhur Aggarwal,
Mr. Uma Shankar & Ms. Meera
Bhatia, Adv.

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+ ITA 19/2024

THE PR.COMMISSIONER OF INCOME TAX - CENTRAL-1

.....Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, JSC and Mr.
Abhishek Anand, Adv.

versus

MIDEAST INTEGRATED STEELS LTD.Respondent

Through: Mr. Salil Aggarwal, Sr. Adv.
with Mr. Madhur Aggarwal,
Mr. Uma Shankar & Ms. Meera
Bhatia, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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10.09.2024

1. These two appeals had been admitted in terms of our order



dated 12 February 2024 on the following question of law:-

“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?”

2. The issue itself had arisen in the context of the Assessing Officer [“**AO**”] having not made any additions in respect of issues which formed subject matter of the notices under Section 147/148 of the Income Tax Act, 1961 [“**Act**”]. This led to the matter being examined by the Principal Commissioner under Section 263 of the Act and which authority took the view that the hands of the AO would not stand tied down to only those items which had been spoken of in the original Section 148 notice.

3. The Income Tax Appellate Tribunal [“**Tribunal**”] ultimately bore in consideration the decision of the Court in **Ranbaxy Laboratories Ltd. v. Commissioner of Income Tax** [2011 SCC OnLine Del 2612] to hold that the reassessment shall stand confined to items which had been mentioned or taken note of by the AO while forming the opinion that income had escaped assessment. Ranbaxy had principally held that unless additions are made on that score, no further additions would be sustained.

4. We had while dealing with an identical question 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.

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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. 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 *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 aforenoted provisions.”

5. In view of the aforesaid, we answer the question as posited in the negative and hold that the Tribunal was correct in the view which stands expressed in the orders impugned before us in these appeals.
6. The appeals, consequently, fail and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 10, 2024/ns