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

Date of decision: 14.02.2014

\+ **W.P.(C) 1608/2013 & CM Appl.3024/2013**

RASALIKA TRADING AND INVESTMENT CO. PVT. LTD

..... Petitioner

Through Mr Rakesh Gupta, Mr Rishabh Kapoor and Ms Khshbu Upadhyay, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX AND ANR.

..... Respondent

Through Mr Rohit Madan, Adv.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

S. RAVINDRA BHAT, J.: (OPEN COURT)

The petitioner in this case challenges the notice proposing reassessment under section 147/148 of the Income Tax Act in respect of assessment year 2005-06. The assessee, an investment and security business company, had raised additional capital and offered shares at a premium of Rs.90 per share during the concerned assessment year. The regular assessment under section 143(3) was completed by an order

framed on 24.12.2007. The notice proposing reassessment, in the present case reads as follows :

"ANNEXURE 'A'
RASALIKA TRADING & INVESTMENT CO. PVT. LTD.
2005-06

In this case initiation was received from DIT (Investigation), New Delhi which was circulated amongst the Assessing officers of Delhi Charge vide F. No. CIT-I/2005-06/2132 dated 13.03.2006. The information received indicated that the assessee is amongst the beneficiaries of bogus accommodation entries as under:

Bank A/c in which entry is received	*Amount/ instruments no.*	*Date of receipt*	*Name of party from whom received*	*Bank a/c of entry given*	*Account No.*
IDBI, KG Marg	*3,00,000/ 41708*	*10.06.2004*	*Ashiana Electronics Pvt. Ltd.*	*Corpn Bank, Kamla Nagar*	*4028*
IDBI, KG Marg	*3,00,000/ 41704*	*29.08.2004*	*Ashiana Electronics Pvt. Ltd.*	*Corpn Bank, Kamla Nagar*	*4028*
IDBI, KG Marg	*3,00,000/ 41710*	*10.06.2004*	*Paropkari Finstock Pvt. Ltd.*	*Corpn Bank, Kamla Nagar*	*4029*
IDBI, KG Marg	*2,00,000/ 41719*	*24.06.2004*	*Paropkari Finstock Pvt. Ltd.*	*Corpn Bank, Kamla Nagar*	*4029*

The information received also indicated that the bank accounts of M/s Ashiana Electronics Pvt. Ltd. and M/s Propkari Finstock Pvt. Ltd. were maintained and controlled by one Shri Hari Om Bansal, who has in statement given on oath on 12.04.2005 before the Investigation Wing admitted that he had received cash in lieu of cheque or draft to various persons through various bank accounts maintained by him with the help of his associates.

In view of the reports received from the Investigation Wing and the above facts and findings, it is clear that the assessee company has not disclosed fully and truly all material facts necessary for its assessment for the assessment year under consideration. I am in possession of material that discredits and impeaches the particulars furnished by the assessee company and also establishes the link with the self-confessed "accommodation entry providers", whose business is to help assessee bring into their booms of accounts their unaccounted money.

In view of the above facts, I have reason to believe that the assessee had introduced its unaccounted/ disclosed income routed through such bogus accommodation entries. Thus, the Income chargeable to tax amounting to Rs. 11,00,000/ - during the A.Y. 2005-06 has escaped assessment in the case and there has been a failure on the part of the assessee to disclosed fully and truly all material facts necessary for his assessment in the AY 2005-06. Hence, the same is to be brought to tax under section 147 of the Income Tax Act. It is a fit case for initiating proceedings u/ s 147 of the Act. Sanction for issue of notice u/s. 148 as prescribed u/s 151, to assessee such income may kindly be accorded.

(Signature of Officer)
Name: KEYUR PATEL
Designation: DCIT. Circle - 15(1), N.D."

The petitioner urges that on the face of it the impugned notice and subsequent proceedings are beyond the authority of law. It is urged that the fresh or tangible material, on the basis of which recourse to section 148 is proposed, existed even when the original regular assessment was completed. The learned counsel pointedly referred to the first sentence of the impugned notice stating that the intimation or report of the DIT (Investigation) was circulated to all concerned including AOs of Delhi Charge on 13.3.2006. It was therefore urged that the reasons in support of the notice were based upon material which was stale and therefore plainly outside the jurisdiction conferred under section 148. Counsel relied upon the decision of Supreme Court in *CIT vs.* Kelvinator *(India) Ltd.* (2010) 320 ITR 561. The learned counsel relied upon the response given during the assessment proceedings particularly the letters dated 20.9.2007, 5.11.2007, 15.11.2007, 29.11.2007, 10.12.2007 and 17.12.2007. It was submitted that the details of the share applicants, who had applied for allotment, sought for by the AO in the regular assessment were furnished to the AO. It was submitted that in these circumstances the reopening of assessment proposed on the basis of the material said to have been contained in the investigation report of 13.3.2006 was a matter that had

been specifically enquired and gone into by the revenue. It was argued that in these circumstances, the notice is illegal and liable to be quashed.

Counsel for the revenue submitted that the notice no doubt adverted to an investigation wing report of 13.3.2006. However, counsel argued that this report was not on the record when the assessment was completed originally on 20.4.2007. In the counter affidavit the revenue stated as follows :

> *"The contents of the para are correct and admitted to the extent that the Respondents had passed the order after application of mind and accepted the income declared by the Assessee with no adverse finding but all this done on the basis of material/documents disclosed by the Assessee. The main reason for reopening the assessment was that the Assessee has not disclosed full and true material and the same has led to escapement of Income. So, the notice u/s 148 when issued after complying with all the legal formalities cannot be bad in law. Moreover the earlier order passed u/s 143(3) cannot be made a basis for proving the reopening bad in law when there was no disclosure of full and true material by the Assessee before the Assessing authority."*

The learned counsel relied upon the following averment made in additional affidavit filed after the counter affidavit is filed. The additional affidavit was filed by one Arun S. Bhatnagar, Commissioner of Income

Tax, Delhi-V and affirmed on 16.12.2013. The relevant contents of the said affidavit are as under :

> *"3. That after going through the original assessment records, it has been noticed that letter dated 13.03.2006 was not on record before the Assessing Officer when the original assessment was framed on 24.12.2007.*
>
> *4. The information regarding the letter dated 13.03.2006 was received by the office of DCIT, Respondent No.1 after the proceedings u/s 143(3) were concluded and based on the contents of the letter dated 13.03.2006, appropriate proceedings have been initiated by the Department u/s 147/148 of the Income Tax Act, 1961."*

Counsel for the revenue urged that in terms of Kelvinator *(India) Ltd.* (supra) the reassessment proceedings were within jurisdiction and ought not to be interfered with.

It is evident from the above discussion that the reassessment proceedings were initiated by the impugned notice which expressly and plainly states that "reasons to believe" are based upon the materials contained in an investigation report of 13.3.2006. The notice itself does not spell out that the report was not on the record when the original assessment was completed on 24.12.2007 nor did the revenue even suggest so in the counter affidavit filed in the proceedings. It is only in a

subsequently filed additional affidavit that the position is sought to be clarified. Clearly this Court refrains from making such an enquiry, at a time when the AO has, in the first instance, failed to spell out clearly in the section 148 notice itself that such report was not on record. In other words "the reasons to believe" do not state that even in one sentence that the investigation report of 13.3.2006 was not with the AO when he completed the assessment. The material on record in fact suggests otherwise; the nature of the queries put to assessee and the replies and confirmation furnished to the AO in the course of the regular assessment clarify that what excited the suspicion was indeed gone into by the AO himself while framing the assessment under section 143(3). This Court is fortified in its conclusions by the decision of the Supreme Court in *Commissioner of Police v. Goverdhan Das Bhanji* AIR 1952 SC 16 where it was held that public orders made by public authorities intended to have effect on the public should be construed objectively with reference to the language used rather than explanations subsequently offered. This principle was reiterated in a somewhat different vein in *MS Gill V. Chief Election Commissioner*, AIR 1978 SC 851 by the Supreme Court. Such being the case this Court has no doubt that the impugned notice, in the

circumstances of the case is based upon stale information which was available at the time of the original assessment and in fact appears to have been used by the AO at the relevant time i.e. during the completion of proceedings under section 143(3). Therefore, the attempt to reopen the proceedings under section 147/148 is really the result of a change of opinion – and thus beyond the pale of the AD's jurisdiction and falling under the illustration spelt out in Kelvinator *(India) Ltd.* (supra). Consequently, the impugned notice and all proceedings further thereto are beyond the authority of law and are hereby quashed.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

FEBRUARY 14, 2014
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