



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.10.2008

+ **ITA 1079/2008, ITA 913/2008 & ITA 908/2008**

**THE COMMISSIONER OF INCOME
TAX DELHI -IV**

... Appellant

- versus -

GUPTA ABHUSHAN PVT. LTD

... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr C. S. Aggarwal with Mr Prakash Kumar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether Reporters of local papers may be allowed to see the judgment ? YES
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in Digest ? YES

BADAR DURREZ AHMED, J (ORAL)

1. These three appeals under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as the 'said Act') are directed against the order dated 21.09.2007 in ITA Nos. 2236, 2237 and 2238/Del/2005 pertaining to the assessment years 1999-2000, 2000-2001 and 2001-2002, respectively. The assessee had filed returns for the aforesaid years which were processed under Section 143 (1) of the said Act. A



the business premises of the assessee on 07.03.2002. At the time of survey it was found that the business premises were under renovation and that there was a discrepancy in the stocks. Proceedings under Section 147 of the said Act were initiated by the Assessing Officer after recording reasons under Section 148 (2) thereof. A notice under Section 148 (1) was issued on 15.05.2002.

2. The reasons, as recorded by the Assessing Officer under Section 148 (2) of the said Act, were as under:-

“1. In this case survey u/s 133A of the I. T. Act was conducted in the business premises of the assessee on 07.03.2002. During the course of survey discrepancies in the stock were noticed and excess stock to the extent of Rs 5.55 Lakh was found. Hence discrepancy in the stock in this year also is likely to occur and I am satisfied income to that extent has escaped assessment.

2. During the course of survey it was noticed that extensive renovation work in the business premises of the assessee has been undertaken. Renovation in respect of ground floor has been completed and renovation in the first floor was going on. But the assessee has not booked any expenses on account of renovation of the business premises. I am satisfied investments made in the renovation work has escaped assessment.”

3. The assessee objected to the re-opening of the assessments.

However, the objections were over-ruled by the Assessing Officer, who completed the assessments and made additions on account of



of unexplained credits under Section 68 of the said Act. Being aggrieved by the assessment orders, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), who upheld the action of re-opening of the assessment as well as the additions made by the Assessing Officer. The assessee filed appeals before the Income Tax Appellate Tribunal. After considering the facts and circumstances of the case as well as the rival contentions of the parties, the Tribunal came to the conclusion that the Assessing Officer was not justified in re-opening the assessments. Consequently, the Tribunal did not consider it necessary to go into the merits with regard to the additions made by the Assessing Officer in respect of each of the three years in question.

4. The Tribunal noted that Section 147 of the said Act empowered the Assessing Officer to re-open assessments, provided he had reason to believe that any income chargeable to tax had escaped assessment for any of the assessment years in question. The Tribunal was of the view that a plain reading of Sections 147 and 148(2) made it clear that there must be some material in the possession of the Assessing Officer for coming to the conclusion that he had reason to believe that any income chargeable to tax had escaped assessment. The Tribunal was of the view that though the reasons recorded indicated



on 07.03.2002, this did not indicate that such a discrepancy existed on any date in the previous years. The Tribunal also noted that in the course of the survey operations, renovation of the premises had been noted, but this did not show as to whether any renovation was carried out in the earlier years, that is, financial years 1998-1999, 1999-2000 and 2000-2001. The Tribunal, therefore, concluded that the reasons, as recorded, do not show or indicate existence of any evidence regarding escapement of income in the three years in question. Consequently, the appeals were allowed on the ground that the Assessing Officer was not justified in re-opening the assessment.

5. We have heard the counsel for the parties. Before action under Section 147 can be taken for re-opening an assessment, the Assessing Officer must have reason to believe that income chargeable to tax had escaped assessment. Examining the reasons recorded under Section 148 (2) of the said Act, we are unable to agree with the learned counsel for the appellant/ revenue that the Assessing Officer had reasons to believe that income chargeable to tax had escaped assessment in respect of the years in question. The reasons recorded, first of all, indicate that the survey was conducted under Section 133 A in the business premises of the assessee on 07.03.2002, which falls



2002-2003. The years in question in the present appeals are assessment years 1999-2000, 2000-2001 and 2001-2002. It is obvious that the survey was not conducted in the years in question. In the said reasons, which have been recorded by the Assessing Officer, it is observed that in the course of the survey discrepancies in the stock were noticed and excess stock to the extent of Rs 5.55 lacs was found. This excess stock is obviously relatable to the date on which the survey was conducted, that is, on 07.03.2002. On the basis of this fact, the Assessing Officer was of the view that discrepancy in the stock was also likely to occur in the years in question and that he was satisfied that income to that extent had escaped assessment. In *Indian Oil Corporation v. Income Tax Officer: 159 ITR 956 (SC)*, the Supreme Court had observed that a mere reason to suspect cannot be equated with a reason to believe. What we note from the reasons recorded is that the Assessing Officer had a mere suspicion that there was a likelihood of there being a discrepancy in the stocks in the earlier years also based on the fact that there was a discrepancy in the stock when the survey was conducted on 07.03.2002. This is merely a reason to suspect and cannot be the same as a reason to believe which is a necessary pre-condition for any action under Section 147 of the said Act.

6. The second part of the reasons recorded by the Assessing



extensive renovation work in the business premises of the assessee had been undertaken and that renovation in respect of the ground floor had been completed and that renovation in respect of the first floor was going on. It is further noted that the assessee had not booked any expenses on account of renovation of the said business premises. On the basis of these facts, the Assessing Officer noted that he was satisfied that investments made in the renovation work had escaped assessment. Here too, we note that the survey was conducted on 07.03.2002, which falls in the year subsequent to the three years in question in these appeals. The fact that the renovation expenses had not been booked in that year, i.e., financial year ending on 31.03.2002 does not by itself indicate that renovation work had been carried on in the earlier three years and, if so, the expenses in respect of the same had not been booked. The conclusion of the Assessing Officer, based on what was noticed in the course of the survey, cannot be extrapolated to other years. The purported belief of the Assessing Officer, on this aspect of the matter, was not a belief at all but was merely a suspicion. Such suspicion cannot take the place of a belief and that too a belief which is based on reasons.

7. From the above discussion, it is apparent that the Tribunal has correctly appreciated the law on the subject and has arrived at the



correct conclusions. No substantial question of law arises for our consideration. The appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

October 20, 2008
SR