

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.05.2013

+ **ITA No.289/2012**

COMMISSIONER OF INCOME TAX - III **Appellant**

versus

M/S SUREN INTERNATIONAL PVT LTD **Respondent**

Advocates who appeared in this case:

For the Appellant :Mr Amol Sinha, Sr.Standing Counsel with
Mr Deepak Anand, Mr.Anshum Jain &
Mr Rahul Kochar, Advocates.

For the Respondent :Mr S. Krishnan, Advocate.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the said Act") has been filed on behalf of the revenue challenging the order dated 23.12.2011 passed by the Income Tax Appellate Tribunal, in ITA No. 2941/D/2010, pertaining to the assessment year 2002-03. The Tribunal has, by its order dated 23.12.2011, quashed the proceedings initiated, by the Assessing Officer, on the basis of a notice under Section 148 of the said Act

issued for reopening the assessment pertaining to the said assessment year 2002-03. The notice under Section 148 of the said Act was issued on 25.03.2009 which is beyond the period of 4 years from the end of the relevant assessment year. The Tribunal held that as there has been no failure on the part of the assessee to disclose material facts and the same is also not alleged either in the notice under Section 148 or in the reasons recorded for initiating reassessment proceedings, the reassessment proceedings are illegal and without jurisdiction. In absence of failure, on the part of the assessee, to disclose fully and truly all material facts necessary for the proceedings, the Assessing Officer would lack the jurisdiction to initiate reassessment proceedings. Consequently, the Tribunal has quashed the reassessment order.

2. The challenge on the part of the revenue to the order passed by the Tribunal has to be considered in light of the following facts.

3. The assessee filed its return of income on 31.03.2003 declaring an income of ₹ 30,18,779/-. The said return was initially accepted under Section 143(1) on 30.05.2003. However, subsequently on 20.10.2003, the same was taken up for scrutiny. The balance sheet and the books of account of the assessee disclosed that, during the relevant previous year, the assessee had received an aggregate sum of ₹ 4,82,01,000/- as share application money from various persons and the same was outstanding, pending allotment of shares. The Assessing Officer issued a detailed questionnaire to inquire into the said share

application money and sought details of the share applicants who had paid the share application money to the assessee company. The Assessing Officer thereafter conducted an inquiry to determine the genuineness and creditworthiness of the transactions relating to the share applications. The assessee produced confirmations from the concerned share applicants during the course of the assessment proceedings. In order to make further inquiries, the Assessing Officer issued summons under Section 131 of the Act to 25 parties from whom the share application money had been received. Initially, some of the summons were received back unserved and the assessee was asked to furnish fresh addresses, which were provided by the assessee. However even thereafter summons to certain persons were received back and the assessee again provided a fresh set of addresses with respect to those persons. The hearings for examining the noticees under Section 131 were fixed on 07.03.2005, 22.03.2005 and 23.03.2005. One of the persons examined under Section 131 declined to acknowledge any relationship with the assessee and consequently the amount of share application money deposited by the said party amounting to ₹ 5,00,000/- was added as income in the hands of the assessee, as unexplained credit in the books of accounts, in terms of Section 68 of the Income Tax Act. Whilst some of the parties to whom summons under section 131 were issued remained unserved, in certain other cases the share-applicants did not come forward on the scheduled dates of hearing for being examined. The Assessing Officer, thereafter,

concluded that a sum of ₹ 42,00,000/- on account of share application money was liable to be taxed as unexplained credit in the books of accounts under Section 68 of the Income Tax Act.

4. The assessment made by the Assessing Officer by the order dated 30.03.2005 was carried in appeal by the assessee. The assessee contested the assessment made by the Assessing Officer and in support of his contentions furnished letters of confirmation, photocopies of share application forms, photocopies of income tax returns, balance sheets, pan cards and bank statements of the share applicants in respect of whom the additions were made in the assessment order dated 30.03.2005. The assessee further produced evidence to show that in some cases, the share application money had since been refunded. The CIT (Appeals) forwarded the additional evidence produced by the assessee to the Assessing Officer for examining the same and furnishing a report thereon. The Assessing Officer submitted a report dated 07.10.2005 reiterating the issues mentioned in the assessment order. The CIT (Appeals) concluded that some of the persons to whom summons had been issued could not appear before the Assessing Officer due to paucity of time and, in the light of the subsequent evidence, deleted the additions made by the Assessing Officer to the extent of ₹ 37 lacs. The addition of ₹ 5 lacs in relation to the share applicant who had categorically stated that she had no link with the assessee was upheld by the CIT(A).

5. It can be seen from the above facts that the assessee furnished all particulars relating to the share application money including confirmations from the share applicants as well as other evidence in relation to those persons, who the Assessing Officer had found to be suspect.

6. It is the case of the revenue that during certain investigation proceedings, a statement of one Shri Deepak Gupta was recorded on 25.09.2004 (that is, while the assessment proceedings were still pending). Shri Deepak Gupta has allegedly admitted that he was providing accommodation entries to the assessee. It has been contended on behalf of the revenue, that based on the statement made by the said Deepak Gupta, the Assessing Officer came to believe that income during the relevant previous year had escaped assessment and the Assessing Officer issued the notice dated 25.03.2009 under Section 148 of the Act, seeking to reassess the income of the assessee under Section 147 of the Act. The assessee requested for the reasons for issuance of notice under Section 148 of the said Act which were furnished by the Assessing Officer. The assessee objected to the reasons, however the same were rejected by the Assessing Officer.

7. The reasons for issuance of the notice under Section 148, *inter alia*, alleged that the assessee had taken certain accommodation entries. The reasons for reopening of the assessment proceedings furnished by the Assessing Officer are as under :-

“12.03.2009 Reasons for issue of notice u/s 148 in the case of M/s Suren International Pvt. Ltd AY 2002-03

Return in this case was filed at an income of ₹ 10,74,990 on 29.10.2002

Enquiries were conducted by the Investigation Wing of the Dept. In this inquiry it was found that one Mr Deepak Gupta S/o Late Shri J.N. Gupta R/o Shastri Nagar, Delhi 110052 was indulging in providing accommodation entries. In his statement recorded on 25/09/2004, he has admitted that he takes cash from various parties and gives them DD/Cheque by charging his commission. This DD/Cheque is then introduced by these parties as share Capital or Loan in their books of accounts.

M/s Suren International Pvt Ltd has taken following accommodation entries from the accounts operated by Deepak Gupta which have been credited in its account with BOP, Karol Bagh Branch in A.Y 2002-03, THE DETAILS ARE GIVEN BELOW:

VALUE OF ENTRY TAKEN	INSTRUMENT NO BY WHICH ENTRY TAKEN	DATE ON WHICH ENTRY TAKEN	NAME OF ACCOUNT HOLDER OF ENTRY GIVING ACCOUNT	BANK FROM WHICH ENTRY GIVEN	BRANCH OF ENTRY GIVING BANK	A/C NO ENTRY GIVING ACCOUNT
500000		26-JUL-01	B.I.C. CONSULTANT S P LTD	SBP	DG	50088
500000		26-JUL-01	--DO--	--DO--	--DO--	50088
500000		26-JUL-01	--DO--	--DO--	--DO--	50088
500000		26-JUL-01	--DO--	--DO--	--DO--	50088
500000		26-JUL-01	--DO--	--DO--	--DO--	50088
500000		26-JUL-01	--DO--	--DO--	--DO--	50088
500000	495673	21-JUL-01	DINANATH LAHURIW	OBC	MINTO ROAD	19

			ALA			
500000	495673	21-JUL-01	--DO--	--DO--	--DO-	19
500000	495673	21-JUL-01	--DO-	--DO-	--DO-	19
500000	495673	21-JUL-01	--DO-	--DO-	--DO-	19
500000	495673	21-JUL-01	--DO-	--DO-	--DO-	19
500000	495673	21-JUL-01	--DO-	--DO-	--DO-	19
500000	495673	21-JUL-01	--DO-	--DO-	--DO-	19
250000	142208	30-JUN-01	DINESH GUPTA	JAILAXMI COOP BANK	FATEHP URI	11246
250000	142208	30-JUN-01	--DO--	--DO--	--DO--	11246
250000	142208	30-JUN-01	--DO--	--DO--	--DO--	11246
250000	142208	30-JUN-01	--DO--	--DO--	--DO--	11246
250000	142208	30-JUN-01	--DO--	--DO--	--DO--	11246
250000	142208	30-JUN-01	--DO--	--DO--	--DO--	11246
500000	257601	6-JUL-01	ENPOL(PV T)	--DO--	--DO--	3340
500000	257601	6-JUL-01	--DO--	--DO--	--DO--	3340
500000	257601	6-JUL-01	--DO--	--DO--	--DO--	3340
500000	257601	6-JUL-01	--DO--	--DO--	--DO--	3340
500000	257601	6-JUL-01	--DO--	--DO--	--DO--	3340
500000	257601	6-JUL-01	--DO--	--DO--	--DO--	3340
450000	499344	24-MAY-01	LANDMAR K COMMUNI CATION PVT LTD	--DO--	--DO--	3194
450000	499344	24-MAY-01	--DO--	--DO--	--DO--	3194
450000	499344	24-MAY-01	--DO--	--DO--	--DO--	3194
450000	499344	24-MAY-01	--DO--	--DO--	--DO--	3194

450000	499344	24-MAY-01	--DO--	--DO--	--DO--	3194
450000	499344	24-MAY-01	--DO--	--DO--	--DO--	3194
500000	145084	02-JUL-01	LEELA DHAR	--DO--	--DO--	8644
500000	145084	02-JUL-01	--DO--	--DO--	--DO--	8644
500000	145084	02-JUL-01	--DO--	--DO--	--DO--	8644
500000	145084	02-JUL-01	--DO--	--DO--	--DO--	8644
500000	145084	02-JUL-01	--DO--	--DO--	--DO--	8644
500000	145084	02-JUL-01	--DO--	--DO--	--DO--	8644
500000	329725	30-JUN-01	MANOHA R LAL MANISH KUMAR	--DO--	--DO--	1556
500000	329725	30-JUN-01	--DO--	--DO--	--DO--	1556
500000	329725	30-JUN-01	--DO--	--DO--	--DO--	1556
500000	329725	30-JUN-01	--DO--	--DO--	--DO--	1556
500000	329725	30-JUN-01	--DO--	--DO--	--DO--	1556
500000	329725	30-JUN-01	--DO--	--DO--	--DO--	1556
480000	269479	18-MAY-01	PROFAN FINANCE & INVESTME NT LTD	IND BAK	CH CHOK	5035
480000	269479	18-MAY-01	--DO--	--DO--	--DO--	5035
480000	269479	18-MAY-01	--DO--	--DO--	--DO--	5035
480000	269479	18-MAY-01	--DO--	--DO--	--DO--	5035
480000	269479	18-MAY-01	--DO--	--DO--	--DO--	5035
500000	311122	18-JUL-01	SUMA FINANCE INVESTME NT LTD.	CORPN	KB	2919
500000	311122	18-JUL-01	--DO--	--DO--	--DO--	2919

500000	311122	18-JUL-01	--DO--	--DO--	--DO--	2919
500000	311122	18-JUL-01	--DO--	--DO--	--DO--	2919
500000	311122	18-JUL-01	--DO--	--DO--	--DO--	2919
500000	311122	18-JUL-01	--DO--	--DO--	--DO--	2919
500000	311122	18-JUL-01	--DO--	--DO--	--DO--	2919
500000	311122	18-JUL-01	--DO--	--DO--	--DO--	2919
250000	135415	30-JUN-01	SUSHIL GOYAL	JAILAXMI COOP BANK	FATEHP URI	10081
250000	135415	30-JUN-01	--DO--	--DO--	--DO--	10081
250000	135415	30-JUN-01	--DO--	--DO--	--DO--	10081
250000	135415	30-JUN-01	--DO--	--DO--	--DO--	10081
250000	135415	30-JUN-01	--DO--	--DO--	--DO--	10081
250000	135415	30-JUN-01	--DO--	--DO--	--DO--	10081
500000	503258	27-JUL-01	SWETU STONE P. LTD	OBC	MINTO ROAD	33
500000	503258	27-JUL-01	--DO--	--DO--	--DO--	33
500000	503258	27-JUL-01	--DO--	--DO--	--DO--	33
500000	503258	27-JUL-01	--DO--	--DO--	--DO--	33
500000	503258	27-JUL-01	--DO--	--DO--	--DO--	33
500000	503258	27-JUL-01	--DO--	--DO--	--DO--	33
500000		25-JUL-01	TECNOCO M ASSOCIAT ES PVT.	SBP	DG	50060
500000		25-JUL-01	--DO--	--DO--	--DO--	50060
500000		25-JUL-01	--DO--	--DO--	--DO--	50060
500000		25-JUL-01	--DO--	--DO--	--DO--	50060
500000		25-JUL-01	--DO--	--DO--	--DO--	50060

500000	145067	02-JUL-01	VIPIN KUMAR	JAILAXMI COOP BANK	FATEHP URI	9378
500000	145067	02-JUL-01	--DO--	--DO--	--DO--	9378
500000	145067	02-JUL-01	--DO--	--DO--	--DO--	9378
500000	145067	02-JUL-01	--DO--	--DO--	--DO--	9378
500000	145067	02-JUL-01	--DO--	--DO--	--DO--	9378
500000	145067	02-JUL-01	--DO--	--DO--	--DO--	9378
3,65,80, 000	TOTAL AMOUN T					

In this case information have been received that their goods have been seized by DRI and also penalty of Rs 2 Crores is levied by Commissioner Customs (ICD).

From the above details and the Statement of Mr. Deepak Gupta who has admitted that he has not carried out any business activity except that of providing accommodation entries as described above that of providing accommodation entries as described above, it is seen that the assessee has diverted its own money into the business by way of taking accommodation entries. Thus the amounts stated in table above taxable u/s 68 of the Act and hence, I have reason to believe that an amount of Rs 3,65,80,000/- has escaped assessment within the meaning of section 147 of the IT Act 1961.

Since 4 years have been elapsed, the assessment record is being submitted for kind perusal and approval of the Commissioner of Income-Tax, Delhi-III, New Delhi according to section 151 (1) of the IT Act, 1961 for issuance of notice u/s 148 of I.T. Act.

-sd/-

(D.D. YADAV)
Asstt. Commissioner of Income Tax
Circle 9(1), New Delhi”

8. The alleged accommodation entries, tabulated in the reasons for issuance of the notice under section 148, totaling ₹ 3,65,80,000/- formed the basis of initiating the reassessment proceedings. The Assessing Officer recorded that he had reason to believe that the amount of ₹ 3,65,80,000/- has escaped assessment. It is relevant to state that the reasons as furnished by the Assessing Officer, first of all, did not disclose any allegation that the assessee had failed to make any disclosure for the purposes of the assessment. Secondly, it would be pertinent for us to mention that a bare perusal of the entries listed in the table forming a part of the reasons indicate that most of the entries have been repeated six times to form the total of ₹ 3,65,80,000/-. The Assessing Officer has thus made an addition on the basis of certain set of alleged entries which *ex facie* include the same entries which have been repeated multiple times to arrive at the figure of ₹ 3,65,80,000/-. This is clearly evident from the fact that the details of instruments through which payments are alleged to have been made are also similar.

9. We may also add that although the said reasons as furnished by the Assessing Officer contain a statement that information had been received that certain goods of the assessee had been seized by DRI and penalty had been levied by Commissioner Customs (ICD), there is no allegation that any income had escaped assessment on that count and thus the only reason for initiating

proceedings under Section 147/148 are the alleged accommodation entries purportedly totaling ₹ 3,65,80,000/-.

10. The Assessing Officer once again commenced inquiries with regard to the amount received by the assessee as share application money, in the reassessment proceedings and concluded that the identity, creditworthiness of the share applicants and the genuineness of the transactions in relation to share application money totaling a sum of ₹ 4,75,01,000/- was not established and accordingly made an addition of the said amount. The Assessing Officer made a further addition of ₹ 3,46,00,000/- to the income of the assessee on the alleged ground of concealment of goods. The order of reassessment dated 24.12.2009 was carried in appeal by the assessee, however the same was dismissed by the CIT (Appeals) by an order dated 25.03.2010.

11. The assessee thereafter preferred an appeal before the Tribunal against the order dated 25.03.2010 passed by the CIT (Appeals), *inter alia*, on the ground that the reassessment proceedings were based on change of opinion and the same were initiated without there being a reason to believe that income had escaped assessment. The Tribunal allowed the appeal holding that no omission or failure to disclose all material facts, fully and truly, on the part of the assessee, was alleged and consequently the reassessment proceedings were illegal and without jurisdiction.

12. The Tribunal also noted that the statement of Shri Deepak Gupta was recorded on 25.03.2004 that is, prior to the framing of the first assessment and subsequently the matter had traversed its course in appeal before the CIT(A). The Tribunal also noted that a sum of ₹ 3,59,85,000/- had also been stated to be refunded by the assessee to the share applicants. The Tribunal concluded that the conditions for reopening the assessment under Section 147 were not satisfied and hence, the reassessment proceedings initiated pursuant to the notice dated 25.03.2009 were illegal and quashed the same by the impugned order.

13. We have heard counsels for the parties at length.

14. The learned counsel for the appellant contended that even though there is no specific allegation that the assessee had failed to disclose all the material facts but the same can be gleaned from the reasons itself. We are unable to accept this contention. In the first instance, we do not find the reasons as recorded by the Assessing Officer to be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded.

15. Having stated the above, we are also unable to accept the contention that there has been failure on the part of the assessee to disclose all material facts in his return as, first of all, there is no such allegation in the reasons as furnished to

the assessee; secondly, we cannot ignore the fact that the enquiry into the share application money had been conducted in detail by the Assessing Officer in the first round of assessment. Having framed his assessment after enquiry into the identity, genuineness and the creditworthiness of the share applicants, it would not be open for the Assessing Officer to re-examine the same without there being any material allegation of failure, on the part of the assessee, to make a full and true disclosure. It is well-settled that in order to invoke the provisions of Section 147 of the Act, after a period of four years from the end of the relevant assessment year, in addition to the Assessing Officer having reason to believe that any income has escaped assessment, it must also be established that the income has escaped assessment on account of the assessee failing to make returns under Section 139 or on account of failure on the part of the assessee to disclose, fully and truly, the necessary material facts. This Court in the case of Wel Intertrade P. Ltd. & Anr. v. ITO: (2009) 308 ITR 22 (Del) and Haryana Acrylic Manufacturing Company v. CIT & Anr.: (2009) 308 ITR 38 (Del) held that it would not be open for the Assessing Officer to reopen the assessment already done beyond the period of four years unless the income has escaped assessment on account of failure, on the part of the assessee, to disclose all the material facts. In the case of Wel Intertrade P. Ltd (*supra*) it has been held as under:

“A plain reading of the said proviso makes it more than clear that where the provisions of section 147 are being invoked after the period of four years from the end of the relevant assessment year, in addition to the Assessing Officer having reason to believe that any income chargeable to tax has escaped assessment, it must also be established as a fact that such escapement of assessment has been occasioned by either the assessee failing to make a return under section 139, etc., or by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year. In the present case, the question of making of a return is not in issue and the only question

is with regard to the second portion of the proviso, which relates to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Insofar as this pre-condition is concerned, there is not a whisper of it in the reasons recorded by the Assessing Officer. In fact, as indicated above, the Assessing Officer could not have made this a ground because the Assessing Officer had required the petitioner to furnish details with regard to loss occasioned by foreign exchange fluctuation which the petitioner did by virtue of the reply dated February 5, 2002. Since the petitioner had fully and truly disclosed all the material facts necessary for the assessment, the pre-condition for invoking the proviso to section 147 of the said Act had not been satisfied.

In this connection, it may be relevant to note one decision, although there are several others. The said decision is that of the Punjab and Haryana High Court in the case of Duli Chand Singhania v. Asstt. CIT : (2004) 269 ITR 192. In the said decision, the High Court of Punjab and Haryana was faced with a similar situation. The court noted that there was not even a whisper of an allegation that the escapement in 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. The court observed that absence of this finding, which is the sine qua non for assuming jurisdiction under section 147 of the Act in a case falling under the proviso thereto, makes the action taken by the Assessing Officer wholly without jurisdiction. We agree with these observations of the Punjab and Haryana High Court and are of the view that in the present case also, the Assessing Officer has acted wholly without jurisdiction. The invocation of section 147, the issuance of the notice under section 148 and the subsequent order on the objections are all without jurisdiction. The impugned notice as well as the proceedings pursuant thereto are quashed.”

16. In the reasons as furnished by the Assessing Officer, we find that there is neither any allegation that the assessee had failed to truly disclose any material facts at the time of assessment, nor can we readily infer the same in view of the

fact that a detailed enquiry had been conducted by the Assessing Officer with regard to the identity and creditworthiness of the share-applicants and genuineness of the transactions in relation to the share application money received by the assessee. Further the mere statement that the DRI has seized certain goods of the assessee and levied a penalty also cannot be stated to be a reason for reopening of assessment of the assessee as the said statement made is neither followed by the recording of a belief that the income escaped on that count or that the assessee has failed to disclose all relevant material, fully and truly, at the stage of the first assessment.

17. We, accordingly, do not find any merit in the present appeal and no substantial question of law has been raised for our consideration. The present appeal is, accordingly, dismissed. Parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

MAY 07, 2013
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