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

Dated of decision: 10th July, 2012

\+ ITA 1325/2009
\+ ITA 525/2010
\+ ITA 1697/2010

THE COMMISSIONER OF INCOME TAX III ..... Appellant
Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel with Mr. Puneet Gupta, Jr. Standing Counsel.
Mr. Sanjeev Rajpal, Sr. Standing Counsel.

versus

SHONKH TECHNOLOGY LTD. ..... Respondent
Through: Mr. S. K. Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

S. RAVINDRA BHAT, J. (ORAL)

Admit.

1. The following substantial question of law arises in these batch of appeals: -

"2.2 Whether learned ITAT erred in quashing the Assessment under section 147/143 (3) and holding that such initiation was invalid?"

2. With the consent of counsel the appeals were heard for final disposal.

3. The assessee, Shonkh Technology Ltd. company was incorporated in 1998 and was engaged in the production of Software. For the assessment year 2000-01 it had filed its return; the same was assessed at ₹12,35,34,420/-. For the succeeding assessment year, i.e. A.Y. 2001-02, which is the year under appeal, however, no return was filed. On 28.10.2004, the Assessing Officer recorded the following, as reasons under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the purpose of initiating proceedings towards escaped assessment for the year 2001-02 in respect of the

present assessee: -

> "*M/s. Shonkh Technology Limited, assessed in this circle is an existing company during this year. This Assessee had filed its return of income for the Assessment Year 2001-02. Hence, I have reason to believe that income chargeable to tax has escaped assessment for assessment year 2001-02.*
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> *Secondly, the Assessee company themselves has during the course of recovery proceedings, filed a business agreement dated 15.07.2000 between M/s. Shonkh Technologies limited and M/s. Shreejee Yatayat Limited on 27.10.2004 as enclosed is an letter from Mr. Vivek Nagpal as director. As per the business purchase agreement, the Assessee M/s. Shonkh Technologies Limited did business upto 15.07.2000 and, has transferred its entire business undertaking for a consideration of ₹110,25,64,745/- (Rupees one hundred ten crore twenty five lakhs sixty four thousand seven hundred forty five). The assessee should have admitted this receipt in its return of income and, should have paid the tax due under relevant provisions of the Income Tax Act.*
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> *Therefore, I have reasons to believe that income chargeable to tax has escaped agreement for the assessment year 2001-02 on account of the assessee to make a return admitting the above transactions and making the payment of tax there on. Since the taxable income has escaped assessment. I proceed to assess the income of M/s. Shonkh Technologies Limited for the assessment year 2001-02 under the provisions of section 147 of the Income Tax Act.*"

4. The assessee responded to the notice declaring its total income on a loss of ₹1,50,16,040/-. The Assessing Officer proceeded to consider the merits and by order dated 30.06.2006, assessed the income at ₹2,36,09,600/-. The Assessing Officer had also initiated penalty proceeding and passed an adverse order. The assessee carried the matter in appeal to the CIT (Appeals) who affirmed the assessment order on 15.10.2008. Aggrieved by the said order, the assessee appealed further to the ITAT. One of the preliminary contentions made before the Tribunal was that there was no material before the Assessing Officer to have concluded that there were reasons to believe that proceedings should be initiated under Section 147 of the Act. On this aspect the ITAT discussed this submission and by its impugned order held that the material on record did

not justify the Assessing Officer holding that he had reason to believe that proceedings could be initiated under Section 147 of the Act. The Tribunal's reasoning is to be found in the following extract of the said order: -

> "*16. A perusal of the reasons recorded by the AO in the present case shows that there was no rational or intelligible nexus between the reasons recorded by him and the belief entertained about the escapement of income of the assessee company. There was nothing in the said reasons to show existence of any positive income arising to the assessee company which was assessable in his hands and the belief entertained by the AO was based merely on assumption and surmises. The reasons recorded by him do not show the process of reasoning which could lead to reason to believe that any income of the assessee company chargeable to tax for the year under consideration had escaped assessment. If all these facts of the present case are considered in the light of principles laid down in the various judicial pronouncements discussed above, we are of the view that the mandatory conditions for assuming jurisdiction u/s 147 were not satisfied and this being so, the initiation of reassessment proceedings by the AO u/s 148 read with Section 147 was bade in law. In that view of the matter, we hold that the assessment completed by the AO u/s 147/143 (3) in pursuance of such invalid initiation is also bad in law and the same is liable to be quashed. We order accordingly and allow the additional ground raised by the assessee.*
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> *17. In the grounds originally taken by the assessee company in this appeal, the various additions made by the AO in the assessment completed u/s 147/143 (3) and confirmed by the learned CIT (A) have been disputed on merits. However, keeping in view our decision rendered on the preliminary issue while deciding the additional ground raised by the assessee quashing the said assessment, these grounds have become only of academic nature. We, therefore, do not deem it necessary to adjudicate upon the same on merits.*"

5. In view of the above reasoning the Tribunal set-aside the assessment and penalty order. We have heard counsel for the parties. In our opinion the Tribunal has adopted a hyper-technical approach in holding that the material which existed and which was relied upon by the Assessing Officer on 28.10.2004, as revealed in the notice dated 29.10.2004, were insufficient to be described as "reasons to believe" under Section 147 of the Act. As is evident, the assessee had filed return for the year 2000-01. However, it did not file

any return for the succeeding year but had received a sum in excess of ₹100 crores as consideration for transfer of business to one M/s. Sreejee Yatayat Ltd. The reasoning of the Tribunal was not justified because Explanation 2(a) to Section 47 provides that non-filing of return under certain circumstances could itself led to inference of escaped income. The Tribunal was conscious of that provision; yet it proceeded to take an extremely narrow view of the facts of this case and set an impossibly high threshold upon the Assessing Officer. Once the Assessing Officer was satisfied – as indeed evidenced from the reasons recorded on 28.10.2004 – that no return had been filed for the relevant year and further a substantial amount had been received by the assessee, there could have been no further investigation as to what was the ground for the assessee to have not filed the return. In other words the explanation for the non-filing of the return would really be going into the merits of the case. Therefore, we are of the opinion that the Tribunal ought not to have set-aside the assessment and penalty order in this case on such narrow reasoning.

6. In view of the above discussion ITA No.1325/2009 deserves to be allowed and is accordingly allowed and ITA Nos.525/2010 and 1697/2010 are also consequently allowed as they are concerned with the merits of the assessment order and the penalty order. The matter is accordingly remitted back to the Tribunal which shall consider the reassessment and the penalty appeals and decide the same on merits in accordance with law.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

JULY 10, 2012
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