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

% Judgment delivered on : 20.04.2009

ITA 501 /2007

M/s JAY BHARAT MARUTI LTD ..... Appellant

versus

COMMISSIONER OF INCOME TAX ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr R. Santhanam, Advocate
For the Respondent : Mr R.D. Jolly, Advocate

CORAM :-

HON'BLE MR JUSTICE VIKRAMAJIT SEN
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. This is an appeal preferred by the assessee under Section 260A of the Income Tax Act, 1961(hereinafter referred to as the 'Act') against judgment dated 20.10.2006 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') in ITA No 654/Del/2000 pertaining to assessment year 1993-94

1.1 By the impugned judgment the Tribunal has dismissed the appeal of the assessee. It is pertinent to note that by the very same impugned judgment the Tribunal has also dismissed the appeal of the

Revenue being ITA No 889/Del/2000 which also pertained to the same assessment year, that is, assessment year 1993-94.

1.2 Before us presently only the assessee is in appeal. After hearing the learned counsel for the assessee Mr R. Santhanam as well as the learned counsel for the Revenue Mr R.D. Jolly we had indicated to them that a substantial question of law as formulated below would arise for consideration of this Court and that with their consent, after framing a question of law we would proceed to a final disposal of the present appeal. The submissions in the matter were heard, keeping the above in mind. In accordance thereto we have framed the following question of law for our consideration:-

> *"Whether the Tribunal misdirected itself in law in upholding as valid the initiation of reassessment proceedings and the consequent assessment order dated 26.03.1999 passed by the Assessing Officer in exercise of his powers under Section 147 read with section 148 and 143 of the Income Tax Act, 1961."*

2. In order to deal with the present appeal the following facts need to be noticed:

2.1 The assessee is engaged in the business of production of parts and moulds which are used in the manufacture of automobile cars. On 31.12.1993 the assessee filed its return of income whereby it declared an income of Rs 5,35,250/-. The said return of income was processed under Section 143(1)(a) of the Act whereupon the Assessing Officer vide intimation dated 19.05.1994 granted to the assessee a refund of Rs 1,81,176/- (inclusive of interest).

2.2 On 27.3.1997 the Assessing Officer issued a notice under Section 148 of the Act to the assessee on the ground that he had reason to believe that the assessee's income which was chargeable to tax for assessment year 1993-94 had escaped assessment within the

meaning of Section 147 of the Act. Accordingly, by the said notice he called upon the assessee to file his return in the prescribed form within a period of 30 days from the date of service of the said notice.

2.3 The Section 148 notice was followed by a notice dated 8.01.1999 under Section 142(1) of the Act. By this notice the assessee was called upon to file a true and correct return of its income in respect of the assessment year under consideration. A blank return form was also enclosed with the said notice.

2.4 In response to the notice under Section 142(1) of the Act issued by the Revenue the assessee by a communication dated 06.02.1999 issued by its Chartered Accountant, M/s Mehra Goel & Co., inter alia, objected to the issuance of notice under Section 142(1) of the Act as also initiation of proceedings under Section 148 of the Act on the ground that the MODVAT amount which remained unutilized was debited to the Profit & Loss account as the assessee had paid the same during the relevant assessment year and hence was entitled to deduction under Section 43B of the Act. It was further submitted that this fact was disclosed as part of its accounting policy and that there was no new information or fact which had come to the notice of the Revenue warranting initiation of proceedings under Section 147 read with Section 148 of the Act. According to the assessee the entire exercise was being conducted on a mere change of view adopted by the Assessing Officer.

2.5 The assessee also relied upon judgments of the Gujarat High Court in the case of ***M/s Lakhanpal National Ltd vs ITO; (1986) 162 ITR 240*** as well as that of Delhi Bench B (Spl. Bench) of the Tribunal in the case of ***Indian Communication Network (P) Ltd vs***

IAC; (1994) 206 ITR 96 (AT) and ***ITO vs Food Specialities Ltd***, dated 02.02.1994 ITAT (Delhi) to contend that, it was the intention of the legislature to allow deduction in respect of customs and excise duty while computing the income of an assessee under Section 28 of the Act in the year in which the said tax was actually paid by the assessee. The only impediment being that the said amounts should not have been allowed as a deduction in any earlier year.

2.6 The assessee, however, it seems as a measure of abundant caution filed a revised return, even though under protest, under a cover of its letter dated 19.02.1999. The point to be noted at this stage is that the revised return was identical to the original return filed by the assessee.

2.7 No sooner had the assessee filed the return on 23.02.1999, the Assessing Officer issued a notice calling upon the assessee to attend his office on 05.03.1999 at 11.00 a.m. for furnishing further information in connection with the return submitted by the assessee. The aforesaid was followed by yet another notice dated 10.03.1999 calling upon the assessee to show cause with respect to various other items of income and expenditure, apart from the issue with respect to, the sum of Rs 25 lacs (approx.) which was shown as a balance in the MODVAT account of the assessee and had been debited to the Profit & Loss account and which verily had formed the basis of the initiation of reassessment proceedings.

2.8 The assessee immediately responded to the same by issuing a rejoinder dated 17.05.1999, through its Chartered Accountant M/s Mehra Goel & Co. The upshot of the assessee's rejoinder was that its return having accepted under Section 143(1)(a) of the Act it had

attained finality. The assessee contended that the assessment could be reopened only if conditions precedent for reopening as provided under Section 147, exist. It was stated that the notice issued was not in accordance with the law. The issuance of notice was on a specific point, while the Department now sought to reopen the entire case.

2.9 It seems that the assessee despite this rejoinder dated 17.05.1999, also submitted a reply on merits on 24.03.1999 to the information sought by the Revenue.

3. By an order dated 26.03.1999 the Assessing Officer passed an assessment order under Section 143(3) and 147 of the Act. By this order the Assessing Officer not only made an addition with respect to the sum of Rs 25,75,000/- which was shown as a credit balance in the MODVAT account and debited by the assessee in the Profit & Loss Account but also with respect to expenses incurred by the assessee in the sum of Rs 1,11,292/- on the ground that they were capital in nature. Apart from the above the Assessing Officer also disallowed deduction under Section 80-I of the Act on income received by way of 'interest' as according to the Assessing Officer, it was revenue of the nature of 'income from other sources' as against business income. On reassessment consequential interest was also charged under Section 234B of the Act.

4. The assessee being aggrieved preferred an appeal with the Commissioner of Income Tax (Appeals) [hereinafter referred to as the 'CIT(A)']. The CIT(A) by an order dated 04.11.1999 allowed the appeal of the assessee in part. On the aspect of reopening of proceedings under Section 147 read with Section 148 of the Act, the CIT(A) was of the view that the assessee's return had been processed

under Section 143(1)(a) of the Act and the fact that the assessee had claimed the entire amount expended towards duty on purchase of raw-material as well as the excise duty paid on goods manufactured by it, when it had a credit balance of Rs 25 lacs in the MODVAT account supplied a reasonable ground to the Assessing Officer to form a belief that assessee's income which was chargeable to tax had escaped assessment. On merits the CIT(A), however, disallowed the addition of Rs 25,75,000/- on account of MODVAT paid. The CIT(A) agreed with the assessee that it was entitled to deduction under Section 43B of the Act as it was nothing but duty paid during the assessment year under consideration. In respect of disallowance of Rs 1,11,292/- on account of canteen equipment, the CIT(A) partially sustained the order of the Assessing Officer. The CIT(A) out of the aforesaid sum sustained a disallowance of Rs 27,912/- which was an expense which the assessee had incurred for purchasing a vertical de-freezer. The CIT(A) agreed with the view of the Assessing Officer that this was in the nature of a capital expenditure. The CIT(A), accordingly, while sustaining the disallowance directed that the assessee would be entitled to depreciation on the said equipment as permissible under law. The CIT(A) also deleted the disallowance of a sum of Rs 10,000/- incurred by the assessee as general expenses by holding that it was supported by relevant vouchers and bills and that none of the items represented non-business expenditure. As regards expenses on the visit of the Managing Director of the assessee to the Switzerland, the CIT(A) dismissed the said ground of appeal by observing that even though in the body of the order the Assessing Officer had made an observation which suggested that an addition

ought to have been made, however, in the computation of income, no such addition had been made and hence the assessee could not have been aggrieved by a mere observation of the Assessing Officer. The last issue with regard to whether interest income would qualify for deduction under Section 80-I of the Act, the CIT(A) partially sustained the conclusion reached by the Assessing Officer by excluding the interest received by the assessee on bank deposits for relief under Section 80-I of the Act. The CIT(A), however, agreed with the assessee that interest received on letters of credit and bank margin with the bank would qualify for deduction under Section 80-I of the Act. For this purpose the CIT(A) relied upon the Tribunal's judgment in the assessee's case for the assessment year 1994-95. The CIT(A) concluded by directing that interest under Section 234B of the Act being consequential, would be recomputed by the Assessing Officer after necessary effect is given and/or necessary adjustments are made as per the order passed by him.

5. By an order dated 24.03.2000 the Assessing Officer passed a consequent order pursuant to CIT(A)'s order dated 04.11.1999, under Section 250/254 of the Act. By virtue of the same the assessee's revised income was assessed at Rs 7,34,592/- (rounded to Rs 7,34,590).

6. Both the assessee as well as the Revenue were aggrieved by the order of the CIT(A). As indicated above, appeals were preferred to the Tribunal by both the assessee as well as the Revenue. The Tribunal by the impugned judgment has dismissed both the assessee's as well as the Revenue's appeal.

7. Being aggrieved the assessee has preferred the present appeal to this Court. The learned counsel for the assessee has in the hearing before us confined his submissions to only one aspect of the matter, which is that both the initiation of the reassessment proceedings and the consequent order passed by the Assessing Officer were bad in law. The Assessing Officer's jurisdiction to initiate proceedings under Section 147 read with Section 148 of the Act is predicated on the reasons which form the basis for initiation of re-assessment proceedings. It was the contention of the learned counsel for the assessee that a perusal of the reasons would show that the Assessing Officer initiated proceedings under Section 147 read with Section 148 of the Act on the ground that the credit balance lying in the MODVAT account of the assessee had been debited to the Profit & Loss account. The learned counsel submitted that a bare perusal of the reasons disclosed would show that a credit balance in the MODVAT account and its consequent debit in the Profit & Loss account could never ever have formed a basis for reason to believe that the assessee's income had escaped assessment. In order to buttress his submission the learned counsel relied upon the judgment of the Supreme Court in ***CIT vs Indo Nippon Chemicals Co Ltd; (2003) 261 ITR 275*** to the effect that the balance MODVAT credit would never amount to income amenable to tax under the Act.

7.1 In addition to above the learned counsel forcefully con ` tended that the initiation of reassessment proceedings would not give a *carte-blanche* to the Assessing Officer to reopen the assessment proceedings on ground 'A' then proceed to make additions to income

or disallowances of expenditure in respect of other grounds which did not form the basis for reopening the assessment proceedings.

7.2 As against this the learned counsel for the Revenue has contended that the assessee's income had been processed under Section 143(1)(a) of the Act. The Assessing Officer had only issued an intimation of acceptance of the return. Therefore, as long as the Assessing Officer had reasons to believe that assessee's income chargeable to tax had escaped assessment the validity of the initiation of reassessment could not be questioned. It was his contention that at the stage of initiation of proceedings under Section 147 read with Section 148 of the Act, the Assessing Officer's belief is not one which is a fact supported by legal evidence. It was contended that once a gateway is found by the Assessing Officer to reopen the proceedings he would be well within his jurisdiction to bring within his net any item of income which had escaped assessment or disallow any expenditure which ought not to have been allowed in the first instance. It was the contention of the learned counsel for the Revenue that in the instant case it could not be said that there was a change of opinion in view of the fact that admittedly the assessee's original return had been processed under Section 143(1)(a) of the Act.

OUR ANALYSIS

8. In the background of the facts narrated above and the submissions made by the learned counsel for the parties, according to us, the following undisputed facts and circumstances emerge in the case:-

8.1 The assessee had filed a return on 31.12.1993 for the assessment year, in issue, the acceptance of which was duly intimated to the assessee on 19.05.1994 by an intimation issued by the Revenue under Section 143(1)(a) of the Act. It transpires that on 27.03.1997 the Assessing Officer, based on information in his possession, formed a belief that the assessee's income in respect of which it was assessable to tax had escaped assessment and accordingly a notice under Section 148 of the Act was issued to the assessee.

8.2 It is pertinent to note at this stage the reasons which propelled the Assessing Officer to issue a notice under Section 148 of the Act. These are appended as annexure 5 to the present appeal being crucial to the case, are extracted hereinbelow:-

> *"During the course of examination of excise and MODVAT account, it was found that in A.Y. 1993-94 there was closing balance of Rs 25 lakhs in MODVAT. This amount was charged into P&L A/c. By this method, the assessee reduced it profit in the A.Y. 93-94 by Rs 25 lakhs. The balance in the MODVAT account at the end of PY relevant for AY 93-94 should have been carried forward and shown as loans and advances on the asset side of the balance sheet.*
> *I have reasons to believe that the above said income chargeable to tax has escaped assessment for AY 93-94 by reasons of the failure on the part of the assessee for not disclosing fully and truly all material facts necessary for his assessment for AY 93-94.*
> *This case is reopened u/s 147 of the I.T. Act. Issue notice u/s 148."*

8.3 It cannot be disputed and it is not the case of either side that the reasons extracted hereinabove did not precede the issuance of notice under Section 148(1) of the Act. The requirement for recordal of reasons by the Assessing Officer before issuing a notice is provided for under sub-section (2) of Section 148 of the Act.

8.4 A perusal of the reasons would thus show that the Assessing Officer was of the view that the assessee's income chargeable to tax had escaped assessment in the relevant assessment year by virtue of the fact that the assessee had charged to its Profit & Loss account the sum of Rs 25 lacs (approx.) which was the closing balance in its MODVAT account. The Assessing Officer was of the view that the balance in the MODVAT account at the end of the previous year, relevant for the assessment year, in issue, ought to have been carried forward and shown as "loans and advances" on the asset side of the balance sheet. This fact alone propelled the Assessing Officer to form a reason to believe that the assessee's income chargeable to tax had escaped assessment by virtue of what he termed as the failure on the part of the assessee in not disclosing fully and truly all material facts.

8.5. Thus the issue which arises for consideration is firstly, what is the scope of the expression "reason to believe" in Section 147 of the Act. Secondly, where an Assessing Officer issues a notice under Section 148(1) of the Act based on one particular item which forms the basis of his reasons under sub-section (2) of Section 148, is he then empowered to bring within his net other items of income or expenditure which are totally un-connected with the item which formed the basis of issuance of notice under Section 148(1) of the Act.

8.6 In so far as the first issue is concerned we do not have to go far but to look the judgment of the Supreme Court in ***ACIT vs Rajesh Jhaveri Stock Brokers (P) Ltd; (2007) 291 ITR 500***. The Supreme Court while enunciating the law on the width and ambit of the provision of Section 147 of the Act stated in no uncertain terms stated that the word "reason" in the phrase "reasons to believe" would mean

cause or justification. In other words if the Assessing Officer has cause or justification to know or suppose that income had escaped assessment it can be said to have "reason to believe" that income had escaped assessment. The Supreme Court went on to say that the expression cannot mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The Court also observed that the final outcome of the proceedings is not relevant. In other words at the initiation stage what is required is reason to believe and not an established fact of escapement of income. The test thus laid down by the Supreme Court is that at the stage of issue of notice the only aspect to be examined is whether there was relevant material before the Assessing Officer, based on which a reasonable person could have formed the requisite belief. One is not concerned at this stage whether the material would conclusively prove escapement and such a formation is within the realm of subjective satisfaction of the Assessing Officer.

8.7 Applying the aforesaid principle, it is clear that while the Supreme Court has conferred a wide discretion on the Assessing Officer for reopening the proceedings whether to assess, re-assess or to re-compute income it is predicated on a test whether a reasonable person would form a belief that there was relevant material for initiating proceedings under Section 147 of the Act. In the instant case if the test of the reasonable person is applied, it is clear that no reasonable person could have come to a conclusion that there was relevant material available with the Assessing Officer to have reason to believe that assessee's income chargeable to tax had escaped assessment only by virtue of the fact that the assessee had charged to

its profit and loss account the credit balance available in its MODVAT account. It is rudimentary that MODVAT is nothing but credit of duty paid by a person on input used by the assessee for manufacture of its final product. The notice under Section 148(1) could not have been based on a ground as tenuous as the one disclosed by the Revenue. If we were to accept such a ground as the one obtaining in the present case then it would virtually amount to giving power to the Assessing Officer to reopen the proceedings at his own whim and fancy. Their Lordships in ***Rajesh Jhaveri Stock Broker (supra)*** have, while giving the widest width and amplitude to the Assessing Officer to initiate proceedings under Section 147 read with Section 148 of the Act incorporated a caveat; which is as to how a reasonable man would view the articulated reasons (as prescribed under Sub-Section (2) of Section 148) which formed the basis of a notice under Section 148(1) of the Act. In our view this by itself would suffice in declaring the proceedings bad in law.

9. However, since the other issue has also been raised, that is, whether the Assessing Officer could reopen the proceedings based on a particular item and thereafter proceed to bring to tax items which are not connected with what was initially indicated in the reasons disclosed under Section 148(2) of the Act for the purposes of issuance of notice under Section 148(1) of the Act.

10. In this regard, it is important to note that the Assessing Officer, as indicated above, had proceeded to issue a notice under Section 148(1) of the Act by recording contemporaneous reasons that assessee's income chargeable to tax had escaped assessment by virtue of the fact that the assessee had charged to its profit and loss

account, the closing balance in the sum of Rs 25 lacs (approx.) appearing in its MODVAT account. The Assessing Officer, as noticed above, had issued a notice dated 08.01.1999 under Section 142(1) of the Act followed by a notice dated 10.03.1999. By the first notice the Assessing Officer called upon the assessee to file its return, however, by the second notice, that is, notice dated 10.03.1999 it asked the assessee to show cause as to why certain items of income and expenditure (which were unconnected to the aspect of the assessee debiting the sum of Rs 25 lacs lying in the MODVAT account to the Profit & Loss account) should not be added or disallowed. The assessee by a response dated 17.03.1999 categorically took the following stand:-

(i) that it would like to know the information which was in the possession of the Department which justified reopening of its assessment;

(ii) since the assessment made under Section 143(1)(a) of the Act had attained finality the Revenue could not reopen it unless it fulfilled the condition precedent as provided under Section 147 of the Act; and

(iii) most importantly, since the assessment had been reopened on a specific point it could not by this methodology reopen the same in the entirety.

11. As noted above, the Assessing Officer undeterred, without dealing with any of the objections raised by the assessee, passed the impugned assessment order dated 26.03.1999. Even though, the CIT(A) partially allowed the appeal, in our view he did not examine the matter from the angle as to whether the Assessing Officer could bring to tax items or disallow expenditure which were totally

unconnected with the reasons articulated under Section 148(2) of the Act at the time of issuance of notice under Section 148(1) of the Act. The Tribunal did likewise and on this aspect of the matter dismissed the appeal of the assessee. In our view a bare reading of sub-ection (2) of Section 148 of the Act would show that before issuing a notice under Section 148(1) of the Act the Assessing Officer is required, under sub-section (2) of Section 148 of the Act, to record his reasons for doing so. Therefore, it is clear the recordal of reasons precede the issuance of notice under sub-section (1) of Section 148 of the Act. The proceedings under Section 147 read with Section 148 do not wipe out or set aside the original proceedings. As a matter of fact the law on the scope of Section 147 can be summarized based on the principles enunciated by the Supreme Court in the case of ***CIT vs Sun Engineering Works P. Ltd (1992) 198 ITR 297***. A reading of the judgment would show broadly the following principles of law have been enumerated:-

(i) Initiation of reassessment proceedings would not mean that the original assessment proceedings are set aside or wiped out. The decision of the Supreme Court in ***Jaganmohan Rao (V.) vs CIT; (1970) 75 ITR 373*** is explained.

(ii) The proceedings under Section 147 of the Act are for the benefit of the Revenue and not for the assessee.

(iii) The assessee cannot convert reassessment proceedings into review, appeal or revisional proceedings to re-agitate in reassessment proceeding matters which are finally concluded in the original assessment proceedings and are unconnected with the **escaped income**.

(iv) The assessee can claim consideration of only those items which are directly connected to the under-assessed income,

(v) and lastly, under no circumstances can the reassessed income be less than income of the assessee which was originally assessed and brought to tax.

12. Applying the aforesaid principle, it is clear that the proceedings under Section 147 of the Act cannot impinge upon items which have no connection or relation with items of income and/or expenditure which form the basis of a notice under Section 148(1) of the Act. In the instant case the items referred to in the Assessing Officer's notice dated 10.03.1999 had no relation with the reasons recorded on 27.03.1997. As a matter of fact the assessee was allowed by the CIT(A) the deduction of the amount of Rs 25 lacs (approx.) charged to its profit & Loss account on the basis of the provisions of Section 43B. The other items with respect to which additions and disallowances had been made and which are discussed in the body of our judgment while discussing the orders of the authorities below had no connection with the reasons articulated on 27.03.1997 which form the basis of the notice issued under Section 148(1) of the Act. In our view the assessment order in so far as it dealt with items other than those which formed the basis of the reasons disclosed on 27.03.1997 are bad in law or stood vitiated in law.

13. The Division Bench of the Kerala High Court in the case of ***Travancore Cements Ltd vs ACIT; (2008) 219 CTR 359*** came to the same conclusion. The observations of the Division Bench in paragraphs 8 to 11 at pages 366 - 367 being apposite are extracted hereinbelow:-

"It is trite law that the provisions in a taxing statute have to be construed in accordance with the clear intention of the legislature which is to make the charge levied effective. Validity of Exts.P6, P7, P8 and P12 is to be adjudged in the light of Sections 147 and 148 read with Section 143 of the Act. At the outset we may point out that we find no infirmity in the Department issuing Ext.P3 under Section 148 or Ext.P6 communication disclosing reasons for reopening the assessment. ExtP3 is a notice issued under Section 148 of the Act proposing to reassess the income of the petitioner for the assessment year 2000-01. But no reasons were recorded in Ext.P3 notice as required Sub-section (2) of Section 148. Later on a request made by the petitioner, reasons were disclosed by Ext.P6 letter dated 17.10.2005. Still the moot question is whether the assessing authority without following the procedure under Sub-section (2) of Section 148 to assess or reassess any income chargeable to tax which virtually has no connection with the reasons already disclosed in the notice issued under Section 148(2). Admittedly no notice under Sub-section (2) of Section 148 was issued in respect of the income which is stated to have escaped for which notice under Section 143(2) and 142 was issued by Exts.P7 and P8. For example, in Ext.P8 it is stated that the assessing authority has proposed to add back Rs. 46,13,711/- being provision for shortage of lime shell stock, which is totally unconnected with the reason stated in the notices issued under Section 148, vide Exts.P5 and P6. Can the assessing authority under the guise of proceeding under Section 147 make a scrutiny of assessment under Section 143(3), which proceeding was barred by limitation? Petitioner specifically states that his return was accepted under Section 143(1)(a) under Ext.P2 intimation. Consequently the assessing authority was entitled to complete the regular assessment under Section 143(3) on or before 31.3.2003. Petitioner further submits that the assessing authority having chosen not to complete the regular assessment under Section 143(3) cannot be permitted to verify all the statements under the guise of assessing escaped income. Petitioner submits that Exts.P7 and P8 requiring him to produce books of accounts and furnishing information on various points are not warranted in a proceeding under Section 147 of the Act.

Section 148 deals with issue of notice where income has escaped assessment. It states that 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. Sub-section (2) of Section 148 states that the assessing officer shall before doing so record his reasons for issuing such notice. Recording of reasons before issuing notice is a mandatory requirement. Assessing officer is also empowered under Section 147 to assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under ***Section 147. Assessing officer gets jurisdiction under Section 148 to assess or reassess the income which has escaped assessment only after Sub-section (2) of Section 148 is complied with. The question is whether Sub-section (2) of Section 148 has to be complied with if any other income chargeable to tax has escaped assessment, or which comes to his knowledge subsequently in the course of the proceedings. In other words, when proceedings are already on in respect of one item in respect of the income for which he had already recorded reasons is it necessary that he should record reasons for assessing or reassessing any of the items which are totally unconnected with the proceedings already initiated. Suppose under two heads, income has escaped assessment and those two heads are interlinked and connected, the proceedings initiated or notice already issued under Sub-section (2) of Section 148 would be sufficient if the escaped income on the second head comes to the knowledge of the officer in the course of the proceedings. But if both the items are unconnected and totally alien then the assessing authority has to follow Sub-section (2) of Section 148 with regard to the escaped income which comes to his knowledge during the course of the proceedings. The expression "subject to the provisions of Sections 148 to 153" in Section 147 lends support to the above view.***

When we apply the above principles to the present case, it is evident that the reasons stated were under Sub-section (2) of Section 148 only. In Ext.P6 those reasons are unconnected with the reasons stated in Ext.P8. The assessing authority has therefore no jurisdiction to proceed with the items covered by Exts.P7 and P8 due to non compliance of Sub-section (2) of Section 148. We may in this connection refer to the decision of the Apex Court in GKN Driveshafts' case (supra) wherein the Apex Court has held that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the assessee is to file a return and if he so desires, to seek reasons for issuing notices and the assessing authority is bound to furnish reasons within a reasonable time. So far as this case is concerned the assessee was not served with

any notice under Section 148; nor the assessing officer recorded reasons as provided under Sub-section (2) of Section 148 for the points highlighted in Exts.P7 and P8.

The Punjab and Haryana High Court had occasion to consider an identical issue in Vipin Khanna v. Commissioner of Income Tax (supra). That was a case where proceedings under Section 147 were initiated. The question arose as to whether assessing officer was justified in launching an inquiry into the issues which were not connected with the issue of depreciation. The court held that the assessee can claim credit in respect of items finally concluded in the original assessment and the letter dated 30.7.1998 issued by the assessing officer in so far as it relates to matters unconnected with the issue of depreciation and also the directions issued by the Deputy Commissioner of Income TAx under Section 144A cannot be sustained. We are in agreement with the reasoning given in Vipin Khanna's case (supra).”

14. In view of our analysis above we are of the opinion that the question as framed has to be answered in favour of the assessee and against the Revenue. In the result the appeal is allowed and consequently the impugned order of re-assessment is set aside. However, there shall be no orders as to cost.

RAJIV SHAKDHER, J

VIKRAMAJIT SEN, J

April 20, 2009
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