

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 23.04.2013

+ **WP (C) 7943/2011**

RURAL ELECTRIFICATION CORP LTD ... Petitioner

versus

**COMMISSIONER OF INCOME TAX-(LTU)
AND ANOTHER** ... Respondents

Advocates who appeared in this case:

For the Appellant : Mr M. S. Syali, Sr Advocate with Mr Satyen Sethi,
Mr Mayank Nagi and Mr A. T. Panda
For the Respondents : Mr Kiran Babu

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition pertains to the assessment year 2004-05. It is directed against the notice under Section 148 of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act') issued on 21.03.2011, whereby the assessment of the petitioner is sought to be reopened. The purported reasons for believing that income had escaped assessment are as under:-

“11. Reasons for the belief that income has escaped assessment.

1. In this case assessment under section 143(3) was completed on 24.2.2005 at an income of Rs.5,52,50,73,110/-. The assessee company is a public financial institution engaged in business of providing finance for rural electrifications and is not an industrial undertaking. It has incurred an expenditure of Rs.5,34,20,000/- on account of issue of long term bond / debt instrument. The expense was incurred for borrowing long term debt instruments which give a benefit of enduring nature and hence the assessee should have capitalized the same. But the assessee claimed these expenses as revenue expense instead of capital expense.

2. Information from Addl. CIT, Karimnagar Range, Karimnagar was received that the assessee company had advanced a loan to M/s. The Cooperative Electrical supply Society Ltd., Siricilla. This Society has created a corpus of special fund amounting to Rs.10 crores. The society earned interest on this special fund but did not disclose it in its return for the reason that the money belonged to M/s. REC i.e. Assessee Company and any income earned was also on behalf of Assessee Company. The ITAT, Hyderabad in its consolidated order in ITA No. 1112 to 1115 & 1198 to 1199 of 2005, 1635 of 2008 and 570 of 2009 dated 13.01.2010 for assessment year 1999-00 to 2006-07 had held that this income was not taxable in the hands of the society but ought to be taxed in the hands of the assessee company. The ACIT-Cir-1, Karimnagar has quantified such income at Rs.24,50,000/- on account of interest on REC Bonds & Rs.45,44,199/- on account of interest from commercial banks.

3. I have therefore reasons to believe that income of Rs.6,04,14,199/- has escaped assessment within the meaning of section 147 which warrants issue of notice under section 148.”

2. It is an admitted position that the notice under Section 148 was issued beyond the period of four years from the end of the assessment year

2004-05, the same having been issued on 21.03.2011. As such, the conditions stipulated in the proviso to Section 147 would have to be complied with. Mr Syali, the learned senior counsel appearing on behalf of the petitioner, submitted that one of the essential conditions stipulated in the proviso to Section 147 was that there must be an allegation that the assessee had failed to disclose fully and truly all the material facts necessary for his assessment and that because of such failure there has been an escapement of income chargeable to tax. He submitted that it would be evident from the aforesaid purported reasons that there is no such allegation. Consequently, relying on the decision of this court in the case of *Haryana Acrylic Manufacturing Company v. The Commissioner of Income Tax IV and Anr.* (2009) 308 ITR 38 (Delhi), he submitted that the impugned notice and all proceedings pursuant thereto are liable to be set aside.

3. The learned counsel for the revenue submitted that all the procedural requirements necessary for re-opening the assessment had been complied with by taking the necessary permission from the Commissioner before the notice under Section 148 had been issued. He also submitted that the petitioner had not shown the interest income mentioned in the 'reasons' in

its return for the relevant year. The interest income in question arose out of the loan advanced by the petitioner to the Cooperative Electrical Supply Society Limited (Siricilla). The circumstances in which the interest income arose are indicated in the purported reasons which have been extracted above. It was contended on behalf of the revenue that it was only pursuant to the Tribunal's order that the notice under Section 148 had been issued. Therefore, according to the learned counsel for the respondent, it was only complying with the directions given by the Tribunal. The learned counsel for the respondent / revenue also stated that the limitation prescribed in Section 149 would not, in any event, come in the way of the respondent inasmuch as the provisions of Section 150 would be applicable. He further submitted that, apart from the question of the interest income escaping assessment, there was also the issue of the income escaping assessment on the ground that the petitioner had claimed expenses as 'revenue expenses' which were actually of a 'capital' nature.

4. We have considered the submissions made by the learned counsel for the parties. Insofar as the plea of the learned counsel for the revenue with regard to Section 150 of the said Act is concerned, that issue stands concluded by virtue of our decision in respect of the very same assessee in

WP (C) No.7944/2011 and other connected writ petitions decided today itself. We have concluded in those writ petitions that the provisions of Section 150 would not be applicable. The very same conclusions would apply to the present case also.

5. As regards the plea taken by Mr Syali that there is no allegation with regard to the failure on the part of the petitioner to fully and truly disclose all the material facts necessary for the petitioner's assessment, we find that this aspect is clearly covered in favour of the petitioner by virtue of our decision in *Haryana Acrylic (supra)*. In that case, we had observed as under:-

“29. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to Section 147. If this condition is not satisfied, the bar would operate and no action under Section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation.

Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in *Wel Intertrade Private Ltd.*[2009] 308 ITR 22 (Delhi) we had agreed with the view taken by the Punjab & Haryana High Court in the case of *Duli Chand Singhania* [2004] 269 ITR 192 that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing officer under Section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated 29.03.2004 under Section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated 02.03.2005 are without jurisdiction as no action under Section 147 could be taken beyond the four year period in the circumstances narrated above.”

6. In the present case also, there is no whisper in the purported reasons of the petitioner having failed to disclose fully and truly all the material facts necessary for its assessment. Therefore, the necessary ingredients of the provisions of Section 147 are not satisfied. In view thereof, the revenue cannot also raise the ground with regard to the expenses being of a ‘capital’ nature, whereas the petitioner had claimed it as ‘revenue expenditure’.

7. Therefore, in whichever way we look at this case, we find that the initiation of reopening of the assessment pertaining to the assessment year

2004-05 did not have the backing of law. Consequently, the impugned notice under Section 148 and all proceedings pursuant thereto, including the assessment order passed pursuant thereto are liable to be set aside. It is ordered accordingly. The writ petition is allowed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

April 23, 2013
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