

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.05.2013

+ **ITA 608/2012**

COMMISSIONER OF INCOME TAX - IV ... Appellant

versus

M/s INSECTICIDES (INDIA) LTD. ... Respondent

+ **ITA 609/2012**

COMMISSIONER OF INCOME TAX - IV ... Appellant

versus

M/s INSECTICIDES (INDIA) LTD. ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr N. P. Sahni with Mr Ruchesh Sinha
For the Respondent : Mr K.V.S Gupta

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These appeals by the revenue are directed against the order dated 12.10.2011 passed by the Income Tax Appellate Tribunal, New Delhi in ITA Nos. 2332-2333/Del/2010 relating to the assessment years 2002-03

and 2003-04 (respectively). In both these appeals the issue relates to the validity of the reassessment proceedings under Section 147 of the Income - tax Act, 1961 (hereinafter referred to as “the said Act”).

2. Insofar as assessment year 2002-03 is concerned, the original assessment under Section 143(3) of the said Act was completed on 29.11.2004. The notices under Section 148 were issued on 21.09.2006. As regards, assessment year 2003-04, there was no assessment under Section 143(3) of the said Act, however, an intimation under Section 143(1) thereof had been issued. The notice under Section 148 seeking to re-open the assessment was issued on 17.10.2006.

3. The reasons indicated behind the re-opening of the assessments were identical in both the cases. We are setting out below the reasons given in respect of the assessment year 2002-03. They are as under:-

“It has been informed by the Director of Income-tax (Inv.), New Delhi vide letter dated 16.6.2006 that the above named company was involved in giving and taking bogus entries/transactions during the F.Y. 2001-02.

From the information gathered by the DIT(Inv.)-1, New Delhi that the assessee was involved in giving and taking accommodation entries only and represented unsecured money of the assessee company is actually unexplained income of the assessee company. The assessee company has failed to disclose fully and truly all the

material facts and source of these funds routed through bank accounts of the assessee company. I, therefore have reasons to believe that the income has escaped assessment within the meaning of section 147 of the I.T. Act, 1961 for the asstt. Year referred above.

Hence notice u/s 148 is issued.”

The respondent / assessee had filed objections against the said notices under Section 148 of the said Act. However, without disposing of those objections by reasoned order, the Assessing Officer framed reassessment orders on 15.10.2007 in respect of both the years. By virtue of the reassessment orders, the Assessing Officer made an addition of ₹ 30 lakhs in respect of the assessment year 2002-03 and an addition of ₹ 35 lakhs in respect of the assessment year 2003-04. Essentially, the Assessing Officer held that the said sums of money represented income of the assessee from undisclosed sources which had been shown as share application money. In other words, the Assessing Officer held the said sums to be bogus entries.

4. Being aggrieved by the said orders passed by the Assessing Officer, the respondent / assessee preferred appeals. Those appeals were allowed by the Commissioner of Income Tax (Appeals) by a common order dated 06.01.2011. Insofar as the assessment year 2002-03 was concerned, the CIT (Appeals) held that the reassessment proceedings were bad inasmuch as it amounted to a mere change of opinion. The findings of the CIT (Appeals) to this effect were as under:-

“The submissions made on behalf of the appellant company and reasons recorded by the Ld AO have been carefully perused. On consideration, I find that the issue of share capital and share application money has come up in the regular assessment proceedings and the appellant company, vide its letter dated 09.11.2004, had submitted detailed written reply along with necessary details of share capital, share holding pattern and confirmation of the persons contributing to share capital along with proof of filing of their income tax return, PAN nos. Ward/Circle/Range etc. Further, this fact was again brought to the notice of Ld AO, vide appellant’s letter dated 28.08.2007, while filing the objections to the reopening the assessment for the assessment year under consideration. On a perusal of the said letter it is seen that not only the issue was examined by the AO but also the claim of the appellant company was accepted in the original assessment. In this factual position, it cannot be held that the issue of share capital of ₹ 30 lacs was not examined and decided by the Ld AO at the time of the regular assessment. I also find myself in agreement with the Ld counsel that no fresh material, let alone tangible material, has come to his possession so as to empower/enable the AO to take recourse to the provisions of section 147 of the IT Act, 1961. Therefore,

the reopening of assessment is based merely on change of opinion, which I am afraid, is not sustainable in law. Therefore, in the light of the judgment relied upon by the Id counsel, I have no hesitation in holding that the reopening of assessment in terms of section 147 of the Act is not sustainable in law.”

5. In respect of both the assessment years, the CIT (Appeals) held in favour of the assessee on merits also.

6. Being aggrieved by the deletion of the addition made by the CIT (Appeals), the revenue preferred the above mentioned appeals before the Tribunal. As mentioned above, the Tribunal rejected those appeals and that is how the revenue has filed these appeals before us.

7. We may point out at this juncture itself that the Tribunal did not go into the question of merits. It only examined the question of the validity of the proceedings under Section 147 of the said Act. The Tribunal, in essence, held that the purported reasons for reopening the assessments were entirely vague and devoid of any material. As such, on the available material, no reasonable person could have any reason to believe that income had escaped assessment. Consequently, the Tribunal held that the proceedings under Section 147 of the said Act were invalid.

8. The Tribunal gave detailed reasons for concluding that the proceedings under Section 147 were invalid. Instead of adding anything to the said reasons, we think it would be appropriate if the same are reproduced:-

“In the case at hand, as is seen from the reasons recorded by the AO, we find that the AO has merely stated that it has been informed by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 that the above named company was involved in giving and taking bogus entries/transactions during the relevant year, which is actually unexplained income of the assessee company. The AO has further stated that the assessee company has failed to disclose fully and truly all material facts and source of these funds routed through bank account of the assessee company. In the reasons recorded, it is nowhere mentioned as to who had given bogus entries/transactions to the assessee or to whom the assessee had given bogus entries or transactions. It is also nowhere mentioned as to on which dates and through which mode the bogus entries and transactions were made by the assessee. What was the information given by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 has also not been mentioned. In other words, the contents of the letter dated 16.06.2006 of the Director of Income-tax (Inv.), New Delhi have not been given. The AO has

vaguely referred to certain communications that he had received from the DIT(Inv.), New Delhi; the AO did not mention the facts mentioned in the said communication except that from the informations gathered by the DIT (Inv.), New Delhi that the assessee was involved in giving and taking accommodation entries only and represented unsecured money of the assessee company is actually unexplained income of the assessee company or that it has been informed by the Director of Income-tax (Inv.), New Delhi vide letter dated 16.06.2006 that the assessee company was involved in giving and taking bogus entries/transactions during the relevant financial year. The AO did not mention the details of transactions that represented unexplained income of the assessee company. The information on the basis of which the AO has initiated proceedings u/s 147 of the Act are undoubtedly vague and uncertain and cannot be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. In other words, the reasons recorded by the AO are totally vague, scanty and ambiguous. They are not clear and unambiguous but suffer from vagueness. The reasons recorded by the AO do not disclose the AO's mind as to what was the nature and amount of transaction or entries,

which had been given or taken by the assessee in the relevant year. The reasons recorded by the AO also do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the amount and nature of bogus entries or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. As already noted above, it is well settled that only the reasons recorded by the AO for initiating proceedings u/s 147 of the Act are to be looked at or examined for sustaining or setting aside a notice issued u/s 148 of the Act. The reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. Therefore, the details of entries or amount mentioned in the assessment order and in respect of which ultimate addition has been made by the AO, cannot be made a basis to say that the reasons recorded by the AO were with reference to those amounts mentioned in the assessment order. The reasons recorded by the AO are totally silent with regard to the amount and nature of bogus entries and transactions and the persons with whom the transactions had taken place. In this respect, we may rely upon the decision of Hon'ble jurisdictional

Delhi High Court in the case of CIT vs. Atul Jain (2000) 299 ITR 383, in which case the information relied upon by the AO for initiating proceedings u/s 147 of the Act did indicate the source of the capital gain and nobody knew which shares were transacted and with whom the transaction has taken place and in that case there were absolutely no details available and the information supplied was extremely scanty and vague and in that light of those facts, the Hon'ble Jurisdictional Delhi High Court held that initiation of proceedings u/s 147 of the Act by the AO was not valid and justified in the eyes of law. The recent decision of Hon'ble jurisdictional High Court of Delhi in the case of Signature Hotels (P) Ltd. (supra) also supports the view we have taken above.”

9. We do not see any reason to differ with the view expressed by the Tribunal. No substantial question of law arises for our consideration. The appeals are dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

MAY 20, 2013
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