THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.05.2013

\+ **W.P.(C) 8562/2007 & CM Nos. 16150/2007 & 17153/2007**

MARUTI SUZUKI INDIA LTD ... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr S. Ganesh, Sr. Adv. with Mr S. Sukumaran, Mr Anand Sukumar & Mr Bhupesh Kumar Pathak, Advs.

For the Respondent : Mr N.P. Sahni, Adv.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the notice dated 18.04.2007 issued under section 148 of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'). The said notice was issued in respect of the assessment year 2003-04. Apart from the said notice, the present petition, after its amendment, also seeks to challenge the order rejecting the objections filed by the petitioner, a copy of which was received by the petitioner on 02.11.2007. The petitioner also seeks to challenge the reassessment order dated 22.11.2007.

2. As this juncture, we may point out that initially when the writ petition was filed the court had granted a stay insofar as the passing of a reassessment order was concerned, though the proceedings were to continue. Apparently

there was some confusion in the minds of the respondent with regard to that order as a result of which the above mentioned reassessment order came to be passed on 22.11.2007. And, that order was subsequently stayed by this court by an order dated 27.03.2008.

3. We are not so much concerned about the fact that a reassessmnet order had been passed despite there being a direction that no such order be passed. We are, in fact, more concerned about the validity of the notice under section 148 and the initiation of proceedings under section 147 of the said Act.

4. Mr Ganesh, the learned senior counsel appearing on behalf of the petitioner submitted that this was a clear case of change of opinion and as such the initiation of proceedings under section 147 of the said Act were invalid. In this context, Mr Ganesh submitted that in the hearing conducted on 27.03.2006, in the course of the original assessment proceedings under section 143(3) of the said Act, the assessing officer had made an entry in the note sheet to the following effect:-

> "Regarding TPO order, nothing new has been said except para 6 & 7. I find no reason to disagree with finding of TPO.
>
> There is no written agreement which stop the assessee from recovering amounts outstanding from Machino Plastics.
>
> Regarding revised return, the questions asked was the reason for each and every modification made in the revised return and how the same was discovered subsequently and ignored at the original return stage.
>
> What is Misc. Income amounting to ₹. 5270 lacs, detail thereof, Net prior period adjustment of ₹. 2 Crore, Other Misc expenses of ₹. 3520 Lacs, Bad debts advance written off: ₹. 40 Lacs. Sales return ac no. 445001,445002, 445201,445202. How the sales return has been taken care vis a vis stock. How it is considered in stock valuation."

(underlining added)

It will be evident from the above extract that one of the queries raised was with regard to "Bad debts advance written off: ₹. 40 lacs." In response to the said query, the petitioner submitted a letter dated 29.03.2006 to the assessing officer wherein it was indicated that the details of bad debts written off were as enclosed as per Annexure "C". Annexure "C" was as under:-

"MARUTI UDYOG LIMITED Assessment Year 2003-04 Details of Bad Debits/Advance written off.			Annexure- C
Voucher No.	Voucher Date	Amout (₹)	Particulars
99271287	30-Sep-02	1,034,012	Simultaneously offered in Miscellaneous Income as submitted vide submission dated 18.02.2005
99269896	30-Sep-02	1,421,800	This is on account of damages for late delivery of vehicles sold to Director General of Ordinance services, MGO Branch, Army Hqrs. New Delhi
99292760	31-Dec-02	831,986	Provision made for non-recovery of amount due from dealers
99294443	31-Dec-02	1,683	Provision made for non recovery of amount due from Dealers
99313332	31-Mar-03	726,046	Advances given to parties written off as irrecoverable
	Total	4,015,528"	

On the strength of the above letter dated 29.03.2006, the learned counsel for the petitioner submitted that specific details had been sought by the assessing officer with regard to the bad debts which had been written off and the details were supplied by the petitioner by virtue of the said letter and which were more particularly set out in annexure "C" thereto. Thereafter, the assessing officer framed the assessment order under section 143(3) on 30.03.2006 wherein no disallowance was made in respect of bad debts written off by the assessee in its books of account. Thus, according to the learned counsel for the petitioner, the assessing officer had asked for specific details which were supplied by the

assessee and after the assessing officer examined the same he was satisfied that no disallowance needed to be made on account of bad debts written off. This, according to the the learned counsel for the petitioner, meant that the assessing officer had, in fact, applied his mind and had formed an opinion to the effect that no disallowance could be made in respect of the bad debts written off by the assessee.

5. Thereafter, the notice dated 18.04.2007 was issued under section 148 seeking the reopening of the assessment completed on 30.03.2006. When the petitioner asked for the reasons which purportedly formed the basis of belief of the assessing officer as required under section 147 of the said Act, the assessing officer furnished the following reasons:-

> "Maruti Udyog Ltd.
> Assessment Year-2003-04
> Reasons for issuing notice u/s 148 of the I.T. Act, 1961
>
> The return of income in this case was filed on 28.11.2003 declaring loss of ₹. 276,16,23,268/-. The return was processed u/s 143(1) at the same income and resultant refund was issued to the assessee. The assessment was completed u/s 143(3) in March, 2006 at income of ₹ 562,70,10,730/-.
>
> On going through the assessment record, it has been noticed that the assessee had written off, bad debts/advances amounting of ₹ 40 Lacs in the P&L Account. Since it was from the capital head of the company it was required to be charged to the capital A/C. If a loan taken on capital account becomes irrecoverable, the loss incurred is capital loss. Consequently, amount of ₹. 40 lacs claimed by the assessee in the P&L A/c needs to disallowed and added back to the income of the assessee.
>
> On the basis of above, I have reason to believe that the income for A.Y. 2003-04 has escaped assessment.
>
> Notice u/s 148 of the I.T. Act issued to the assessee.
>
> (ANU KRISHNA)
> Dy. Commissioner of Income-tax,
> Circle-6(1), New Delhi."

It will be apparent that the only reason indicated therein for reopening the assessment was the issue of bad debts written off which amounted to ₹. 40 lakhs. The issue that was sought to be raised in the reasons was with regard to the said amount being liable to be disallowed on account of being it deemed to be on the capital account.

6. Thereafter, as mentioned above, the petitioner filed its objections on 10.10.2007 to the proposed reopening of the assessment which had been completed on 30.03.2006. In paragraph 2.4 of the said objections the petitioner had submitted that the only issue for reopening of the case was with regard to the bad debts/ advance of ₹. 40 lakhs which had already been duly considred by the assessing officer in the original assessment proceedings. Therefore, the petitioner requested that the proceedings under section 147/148 of the said Act in respect of the assessment year 2003-04 be dropped.

7. The assessing officer, however, did not accede to this request and rejected the objections by an order which was received by the petitioner on 02.11.2007. In the said order, the assessing officer noted that the petitioner/assessee had only filed an annexure giving details of bad debts without any note/discussion on the subject and that the issue was nowhere debated by the assessing officer or the assessee at the time of the original assessment proceedings. Therefore, there was no question of there being a change of opinion, as, according to the assessing officer, no opinion had been formed in the first instance. Of course in the said order rejecting the objections there was no mention of the issue with regard to the bad debts being on the capital account.

8. This was followed by the reassessment order dated 22.11.2007 wherein an addition of ₹. 29,81,515/- was made under the head bad debts disallowed and which were added to the income of the petitioner/assessee. Furthermore, by virtue of the reassessment order dated 22.11.2007 an addition of ₹.

112,90,00,000/- was also made on account of royalty paid. According to Mr Ganesh, the learned senior counsel for the petitioner, the issue of bad debts was only used as a 'key' to open up reassessment proceeding of which the issue of royalty was the main target. In any event, he submitted, the petitioner's case fell squarely within the parameters of the decision of this court in the case of ***CIT v. Usha International Ltd.*: 348 ITR 485 FB (DEL).** He drew our attention straightway to paragraph 13 of the said decision, which inter alia, reads as under:-

> "13. It is, therefore, clear from the aforesaid position that:
>
> (1) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion.
>
> (2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by principle of "change of opinion".
>
> (3) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons."
>
> (underlining added)

Particular emphasis was laid on point No. (3) mentioned above. In the facts of the present case it was submitted that a specific query had been raised and had been answered by the petitioner in the course of the original assessment proceedings and the assessing officer did not make any addition in respect of that issue in the assessment order. Therefore, in light of the position indicated in **Usha International Ltd.** (*supra*), it was contended by the learned counsel for the petitioner that the position should be accepted that the issue had been examined by the assessing officer but he did not find any ground or reason to make an addition or to reject the stand of the assessee. The crux of the matter being that the assessing officer must be considered to have formed an opinion. As a result, the reassessment would be invalid because the assessing officer had formed an opinion in the original assessment though he had not recorded his reasons for the same. Thus, according to Mr Ganesh, the facts of the present case were squarely covered by point No.3 indicated in **Usha International Ltd.** (*supra*).

9. In response to the aforesaid arguments, Mr Sahni appearing on behalf of the revenue referred to paragraph 23 of **Usha International Ltd.** (*supra*) and submitted that there cannot be a deemed formation of an opinion. Paragraph 23 of the said decision reads as under:-

> "23. The said observations do not mean that even if the Assessing Officer did not examine a particular subject-matter, entry or claim/deduction and, therefore, had not formed any opinion, it must be presumed that he must have formed an opinion. This is not what was argued by the assessee or held and decided. There cannot be deemed formation of opinion even when the particular subject-matter, entry or claim/ deduction is not examined."

The above observation is in the context where the assessing officer had not examained a particular subject matter, entry or claim/deduction. But the facts

of the present case are different. The assessing officer had raised a specific query with regard to the issue of bad debts/advances written off. Therefore, in the present case it cannot be said that the assessing officer did not examine the issue of bad debts/advances which had been written off by the petitioner/assessee. The majority view of the Full Bench in **Usha International Ltd.** (*supra*) quoted in paragraph 23 would therefore not apply to the facts of the present case as it is not a question of a deemed formation of an opinion but of an opinion being formed inasmuch as the assessing officer in the original proceedings had raised a specific query which had been answered specifically by the petitioner/assessee, though it did not find mention in the assessment order. It is that specific situation which has been categorically dealt with in point No. 3 referred to above which finds mention in paragraph 13 of the very same decision in **Usha International Ltd.** (*supra*). Therefore, the reliance placed by Mr Sahni on the observation contained in paragraph 23 would be of no avail to the respondent in the factual matrix of this case. A reference had also been made by Mr Sahni to the various decisions discussed in **Usha International Ltd.** (*supra*) and, in particular, to the decision in the case of ***Kalyanji Mavji and Co. v. CIT*: 102 ITR 287 (SC)** and ***A.L.A. Firm v. CIT:* 189 ITR 285 (SC).** A reference was also made to the Supreme Court decision in the case of ***Indian and Eastern Newspaper Society v. CIT*: 119 ITR 996 (SC).** We find after examining these decisions and certain other decisions, the majority opinion in **Usha International Ltd.** (*supra*) concluded as under:-

> "36. The aforesaid observations are complete answer to the submission that if a particular subject-matter, item, deduction or claim is not examined by the Assessing Officer, it will nevertheless be a case of change of opinion and the reassessment proceedings will be barred."

It is obvious that when a claim for deduction is not at all examined by the assessing officer, it could never be a case of change of opinion. However, where a claim or deduction has in fact been examined by the assessing officer it would amount to formation of an opinion despite the fact that no addition had been made or reason therefor had been given in the original assessment order. Thus, when, after such an examination in the first round, the matter is sought to be reopened by issuance of notice under section 148 of the said Act, it would clearly be a case of change of opinion and the reassessment proceedings would be invalid.

10. We may also note the observations of the Full Bench in paragraph 39 of the said decision in the case **Usha International Ltd.** (*supra*) which are to the following effect:-

> "39. In view of the above observations we must add one caveat. There may be cases where the Assessing Officer does not and may not raise any written query but still the Assessing Officer in the first round/ original proceedings may have examined the subject-matter, claim, etc., because the aspect or question may be too apparent and obvious. To hold that the assessing officer in the first round did not examine the question or subject-matter and form an opinion, would be contrary and opposed to normal human conduct. Such cases have to be examined individually."

It is apparent from the above extract that even in cases where no query is raised by the assessing officer in the course of the original assessment proceedings it may yet be held that the assessing officer had examined the subject matter. This is so because the aspect or question in issue may be too apparent and obvious. However, the Full Bench cautioned by stating that such cases would have to be examined individually. It is, therefore, clear that even where no query is raised by the assessing officer and there is no discussion in the assessment order, it may yet be a case where the assessing officer would be considered to have examined the issue. However, we are not concerned with

those type of cases inasmuch as in the present case the assessing officer had clearly raised a specific query with regard to bad debts/ advances written off and the petitioner/assessee had given details in respect thereof. It is obvious that since no such addition was made on that count, the assessing officer had considred and examined the position and held in favour of the petitioner/assessee. Therefore, we can safely conclude that, in the facts and circumstances of the present case, the assessing officer had, indeed, examined the issue at the time of the original assessment proceedings and had formed an opinion by not making any addition in respect thereof. Thus, the reopening of the assessment which had been concluded on 13.03.2006, would be nothing but a mere change of opinion.

11. Mr Sahni appearing on behalf of the revenue had also submitted that the point of bad debts written off may have been missed by the assessing officer inasmuch as the present case was a complicated matter and even the assessment order framed on 13.03.2006 ran into 34 pages. He submitted that there was every possibility of some aspects being missed out by the assessing officer. And, such aspects which had been inadvertently missed by the assessing officer cannot be regarded as those on which the assessing officer had formed an opinion. For this proposition, Mr Sahni relied on the decision of the Supreme Court in the case of **A.L.A. Firm** (*supra*). However, we do not agree with this submission because in the present case, the factual positon is different. Whether it was a complicated matter or not is not what is relevant here. In the present matter the assessing officer had finally raised only 4 issues, one of them being the issue of bad debt/advances written off. Therefore, it is not as if the assessing officer had lost sight of the issue of bad debts/advances. In fact, he had specifically raised queries in this regard towards the fag end of the assessment proceedings and therefore it must be presumed that he was very much alive to the issue. We may also note that in the reasons recorded for

reopening of the assessment, the assessing officer does not says that he missed it. The reasons recorded reveal that the assessing officer, in the second round was of the view that the addition should have been made in respect of bad debts/advances amounting to ₹. 40 lakhs because of the fact that it was on the capital account. Had the assessing officer felt that this point had been missed out in the first round he would have been stated so. The reasons as recorded also belie the contention raised by the learned counsel for the respondent.

12. In view of the foregoing discussion, the notice dated 18.04.2007 under section 148 and all proceedings pursuant thereto are invalid and they are set aside. The reassessment order dated 22.11.2007 is also set aside.

13. The writ petition is allowed as above. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

MAY 13, 2013
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HIGH COURT OF DELHI
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