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

\+ ITA 225/2010

COMMISSIONER OF INCOME TAX ..... Appellant
Through: Ms. Prem Lata Bansal, Advocate

versus

M/S. NOBLE RESOURCES & TRADING PVT. LTD. ..... Respondent
Through: None.

% Reserved on: 12th August, 2010
Date of Decision: 18th August, 2010

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

**J U D G M E N T**

**MANMOHAN, J**

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 31st March, 2009 passed by the Income Tax Appellate Tribunal (for brevity "ITAT") in ITA No. 273/Del/2008 for the Assessment Year 1998-1999.

2. The relevant facts of the present case are that on 25th January, 2001, the respondent-assessee filed its return declaring an income of Rs.13,40,570/-. The said return was processed under Section 141(A) and notice under Section 141(2) of the Act, 1961 was duly served. The respondent-assessee's income was assessed and an addition of Rs.82,46,080/- was made. On 24th January, 2006, the assessee's case was reopened under Section 147 and notice was issued under Section 148 of the Act, 1961. Consequent to the reassessment an addition of Rs.39,99,324/- was made. Though the Commissioner of Income Tax (Appeals) [in short "CIT(A)] dismissed the respondent-assessee's appeal, ITAT by the impugned order allowed the respondent-assessee's appeal.

3. Ms. Prem Lata Bansal, learned counsel for the revenue submitted that ITAT was not justified in concluding that the reassessment proceeding initiated by the Assessing Officer was illegal. Ms. Bansal further submitted that the issue of mere change of opinion did not arise in the present case as the Assessing Officer in the first instance had not applied his mind and taken a conscious decision on the issue that had arisen for consideration during the reassessment proceedings. In this connection Ms. Bansal relied upon certain observations made by the CIT(A) in its order dated 06th November, 2007.

4. Having heard learned counsel for the revenue and having perused the impugned order, we are in agreement with the view of the ITAT

that the reassessment was barred by limitation as the period of four years had already expired from the end of the relevant Assessment Year and as none of the conditions precedent in the first proviso to Section 147 were fulfilled in the present case. In fact, the first proviso to Section 147 which provides extended limitation for reassessment i.e. beyond that period of four years reads as under:-

> *"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant Assessment Year, no action shall be taken under this section after the expiry of four years from the end of the relevant Assessment Year, unless any income chargeable to tax has escaped assessment for such Assessment Year by reason of failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that Assessment Year."*

5. From a plain reading of the above proviso, it is apparent that where an assessment under Section 143(3) has been made, as in the present case, no action can be taken under Section 147 of the Act, 1961 after expiry of four years from the end of the relevant Assessment Year unless the assessee had omitted or failed either to make a return under Section 139 of the Act, 1961 for the year or had failed to respond to a notice under Section 142(1) or under Section 148 of the Act, 1961 or had failed to disclose fully and truly all the facts necessary for his assessment.

6. In fact, the CIT(A) in its order dated 06th November, 2007 has not dealt with the issue of limitation at all. On the contrary, ITAT in its impugned order has concluded as under:-

> *"In the instant case, undisputedly, it is not the allegation of the department that the return of income was not filed by the assessee under Section 139 or in response to notice under Section 142(1) or 148 nor there is any allegation that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Assessment was completed u/s 143(3) and the notice for reopening u/s 148 was issued long after expiry of 4 years from the end of the relevant Assessment Year. In view of these undisputed facts and applying the proposition of law as discussed hereinabove with respect to first proviso to Section 147, we are inclined to reverse the findings of lower authorities on this legal issue. As the legal issue has already been decided in favour of the assessee, we are not going to decide the merit of addition disputed by the assessee."*

7. In our opinion, in the present case as none of the conditions precedent for invoking the first proviso to Section 147 had arisen, the Assessing Officer could not have assumed jurisdiction under Section 147 of the Act, 1961. Consequently, no substantial question of law arises in the present case. Accordingly, the appeal is dismissed *in limine.*

**MANMOHAN, J**

**CHIEF JUSTICE**

**AUGUST 18, 2010**
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