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

% *Judgement delivered on:11.01.2017*

+ **ITA 335/2015**

PR.COMMISIONER OF INCOME TAX-6 Appellant
Through: Mr. Dileep Shivpuri, Mr. Sanjay
Kumar and Mr. Vikrant A.
Maheshwari, Advocates.

Versus

M/S N.C CABLES LTD. Respondent
Through: Dr. Rakesh Gupta, Mr. Somil
Agarwal, Mr. Rohit Kumar Gupta and
Ms. Monika Ghai, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT (Oral):-

1. The following questions of law were framed in this case:-

“(a) Did the Tribunal fall into error in holding that the Commissioner of Income Tax (CIT) did not in fact record satisfaction under Section 151 of the Income Tax Act, 1961 for issuing notice under Section 147, in the circumstances of the case?”

“(b) Is the impugned order of the Tribunal justified in so far as it directs the deletion of sums brought to tax by the Assessing Officer under Section 68?”

2. The assessee had in its return for the Assessment Year (AY) 2001-02 claimed that sum of ₹1,00,00,000/- (One Crore) was received towards share

application amounts and a further sum of ₹35,00,000/- (Thirty Five Lakhs) was credited to it as an advance towards loan. The original assessment was completed under Section 143(3) of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act'). However, pursuant to the reassessment notice, issued on 25.03.2008, which was dropped due to technical reasons, and later notice was issued on 21.04.2008, assessments were taken up afresh. After considering the submissions of the assessee and the documents produced in the reassessment proceedings, the Assessment Officer (AO) added back a sum of ₹1,35,00,000/- (One Crore Thirty Five Lakhs). The Commissioner of Income Tax (Appeals) [CIT (A)] held against the assessee on the question of legality of the reassessment notice but allowed the assessee's appeal on merits holding that the AO did not conduct the appropriate enquiry to conclude that share inclusion and the advances received were from bogus entities. The Income Tax Appellate Tribunal (ITAT) allowed the assessee's appeal on merits.

3. The Revenue appealed against the appellate order on the merits; the assessee's cross appeal was on the question of correctness of reopening of the assessment.

4. The ITAT upheld the assessee's cross-objections and dismissed the Revenue's appeal holding that there was no proper application of mind by the concerned sanctioning authority under Section 151 of the Act as a pre-condition for issuing notice under Sections 147/148 of the Act. The ITAT also concluded that in the given facts of the case, the AO had not conducted adequate and proper inquiry into the materials, while invoking Section 68 of the Act to add the amounts in issue.

5. Counsel for the Revenue urges that the CIT (A) and the Tribunal fell

into material error of law in holding that there was no proper application of mind by the competent authority under Section 151 of the Act.

6. The learned counsel relied upon the actual noting which approved the reasons put up to the CIT (A) under Section 151 and submitted that the Commissioner had applied its mind to all the surrounding circumstances while authorizing the reopening and in the circumstances, the adverse findings recorded by the ITAT cannot be sustained. Learned counsel next submitted that on the merits, the CIT (A) and the ITAT's findings cannot be sustained and are unreasonable in the circumstances. It was urged that when notices were issued under Section 131 to the alleged investors/creditors, it was found that substantial majority of them were missing or not found at the addresses given. Furthermore, the bank statements furnished by the assessee of such individuals or entities were supposed to have invested in the shares of the assessee, a private company, who had infusion of funds before the disbursement. The assessee despite opportunity failed to substantiate these infusions and also failed to show that the share investors or creditors were genuine parties and that the transactions were genuine. It was submitted that the judgment in *Commissioner of Income Tax Vs. Lovely Exports (P) Ltd. 216 CTR 195(SC)* clearly envisages that three tests are to be satisfied. In the present case, the genuineness of the transactions and the creditworthiness of the share applicants and the creditors were not demonstrated. In the circumstances, the assessee could not be said to have discharged the burden placed upon it in the first instance.

7. Counsel for the assessee argued that the findings of the ITAT on the question of reopening are not perverse and are according to law. He relied upon the noting to say that the CIT (A) merely approved the note put up by

the ACIT which cannot be said to have satisfied the pre-condition of satisfaction contemplated under Section 151 of the Act. As to the merits, the learned counsel urged that details of each relevant party i.e. confirmation of the amounts paid towards share application or loan, acknowledgment of the ITRs filed by the concerned party/creditor, copies of bank statements and company details were furnished. The mere fact that the AO's representative or inspector could not find the premises of these investors after seven years did not mean that the transactions were not genuine. Learned counsel submitted that the AO could well have conducted an appropriate inquiry into the income tax records to discern whether the authorities were genuine and had sufficient credit to invest or advance the amounts. In the absence of such enquiry, the onus could not have shifted back to the assessee in terms of the judgment in *Lovely Exports'* case (*supra*) since it had clearly shown the identities of the investors/creditors, their bank accounts and the creditworthiness of such party.

8. As far as the addition is concerned, the assessee had furnished large amounts of materials in the form of documents to evidence the genuineness of the identity and the transactions as well as the creditworthiness of the parties. The AO apparently conducted the perfunctory inquiry by deputing an inspector to the premises. As is contended by the assessee, the absence of these parties, after seven or eight years, *ipso facto* could not have led the AO to conclude that the parties were fictitious or non-existent. The assessee had provided details of the Permanent Account Numbers (PAN) and Income Tax Returns (ITR) for the relevant years. Nothing prevented the AO from inquiring into these details in support of its suspicion that the transactions were not genuine. Undoubtedly, the AO had certain bank statements which

disclosed facially that the amounts were infused in cash at the relevant time before the shares were subscribed to or the credits were given. Those suspicious circumstances at the same time could not have been the conclusive factor in this case.

9. Since the investigation wing had levelled several allegations, the AO should, in our opinion, have carried out a more intensive investigation into the income tax records to actually discern the volume of trade or commerce of the share applicants/creditors and their inability, if any, to invest or advance the amounts in issue. That failure cannot translate into the amount by the assessee to provide basic information which is undoubtedly not done. In these circumstances, this Court is of the opinion that there is no infirmity in the concurrent findings of the CIT (A) and the ITAT on this issue.

10. As far as the first issue with respect to the approval granted to reopen the assessment under Section 147/148 of the Act is concerned, the relevant noting is as follows:-

"Reasons for issuing notice u/s 148 of the Act in the case of M/s N. C. Cables Limited, for the A. Y. 2001-02-reg.

Information has been received from the Investigation Wing of the Income Tax Department that the above named assessee is a beneficiary of accommodation entries received from certain established entry operators identified by the Wing during the period laundering for the beneficiaries and on the basis of investigation carried out and evidences collected, a report has been forwarded. I have perused the information contained in the report and the evidences gathered. The report provides details of the modus operandi of the 'money laundering scam' and explain how the unaccounted money of the beneficiaries are ploughed back in its books of account in the form of bogus share capital/capital gains etc. after routing the same through the bank account (s) of the entry operators. Entry operators were

identified after thorough investigation on the basis of definitive analysis of their identity, creditworthiness and the source of the money ultimately received by the beneficiaries. These entry operators are found to be mostly absconding after the unearthing of the 'Money Laundering Scam' leaving the said money at the disposal of the beneficiaries without any associated cost or liability. In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the following specific details of transaction:-

Entry Operator	Beneficiary's bank	Amount-Rs.	Instrument No. by which entry taken and date	Entry giving bank	Account no. From which entry was given
Mahesh Garg	-	800480	30.11.2000	SBP-DG	4507
Performance Trading & Inv.	-	700420	13.11.2000	SBP-DG	4281
Chintpurni Credits	-	900540	22.11.2000	SBP-DG	50058
Subhash Chander Singhal	-	500300	23.11.2000	SBP-DG	4544
Kuldeep Textiles P. Ltd.	-	500500	21546 24.3.2001	Innovative Wazipur	239
Sweta Stone P. Ltd.	-	500500	23510 24.3.2001	-do-	1200259-C.A.
Division Trading P. Ltd.	-	500500	33612 24.3.2001	-do-	225

During the course of the proceedings u/s 148 for the same assessment year, which was dropped on the technical ground that proper sanction was not obtained, it was noticed that there are other receipts also from the identified entry operators. Information about those entries was not available in the data received from the Investigation Wing.

Nevertheless they also fall within the ambit of section 68 of the Act. The assessee has received unexplained sums from the entry

operators as per the above details as per information available with the undersigned. As explained above the identity, creditworthiness and genuineness of transactions with the persons found to be entry operators cannot be established. I therefore have reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for above AY the income chargeable to tax to the extent of accommodation entry mentioned above, has escaped assessment within the meaning of S.147 of the Act.

Since four years has been expired from the end of the relevant year, and assessment u/s 143(3) of the Act was made in the case of the assessee for the said A ~ the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of the CIT, Delhi t1, New Delhi in terms of the Proviso to Section 151 of the Act.

Sd/- (ITO) Ward 13(1).

*The ACIT, Range 13, New Delhi
For kind approval of CIT-V, New Delhi
CIT-V, Delhi:
"Approved"*

Sd/-"

11. Section 151 of the Act clearly stipulates that the CIT (A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT (A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed.

12. The substantial questions of law framed are answered in favour of the assessee and against the Revenue. The appeal is dismissed.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

JANUARY 11, 2017

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