



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

+ **W.P.(C) Nos. 1701/1986, 1702/1986, 1703/1986, 1704/1986,  
1705/1986 & 1706/1986**

**Reserved on : 6<sup>th</sup> August, 2009  
Pronounced on : 9<sup>th</sup> September, 2009**

**1. W.P.(C) NO. 1701/1986**

M/S DIWAKAR ENGINEERS LTD. .... Petitioner.  
Through: Mr. Anoop Sharma and Mr. Manu  
K.Giri, Advocates.

Vs

THE INCOME TAX OFFICER ...Respondent  
Through: Ms. P.L.Bansal, Advocate.

**2. W.P.(C) NO. 1702/1986**

M/S DIWAKAR ENGINEERS LTD. .... Petitioner.  
Through: Mr. Anoop Sharma and Mr. Manu  
K.Giri, Advocates.

Vs

THE INCOME TAX OFFICER ...Respondent  
Through: Ms. P.L.Bansal, Advocate.

**3. W.P.(C) NO. 1703/1986**

M/S DIWAKAR ENGINEERS LTD. .... Petitioner.  
Through: Mr. Anoop Sharma and Mr. Manu  
K.Giri, Advocates.

Vs

THE INCOME TAX OFFICER ...Respondent  
Through: Ms. P.L.Bansal, Advocate.



**4. W.P.(C) NO. 1704/1986**

M/S DIWAKAR ENGINEERS LTD. .... Petitioner.  
Through: Mr. Anoop Sharma and Mr. Manu K.Giri, Advocates.

Vs

THE INCOME TAX OFFICER ...Respondent  
Through: Ms. P.L.Bansal, Advocate.

**5. W.P.(C) NO. 1705/1986**

M/S DIWAKAR ENGINEERS LTD. .... Petitioner.  
Through: Mr. Anoop Sharma and Mr. Manu K.Giri, Advocates.

Vs

THE INCOME TAX OFFICER ...Respondent  
Through: Ms. P.L.Bansal, Advocate.

**6. W.P.(C) NO. 1706/1986**

M/S DIWAKAR ENGINEERS LTD. .... Petitioner.  
Through: Mr. Anoop Sharma and Mr. Manu K.Giri, Advocates.

Vs

THE INCOME TAX OFFICER ...Respondent  
Through: Ms. P.L.Bansal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE A. K.SIKRI, J.**

**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? Yes
3. Whether the judgment should be reported in the Digest? Yes



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**VALMIKI J.MEHTA, J**

1. These writ petitions are filed by the petitioners seeking the relief of quashing of the notices issued under Section 147/148 of the Income Tax Act, 1961 (hereinafter referred to as “The Act”) by the respondents with respect to the Assessment Years 1977-1978 to 1982-1983. One of the prayers in the writ pertained to seeking direction against respondent No.1 to furnish a copy of the reasons for reopening of the completed assessments before issuing the impugned notices. This part of the relief has already become infructuous in as much as the respondents along with their counter-affidavit have furnished the reasons for initiation of the proceedings under Section 147/148 of the Act.

2. The case of the petitioner is that for the Assessment Years 1977-1978 to 1982-1983, it duly submitted its return of income along with complete details necessary for making the assessments. The assessments orders were thereafter passed under Section 143(3) of the Act for these Assessments Years. After scrutiny of the returns for 1981-82 and 1982-83, the respondents have issued the impugned notices under Section 147/148 of the Act on 24.2.1986 for the six Assessment years thereby reopening the completed assessments. As stated above, the reasons have already been furnished by the respondents in their counter-affidavit and the challenge is now to the fact that the reasons given for reopening of the assessments amount to nothing but a change of opinion in as



much as there are no new materials on the basis of which reopening of t  
assessments can be initiated.

3. The relevant provisions of Section 147 and 148 as applicable for the  
relevant assessment years read as under:-

“Income escaping assessment.

147. If-

(a) the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in section 148 to 153 referred to as the relevant assessment year).

Explanation 1: For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

- (a) where income chargeable to tax has been under-assessed; or
- (b) where such income has been assessed at too low a rate; or
- (c) where such income has been made the subject of excessive relief under this Act or under the Indian Income-tax Act, 1922 (11 of 1922);or
- (d) where excessive loss or depreciation allowance has been computed.

Explanation 2: Production before the Income-tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

**Issue of notice where income has escaped assessment.**

148. (1) Before making the assessment, reassessment or recomputation under section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139; and the provisions of this Act shall, so far as may be apply accordingly as if the notice were a notice issued under that sub-section.

(2) The Income-tax Officer shall, before issuing any notice under this section, record his reason for doing so.”



4. The basic contention of the petitioner is that the aforesaid provision require “reasons to believe” and which reasons had to be a reasonable in that the material sought to be relied upon must have nexus and must be sufficient for reopening of the completed assessments. It was contended that if there is a mere change of opinion without sufficient material for reopening of the assessments, the same is illegal. The counsel for the petitioner has taken us through the reasons which have been given for reopening of the assessments and which have been filed as Annexure R-16 to R-20 along with the counter affidavit. The said reasons are given separately for each assessment years. We reproduce now these reasons for each of the assessment years which are sought to be under Section 147 as under:-

(Assessment Years 1977-78)

“Reasons:

It has come to my notice that the assessee introduced cash credit in the assessment year under consideration amounting to Rs.3,82,592/-. The genuineness of these cash credits has not been proved by the assessee despite several opportunities given. I have, therefore, reason to believe that on account of commission or failure on the part of the assessee to disclose fully and truly material facts of its income to the extent of Rs.3,82,592/- has escaped assessment. As per attached letter No. 779 dated 21.2.1986 it is evident that the assessee has introduced his undisclosed income in the form of bogus cash credits.

In view of the above facts, I have reason to believe that income to the extent of Rs.3,82,592/- has escaped assessment. Necessary approval to reopen the assessment may kindly be accorded.

Dated: 21.2.1986

(Mridula Ghosh)

Income-tax Officer,

Coy. Cir.XXIV, New Delhi.” (Emphasis Added)



(Assessment year 1978-1979)

“Reasons:

It has come to my notice that the assessee introduced cash credit in the assessment year under consideration amounting to Rs.8,18,474/-. The genuineness of these cash credits has not been proved by the assessee despite several opportunities given. I have, therefore, reason to believe that on account of omission or failure on the part of the assessee to disclose fully and truly material facts of its income to the extent of Rs.8,18,474/- has escaped assessment. As per attached letter No. 779 dated 21.2.1986 it is evident that the assessee has introduced his undisclosed income in the form of bogus cash credits.

In view of the above facts, I have reason to believe that income to the extent of Rs.8,18,474/- has escaped assessment. Necessary approval to reopen the assessment may kindly be accorded.

Dated: 21.2.1986

(Mridula Ghosh)

Income-tax Officer,

Coy. Cir.XXIV, New Delhi.”(Emphasis Added)

(Assessment Year 1979-1980)

“Reasons:

It has come to my notice that the assessee introduced cash credit in the assessment year under consideration amounting to Rs.6,26,546/-. The genuineness of these cash credits has not been proved by the assessee despite several opportunities given. I have, therefore, reason to believe that on account of omission or failure on the part of the assessee to disclose fully and truly material facts of its income to the extent of Rs.6,26,546 has escaped assessment. As per attached letter No. 779 dated 21.2.1986 it is evident that the assessee has introduced his undisclosed income in the form of bogus cash credits.

In view of the above facts, I have reason to believe that income to the extent of Rs.6,26,546 has escaped assessment. Necessary approval to reopen the assessment may kindly be accorded.

Dated: 21.2.1986

(Mridula Ghosh)

Income-tax Officer,

Coy. Cir.XXIV, New Delhi.”(Emphasis added)

(Assessment year 1980-1981)

Reasons:

It has come to my notice that the assessee introduced cash credit in the assessment year under consideration amounting to Rs.6,10,075. The genuineness of these cash credits has not been proved by the assessee despite several opportunities given. I have, therefore,



reason to believe that on account of omission or failure on the part of the assessee to disclose fully and truly material facts of its income to the extent of Rs.6,10,075/- has escaped assessment. As per attached letter No. 779 dated 21.2.1986 it is evident that the assessee has introduced his undisclosed income in the form of bogus cash credits.

In view of the above facts, I have reason to believe that income to the extent of Rs. 6,10,075 has escaped assessment. Necessary approval to reopen the assessment may kindly be accorded.

Dated: 21.2.1986

(Mridula Ghosh)

Income-tax Officer,

Coy. Cir.XXIV, New Delhi.”(Emphasis added)

(Assessment Year 1981-1982 and 1982-1983)

M/s Diwakar Engineers Ltd.,  
B-65/1 W.P.Indl. Area, Delhi.  
Assessment years: 1981-82 and 82-83

Brief Reasons for taking action U/s 148 of the I.T.Act in above mentioned assessment Years.

During assessment proceedings in the case of above assessee M/s Diwakar Engineers Ltd. for the assessment year 1983-84, it was observed that interest amounting to Rs.1,76,370 debited in the earlier years to the account of certain parties was credited as income during the year under consideration. On going through the assessment records from assessment year 1975-76 onwards, the first assessment year in the case of the above assessee, I noticed that some of these parties had deposited money in assessment year 1975-76 1976-77 and so on. I have repeatedly been asking the assessee to furnish the address of these parties, confirmed copies of accounts, the date from which the money is alleged to have been lying in their account books, the reason for non-payment of interest as well as the dates on which the accounts of these parties were finally settled by them. No compliance of this query has been made by the assessee coy. Even though in number of opportunities given to them for this purpose. They have even failed to furnish the addresses and accounts of these parties as per their books. Moreover, from the ledger of the assessee coy. for the assessment year 83-84, which has impounded by me u/s 131 of the I.T.Act, during the assessment proceedings recently I noticed that ledger account was not being maintained for all the parties whose interest amounting to Rs.1,76,370 has been credited is income during the year.

During assessment year 1983-84, I also observed that share application money amounting to Rs.4,69,000 was received by the assessee coy. in the accounting period relevant to assessment year 1981-82, which had been lying in their books of account without any allotment having been made so far. From the return filed for the assessment year 1985-86, it is seen that no share allotment has been done up to accounting period relevant to assessment year 1985-86. Registered letters seeking



confirmation of deposit of share application money were sent to the 46 persons from whom this money was alleged to have been received at the addresses furnished by the assessee coy. and these regd. letters came back unserved in 32 cases out of 46 with the Notings 'No Such Person Known'. It may further be mentioned over here that no interest payment has been shown to these persons on the share application money deposited by them.

I issued a letter listing the 'Loans Raised' by the assessee coy. during various assessment years asking it to prove the following regarding these cash credits/advances alleged to have been received by them.

- 1) Genuineness of the party;
- 2) Genuineness of the transaction;
- 3) Capacity of the party.

No satisfactory reply had been furnished by the assessee company. The amounts of loan as per assessment record for assessment year 1981-82 and 82-83 are as under:

<u>Assessment Year</u>	<u>Unsecured loan.</u>
1981-82	Rs.7,56,783/-
1982-83	Rs.9,05,004/-

Section 147(a) of the I.T. Act states-

“If the Income-tax Officer has the reason to believe that, by reason of omission or failure on the part of the assessee to make a return u/s 139 for any assessment year to the Income-tax Officer, or to disclose fully and truly all material facts necessary for assessment year for that year, income chargeable to tax has escaped assessment for that year.”

In my opinion prima facie, grounds exists for taking action u/s 148 since the assessee has failed to disclose fully and truly all material facts necessary for its assessment for the assessment years under consideration. It has been held that when primary facts disclosed by the assessee are incorrect, action u/s 147(a) is correct.

Considering the above facts, Notice u/s 148 is being issued in the case.

(Mridula Ghosh)  
Income-tax Officer,  
Coy. Cir.XXIV, New Delhi.”  
(Emphasis added)

5. The counsel for the petitioner referring to the aforesaid reasons for reopening of the assessment has made his submission in two parts, one with respect to the reasons for the assessment years 1977-1978 to 1980-1981 and secondly for the detailed reasons for the years 1981-1982 and 1982-1983. Counsel has contended that all what is stated in the reasons for reopening of the assessments for the years 1977-1978 to 1980-1981 are that the Income Tax Officer has simply averred that the genuineness of the cash credits have not



been proved by the assessee despite several opportunities and which is the on basis for reopening of the assessment. Similarly, by giving reference to the reasons for reopening of the assessment for the years 1980-1981 and 1982-1983, it is canvassed that the Income Tax Officer has not stated that he has “reasons to believe” as it is only stated that he is of a ‘prima facie’ opinion which according to the counsel is not good enough for exercising powers under Section 147/148 of the Act. The counsel has lastly contended that a mere reference, to two letters of the Income Tax Officer of Calcutta cannot be sufficient material for reopening of the assessment and which letters have been filed at pages 185-186 of the paper book and which read as under:-

“REGISTERED WITH A.D.

OFFICE OF THE DEPUTY DIRECTOR OF INSPECTION (INV)  
INCOME TAX DEPARTMENT  
P-13, Chowringhee Square : Calcutta.

No. DDI/Cal/ITO/(Inv.-IV)/85-86/5713

Date : 3.3.1986.

To  
Income Tax Officer,

Comp. Circle-XXIV,[4<sup>th</sup> floor]  
Central Revenue Buldg.,  
New Delhi.

Sub: Verification of deposit of Rs.15,19,000/- in the name of M/s. Eastern Trading Co. (P.A.No.-SSC/VIII/300/E/B/Cal.) appearing in the books of M/s. Diwakar Engineers Pvt. Ltd., 1/5B, Asaf Ali Road, New Delhi, an assessee assessed at your end-  
Detailed information regarding the same.

Ref. Letter No. I.T.O./Comp. Circle/XXIV/761 dt. 12.2.1986.

The undersigned is directed to inform that the assessment records of M/s Eastern Trading Co. (P.A. No. SSC/VIII/300/E/B/Cal) have been examined by the concerned I.T.O. ‘B’-Ward, SSC-VIII and a letter to that effect incorporating the fact that the



assessee is not in a position to make such a huge deposit has already been despatched to you (Copy of the same is enclosed). Further more, the concerned ITO has also taken up the matter with his Commissioner of Income Tax, W.B. (a copy of the said letter is also enclosed for ready reference).

As regards other deposits, enquiries are being conducted at this end. Those will be sent very soon.

Encl. Two letters. (Ranen De)  
Income Tax Officer/INV-IV,  
Calcutta.”

“OFFICE OF THE INCOME TAX OFFICER: SSC-VIII,  
169, A.J.C. Bose Road: Calcutta-14.

Income Tax Officer,  
Company Circle-XXIV,  
4<sup>th</sup> Floor, C.R. Building,  
New Delhi.

Sub: Confirmation of deposition by M/s/ Eastern Trading Co.,(SSC- VIII/300-  
E/B) of 58/1/D, B.T. Road, Calcutta-35-matter regarding in the assessment of  
your assessee M/s. Diwakar Engineers Ltd., Assessment Year 1983-84.

Ref: Your letter No. ITO/712/dated 3-2-1980.

Please refer to above.

On scrutiny of assessment of my above named assessee, it appears that the assessment for 1979-80 (Year ending 31.3.1979) was completed in the status of URF on a duplicate return u/s 143(3) on 24-2-1981 on a total income of Rs.10,700/-. The main source of income as stated in the assessment order is from commission and interest. The balance sheet as on 31-3-1979 shows a meagre total of Rs.21,018/- inclusive of Loan and Advance of Rs.11,200/- in the asset aside.

No further return has been filed. My predecessor addressed a letter to the assessee at its officially known address at 58/1/D, B.T.Road, Calcutta-35, asking for submission of Income-tax return of 1980-81 which was returned by the Notice server with the remark ‘Not traceable’ on 28-7-1982.

It, therefore, appears that my assessee has no capacity to make such a huge deposit. This is for your information and necessary action.

Sd/  
(S.K.Bhattacharjee.)  
I.T.O., B-Ward, SSC-VIII, Calcutta.”



6. The learned counsel for the Revenue on the other hand strongly canvassed that assessments have been rightly sought to be reopened because the Income Tax Officer during the subsequent assessments for the year 1983-1984 realised that various cash credits/loans were bogus and consequently, detailed reasons have been given for these assessments years as reproduced above which reasons are good enough for reopening of the assessment. The new material and facts which have come to light showing the bogus nature of the loans and credit entries justified the issuance of the impugned notices. The counsel has further contended that at the stage of recording of reasons under Section 147/148, the concerned officer only has to make a prima facie opinion on the basis of material then available and which material is different than so required for a final decision and which will only be taken after hearing the assessee and a detailed order will be passed under Section 147 of the Act. It was further contended that the expression used in the reasons recorded viz “in my opinion **prima facie** grounds exists” is correct and cannot be faulted.

7. It is trite and laid down now in catena of decisions that powers under Section 147/148 can only be exercised when there is material found for reopening of the assessments and a mere change of opinion is not sufficient. The counsel for the revenue does not dispute this. We, therefore, are to see whether there are sufficient materials as required in law for reopening of the assessments. Before however so doing, we would like to refer to one para of a recent judgment of the Supreme Court reported as *Assistant Commissioner of*



*Income-Tax vs. Rajesh Jhaveri Stock Brokers P. Ltd. 2007 (291) ITR 50*

The relevant portions of this judgment reads as under:-

“Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word “reason” in the phrase “reason to believe” would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. ITO [1991] 191 ITR 662, for initiation of action under section 147 (a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is “reason to believe”, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not a concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v Selected Dalurband Coal Co. P. Ltd. [1996] 217 ITR 597 (SC); Raymond Woollen Mills Ltd. v ITO [1999] 236 ITR 34 (SC). (Emphasis added)

8. It is therefore, clear from the aforesaid judgment that at the stage of issuing of notices under Section 148, it is not necessary that the materials must be extensive and detailed. The Supreme Court has laid emphasis on the difference of the material for the purpose of initiation of investigation and those required for successfully completing the reassessments. We feel that one of the methods by which the materials can come into possession of the Income Tax Officer is by the assessment proceedings in the subsequent assessment years.

9. It is clear that in the facts of the case, there were sufficient materials for the Income Tax Officer to initiate proceedings under Section 147/148. Besides



the letters referred to above, there is other correspondence between the ITO a1 the assessee during the scrutiny of the returns of the assessment year 1983-84 whereby time and again the ITO asked the assessee to file particulars with respect to the details of the persons with respect to whom the credits were appearing in the books of accounts as loans and which were not complied with by the assessee. In fact, the AO became suspicious because in the assessment year 1983-1984, the assessee has sought to credit as income the payments due as interest in the earlier years and whereafter consequently a detailed correspondence ensued with the assessee and to which the assessee did nothing accept stonewall. We are of the clear opinion that in the facts and circumstances of the present case, there existed sufficient materials for the Income Tax Officer to initiate proceedings under Section 147 of the Act by issuing notices under Section 148 of the Act. It is not a case of change of opinion but materials have come to light including those during the assessment of the subsequent assessment years throwing clear doubt on the genuineness of the credits/loans and that this was because of omission on failure on the part of the assessee to disclose fully and truly all material facts necessary as a result of which income chargeable to tax has escaped assessment.

10. One of the contentions which has been raised by the counsel for the petitioner is that the impugned notices have been issued under Section 147(a) and therefore, it is impermissible to refer to ingredients of Section 147(b) to sustain the notices. He has further urged that the grounds which have been



stated for reopening of the assessment years 1981-82 and 1982-1983 and different than the reasons for the assessment years 1977-1978 to 1980-1981. We, however, find that this argument is not correct because in each of the reasons given for the assessment years 1977-1978, to 1980-1981, it is said as under:-

*“ I have, therefore, reason to believe that on account of omission or failure on the part of the assessee to disclose fully and truly material facts of its income to the extent of Rs.6,10,075/- has escaped assessment. As per attached letter No. 779 dated 21.2.1986 it is evident that the assessee has introduced his undisclosed income in the form of bogus cash credits.” (Emphasis added)*

11. It is clear that while recording the reasons for the assessment years 1977-1978 to 1980-1981, the Assessing Officer has incorporated by virtue of the above said line the reasons which have been given in detail for the assessment years 1981-1982 and 1982-1983. It is by application of the doctrine of incorporation that the reasons for 1981-1982 and 1982-1983 have been supplanted in and incorporated in the reasons for assessment years 1977-78 to 1980-1981. There is nothing therefore amiss with respect to reasons for the assessment years 1977-1978 to 1980-1981. Clearly, the reasons recorded for the years 1981-1982 to 1982-1983 for the bogus cash credits and the details therein are deemed to be incorporated in the reasons for seeking the reopening of the assessments in the years 1977-1978 to 1980 to 1981. The assessment proceedings are, therefore, rightly initiated under Section 147(a) and there is no



need for the revenue to refer to and rely upon Section 147(b) to sustain t  
impugned notices and the action under Section 147 of the Act.

12. In view of the above, the writ petitions are liable to be dismissed. The  
same are accordingly dismissed, however, leaving the parties to bear their own  
costs.

**A. K. SIKRI, J**

**VALMIKI J.MEHTA, J**

**September 9, 2009**

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