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

Date of decision: 5th August, 2013

\+ **W.P.(C) 7452/2010**

REPLIKA PRESS PRIVATE LIMITED & ANR ..... Petitioner
Through Mr. S. Krishnan, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE ..... Respondent
Through Mr. Kamal Sawhney, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL)

The petitioner has challenged reassessment proceedings initiated in respect of assessment year 2006-07 vide notice dated 31st March, 2010 issued under Section 148 of the Income Tax Act, 1961 (Act, for short).

2. Reassessment proceedings have been initiated within four years from the end of the assessment year and, therefore, the first proviso to Section 147 is not applicable.

3. The petitioner had filed its return for the assessment year 2006-07 on 19th October, 2006 and the return was selected for scrutiny. Assessment order under Section 143(3) of the Act was passed on 25th

August, 2008.

4. The petitioner had claimed and were allowed deduction under Section 10B of the Act amounting to Rs.6,72,28,255/- on the ground that they were 100% export oriented unit and had fulfilled the conditions of Section 10B. This is an undisputed position.

5. The "reasons to believe" to justify reopening recorded by the Assessing Officer under Section 147 of the Act read as under:-

> "The assessment of M/s Replika Press (P) Ltd. for the A.Y. 2006-07 was completed after scrutiny on 25.08.2008, determining an income of Rs. 60, 07,205/-. Thereafter, it was observed that the assessee is engaged in the business of printing of text books (export as well as domestic sales) which does not made (sic) it eligible for claiming deduction u/s 108. It has been made clear in the case of Addl CIT WB-III, Calcutta Vs. A Mukherjee & Co. (P) Ltd. (113 ITR 718) that "a publisher may get the books printed from any printer, but the printer is a mere contractor and the publisher carries on the business of manufacturing and processing goods". A circular has also been issued by the CBDT (Circular No.347 dated 07/07/1982) on this matter. Thus the assessee is not a manufacturer for the purpose of claiming deduction u/s 10B. This mistake has resulted in under-assessment of income by Rs.6,72,28,255/-.
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> In view of the above facts, I have reason to believe that income of Rs.6,72,28,255/- has escaped assessment by virtue of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for assessment in this year in this case and the same is to be brought to tax under section 147/148 of the I.T. Act."

6. A reading of the said reasons makes it apparent and crystal clear

that the Assessing Officer has referred to the business of the assessee i.e. printing of textbooks, and has recorded a prima facie opinion that this activity was not eligible for claiming deduction under Section 10B. Reliance has been placed upon an earlier decision of the Calcutta High Court in ***Additional CIT WB-III, Calcutta Vs. A Mukherjee & Co. (P) Ltd.*** (1978) 113 ITR 718 (Calcutta). A portion of the said judgment has also been quoted.

7. A bare perusal of the original assessment order dated 25th August, 2008 would indicate that there was no doubt or dispute about the business activity undertaken i.e. the petitioner was a printer of text books. The assessment order itself records that business of the assessee was to print and export books which used to be delivered as per instructions of the overseas importer to parties situated outside India as well as in India (i.e. constructive exports). The petitioner had shown receipts in convertible foreign exchange from export/transmission of customized electronic data by way of scanning and type setting charges. The assessee had shown domestic sales as local turnover. It is clear that the Assessing Officer was fully aware and conscious of the activities undertaken by the petitioner i.e. printing of books in India as per instructions of the overseas third parties.

8. The petitioner in objections had submitted that the reassessment proceedings have been initiated in view of the audit objections. It was a

case of 'change of opinion' and the nature and character of the business activities undertaken by the petitioner were examined at the first round and the Assessing Officer was satisfied that Section 10B was applicable to the said activities i.e. the petitioner had carried on business of manufacture or production.

9. The Assessing Officer in his order dated 28th September, 2010 has referred to the said contention of the petitioner in the objections but after referring to the judgment of the Supreme Court in ***CIT Vs. P.V.S. Beedies (P) Ltd.*** (1999) 237 ITR 13 (SC) and the Delhi High Court in ***New Light Trading Co. Vs. CIT*** (2001)170 CTR 138, rejected the said contention recording that the audit objection was in respect of a new information and not law.

10. It cannot be disputed and questioned that the nature of activities being undertaken by the assessee were in the knowledge of the Assessing Officer in the first round. The nature and character of the said activities i.e. printing of books has been mentioned in the assessment order itself. It is also recorded that these books were printed and supplied to different parties as per the instructions of the overseas importer. Thus, it is incorrect and wrong that any fresh or new factual information came to the knowledge of the Assessing Officer after passing of the first assessment order dated 25th August, 2008. No new fact came to the knowledge of the Assessing Officer,

which made him believe that the petitioner was carrying on another activity and was not printing books. The audit objections in the present case reflects and indicates that the auditors were of the opinion that the Assessing Officer had erred in accepting the legal position that printing of book amounts to manufacture or production. In the present case, the Assessing Officer as per the "reasons to believe" had formed an erroneous legal opinion in the original assessment order. Such cases cannot be covered and cannot be made subject of reassessment proceedings under Section 147 of the Act. Appropriate remedy available to the Revenue was to initiate proceedings under Section 263 of the Act, as it is their stand that the assessment order was erroneous and was prejudicial to the interest of the Revenue.

11. Learned counsel for the respondent-assessee has drawn our attention to the full bench decision of this Court in ***Commissioner of Income Tax Vs. Usha International Ltd.***, [2012] 348 ITR 485 (Delhi) wherein, reference is made to the judgment of the Supreme Court in ***ALA Firm Vs. CIT***, (1991) 189 ITR 285 (SC). Our attention was drawn to proposition No.4; that information as required by Section 147(b) can relate to an earlier decision on the point of law but that information should have come to the knowledge of the Assessing Officer by his own efforts. Such information may be gathered after examination of the assessment records. Decision in ***ALA Firm*** (*supra*)

was referred to in ***Usha International*** (supra) in a different context and purpose. Observations made by the Supreme Court was with reference to the term "information" and conceptually there is a difference between the scope and ambit of the reassessment provisions incorporated with effect from 1st April, 1989. The new statutory provisions do not refer to the word "information" and nature, type or character of information. No doubt, the scope and ambit of the amended reassessment provisions is wider, but what is relevant and important is that cases of "change of opinion" are not covered or protected under the re-enacted reopening provisions. In this connection, it would be appropriate to reproduce paragraphs 15 and 16 of the decision of the Full Bench in ***Usha International Ltd.*** *(supra)*:-

> "15. Thus where an Assessing Officer incorrectly or erroneously applies law or comes to a wrong conclusion and income chargeable to tax has escaped assessment, resort to Section 263 of the Act is available and should be resorted to. But initiation of reassessment proceedings will be invalid on the ground of change of opinion.
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> 16. Here we must draw a distinction between erroneous application/ interpretation/understanding of law and cases where fresh or new factual information comes to the knowledge of the Assessing Officer subsequent to the passing of the assessment order. If new facts, material or information comes to the knowledge of the Assessing Officer, which was not on record and available at the time of the assessment order, the principle of "change of opinion" will not apply. The reason is that "opinion" is formed on facts.

> "Opinion" formed or based on wrong and incorrect facts or which are belied and untrue do not get protection and cover under the principle of "change of opinion". Factual information or material which was incorrect or was not available with the Assessing Officer at the time of original assessment would justify initiation of reassessment proceedings. The requirement in such cases is that the information or material available should relate to material facts. The expression 'material facts' means those facts which if taken into account would have an adverse affect on the assessee by a higher assessment of income than the one actually made. They should be proximate and not have remote bearing on the assessment. The omission to disclose may be deliberate or inadvertent. The question of concealment is not relevant and is not a precondition which confers jurisdiction to reopen the assessment."

12. After quoting the said paragraphs, the full bench had made reference to ***New Light Trading Co. Vs. CIT*** *(supra)* and ***P.V.S. Beedies (P) Ltd.****(supra)*.

13. We have also examined the judgment of the Calcutta High Court in ***A. Mukherjee and Company Private Limited*** (supra). The said judgment does not support the Revenue and the Assessing Officer in the 'reasons to believe' has quoted one sentence, which in fact is a misquote and does not state or convey what the Assessing Officer has understood. The full paragraph in ***A. Mukherjee and Company Private Limited*** **(supra)** reads:-

> "In order that a publisher of books should be a manufacturer of books it is wholly unnecessary

> for him either to be an owner of a printing press or to be a book-binder himself. A paper is not a book, though it is printed on papers. A publisher may get the books printed from any printer but the printer is not the manufacturer but a mere contractor. The findings of the Tribunal in our opinion conclusively show that the assessee was carrying on the activity of manufacturing and also of processing of books which are also goods."

14. In the said case, the respondent was a publisher of books but did not have a printing press. He would procure manuscripts, hit upon a suitable format, get it printed from third parties under his supervision, get the book bound and put it out for sale. The Calcutta High Court dismissed the appeal of the Revenue and held in favour of the assessee therein that he was engaged in manufacturing and also processing of books, which were goods. The activity undertaken by the petitioner herein, as accepted in the original assessment order, is that the petitioner had printed text books and bound them and as per the instructions of the importer dispatched them to parties outside India or within India. The petitioner has set up an undertaking for printing and production of books.

15. Section 10B applies to 100% export oriented undertaking engaged in export of articles, things or computer software for a period of ten consecutive assessment years beginning from the year in which the undertaking begins to manufacture or produce articles, things or

computer software. The words “articles” and “things” are wide and by no stretch it can be said that the petitioner does not produce an article or a thing. After receipt of manuscripts from abroad, the petitioner has to do type setting, make/process/print on paper and then bind printed pages into books. Thus, a new product, distinct and separate from the bare manuscripts takes shape and gets a physical shape in form of books. Books are an article or a thing and the process involved is certainly production, if not manufacture.

16. In view of the aforesaid position, we allow the present writ petition quashing the reassessment notice and the order dated 28th September, 2010. No order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

AUGUST 05, 2013
NA/VKR