



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

+ **W.P(C) No. 9180/2007 & CM No. 17282/2007**

18th August, 2009

CARLTON OVERSEAS PVT. LTD. ...Petitioner
Through: Mr. Ajay Vohra and Ms. Kavita Jha,
Advocates.

VERSUS

INCOME TAX OFFICER & ORS.Respondents
Through: Ms. P.L.Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

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VALMIKI J.MEHTA, J

1. The petitioner by way of this writ petition has sought the quashing of the notice dated 29.1.2007 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and by which notice, the Assessing Officer (AO) has sought to re-open the assessment with respect to the assessment year 2002-2003.

2. The petitioner is a Private Limited Company engaged in a business of manufacturing and export of footwear. For the assessment year 2002-2003 the



assessee company filed the return of income on 30.1.2002 declaring an incor of Rs. 3,02,91,449/-. In this return of income the petitioner had claimed deduction under Section 80-G, 80-HHC and 80-IB of the Act. The return of income was filed along with the following documents:

- “(i) Audited Accounts*
- (ii) Tax Audit Report*
- (iii) Audit Report in Form No. 10-CCAC for claim of deduction under Section 80-HHC of the Act*
- (iv) Detailed computation of income along with the detailed working of deduction claimed under Section 80-HHC and 80-IB of the Act*
- (v) Audit Report on Form 3-CEB relating to international transactions.”*

3. During the course of the assessment, the Assessing Officer vide questionnaire dated 28.2.2005 asked the following question with respect to the allowability of deduction under Section 80-HHC of the Act:

“Mr. S.C. Goyal, C.A. appeared. Ask to justify deduction under Section 80-HHC in view of the provisions of sub-section (9) of Section 80-IA and why deduction allowed under Section 80-IB should not be deducted while working out deduction under Section 80-HHC. Produce books of accounts. Produce details of interest income also. Case adjourned to 4th March, 2005.”

4. The petitioner filed a detailed note on deduction under Section 80-HHC and Section 80-IB which has been filed as Annexure ‘A’ to the writ petition. The said note justified the entitlement of the petitioner/assessee company for claiming the reliefs under Section 80-HHC and 80-IB. In the last para of the



note, it was specifically stated that where there are two reliefs, each relief under a different section, then, the relief should be calculated independently subject only to the condition that aggregate of both the reliefs should not exceed the income of the undertaking. Other portion in the note shows the claim of the assessee to get a double deduction under both the heads and that calculation of relief has to be done independently.

5. An assessment order was thereafter passed under Section 143(3) of the Act on 29.3.2005. The assessee thereafter received the impugned notice dated 29.1.2007 under Section 148 of the Act. On receipt of the notice under Section 148, the assessee company applied for the reasons for re-opening the assessment which were furnished to the assessee as under:

“Reasons for reopening the assessment in the case of M/s Carlton Overseas Ltd. for the A.Y. 2002-03.

Return of income for A.Y. 2002-03 was filed on 31.10.02 declaring the income of Rs. 23,70,590/- and the case was assessed u/s 143(3) at an income of Rs. 27,44,850/-. On perusal of the return, it was noticed that the assessee was allowed deduction of Rs. 70.70 lakhs under Section 80IA and the same was not deducted from the profit of the business for the purpose of calculating deduction u/s 80HHC. As per the sub section 9 of 80IA, the profits considered for the deduction u/s 80IA should be reduced for computing the deduction under any other section mentioned in the chapter VIA. This has resulted in the incorrect allowance of deduction of Rs. 49.08 lakhs involving short, levy of tax of Rs. 24.57 lakhs including interest.

Therefore, I have reason to believe that taxable income of Rs. 24.57 lakhs chargeable to tax has escaped assessment and I am satisfied that it is a fit case for issue of notice u/s 148 of the Income-tax Act.



Sd/-
(V. VIZAY BABU)
Deputy Commissioner of Income Tax
Circle-3(1), New Delhi

6. Mr. Ajay Vohra, learned counsel for the petitioner has contended that the reasons for re-opening of the assessment clearly do not provide the basis for issuing of the notice under Section 148 inasmuch as no new material has been disclosed for issuing of the notice and the reasons given for re-opening of the assessment merely reflect a change of opinion, and a mere change of opinion is not sufficient for issuing the notice under Section 148. The counsel has further referred to the counter affidavit filed by the Revenue in this Court in which it has been clearly stated that objection was raised by the Revenue Audit Party with regard to allowing of the deduction under Section 80-IA and 80-HHC i.e. after the assessee was allowed deduction of Rs. 70.70 lakhs under Section 80-IA but the said amount was not deducted from the profits of the business while computing deduction under Section 80-HHC, and therefore the mistake has resulted in the incorrect allowance of deduction of Rs. 49.08 lakhs involving a short levy of tax of Rs. 24.57 lakhs including interest. Mr. Vohra contends that it is quite clear in view of the stand taken in the counter affidavit that no new facts have come on record and the impugned notice is merely based on a change of opinion bring on the basis of the same material which was already available with the Assessing Officer at the time of making initial assessment under Section 143(3) of the Act.



7. Mr. Vohra, in support of his contention, has specifically relied upon *Transworld International Inc. Vs. Joint Commissioner of Income-Tax, 273 ITR 242* in support of his contention and which holds that when sufficient material was placed on record and the Assessing Officer had arrived at conclusion that the assessee was entitled to a particular relief (depreciation in that case) then on the same material a different view could not be taken as the same amounted to a change of opinion and consequently the notice and the subsequent proceedings are not valid and liable to be quashed.

8. Ms. Prem Lata Bansal, learned counsel appearing for the Revenue has contended that Audit Party can on factual basis ask for re-assessment and which has, therefore, been done in the present case. It is, however, admitted by her that a mere change of opinion does not permit action under Section 147/148 of the Act.

9. We find that the arguments on behalf of the petitioner are well founded and it must succeed. The Audit Report merely gives an opinion with regard to the non-availability of the deduction both under Section 80-IA and under Section 80-HHC and that the deduction under Section 80-IA was not deducted from the profits of the business while computing deduction under Section 80-HHC. Clearly, therefore, there was no new or fresh material before the Assessing Officer except the opinion of the Revenue Audit Party.

10. Since it is settled law that mere change of opinion cannot form the basis for issuing of a notice under Section 147/148 of the Act, therefore, we do not



propose to burden our judgment with the said judgments. In fact, as stated above, the counsel for the Revenue does not dispute this principle of law.

11. In view of the above, the present writ petition is allowed and the impugned notice dated 29.1.2007 issued by the respondent No.2 is quashed. A writ in the nature of prohibition is issued commanding the respondents, more particularly the respondent No. 2, to forbear in giving any effect to or taking any steps whatsoever pursuant to and in furtherance of the notice under Section 148 of the Act for the proceedings initiated with respect to the assessment year 2002-03.

12. The writ petition is disposed off accordingly.

A. K. SIKRI, J

VALMIKI J.MEHTA, J

August 18, 2009

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