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

\+ ITA 1113/2005

COMMISSIONER OF INCOME TAX V ..... Appellant

Through: Mr. Vipul Agrawal, Sr. Standing Counsel along with Mr. Gibran Nausahd and Ms. Sakashi Shairwal, Jr. Standing Counsels.

versus

M/S RAJASTHAN BREWERIES LTD. ..... Respondent

Through: Appearance not given.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **29.02.2024**

1. The Commissioner impugns the order dated 07 April 2005 as passed by the **Income Tax Appellate Tribunal**[1]. In terms of the order dated 14 November 2005, we had admitted the appeal on the following question of law:-

> "Whether the ITAT was correct in holding that the proviso of Section 143(2) applies to proceeding initiated under Section 148 of the Income Tax Act, 1961?"

2. We note that the assessment which was completed and was questioned by the assessee emanated from proceedings which came to be initiated under Section 147 of the **Income Tax Act, 1961**[2]. The order of assessment which was ultimately framed was assailed before the ITAT on the ground that the notice under Section 143(2) of the Act was issued on 15 October 1997 and thus "*after the expiry of the*

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[1] ITAT
[2] Act

twelve month period from the end of the month in which the return was furnished".

3. The ITAT has while dealing with the aforesaid challenge proceeded to allow the appeal in the following terms: -

> "6. We have carefully considered the entire material on record. Before the learned CIT(A) the assessee had challenged the reopening of the assessment though on different grounds. The additional ground taken by the assessee being legal ground has to be adjudicated first because it relates to the validity of the assessment order. There is no dispute about the fact that the assessee filed return of income on 19-12-1996. Further it is also not disputed that notice u/s 143(2) was issued on 15-10-1997. In the proviso attached to section 143(2) it has been laid down that no notice u/s 143(2) shall be served on the assessee after the expiry of the twelve months from the end of the month in which the return was furnished. In view of this statutory provision, if notice is served after the expiry of one year from the end of the month in which the return was filed then the notice has to be treated as invalid and it is settled legal position that on the basis of illegal or invalid notice the assessment made cannot be justified in the eye of law. In the present case therefore, the assessment, which is based on the invalid notice, has to be quashed. In view of the above the additional ground taken before us in allowed in favour of the assessee."

4. The view as is taken by the ITAT essentially appears to flow from Section 143(2) of the Act which at the relevant time read as under:-

> "143(2) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return."

5. However, Mr. Agarwal has drawn our attention to the First Proviso to Section 148 of the Act which came to be inserted by way of Finance Act, 2006 and which read as follows: -

"148. **Issue of notice where income has escaped assessment**.—1 [(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:]

[Provided that in a case— (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case— (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and (b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

[(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.]

6. As is manifest from a reading of clauses (a) and (b) and since the return in question fell within the period of 01 October 1991 and 30

September 2005, the view of the ITAT cannot possibly be sustained.

7. We note that an identical question stood raised in ITA 645 of 2004. Taking note of the amendment noticed by us hereinabove, the Court had proceeded to allow the appeal and remit the matter to the ITAT for reconsideration. That order reads as follows: -

> "This appeal was admitted on 4.7.2005 on the following substantial questions of law:
>
> 1. Whether the ITAT was correct in holding that the proviso of Section 143(2) applies to proceedings initiated under Section 147/148 of Income Tax Act, 1961?
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> In view of the amendment to Section 148 of the Income-tax Act, 1961 by which a proviso has been inserted by the Finance Act, 2006 with retrospective effect from 1.10.1991, the impugned order is set aside. Accordingly, this appeal is allowed and the case is remanded to the Tribunal for re-consideration of the matter in light of the amended provision.
>
> Appeal stands disposed of."

8. In view of the above, we allow the instant appeal and set aside the order dated 07 April 2005. The question of law as framed shall stand answered in favour of the appellant. The matter shall stand remitted to the file of the concerned ITAT which shall now proceed in the matter afresh and in accordance with law.

9. The appeal shall stand disposed of in the aforesaid terms.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 29, 2024/RW