* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P(C) No. 8922/2007 & W.P.(C) No.8979/2007

24th September, 2009.

1. W.P.(C) No. 8922/2007

LEGATO SYSTEMS(INDIA) PVT. LTD ...Petitioner

Through: Mr. M.S.Syali, Sr. Advocate with Mr. Pratyush Jain, Advocate.

VERSUS

DEPUTY COMMISSIONER OF INCOME TAX ....Respondent

Through: Mr. Sanjeev Sabharwal, Advocate

2. W.P.(C) No. 8979/2007

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Through: Mr. M.S.Syali, Sr. Advocate with Mr. Pratyush Jain, Advocate.

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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. By these writ petitions, the petitioner challenges the impugned notices under Section 148 of the Income Tax Act, 1961 dated 3.10.2006 whereby the respondent/Income Tax Department seeks to reopen the assessment order passed under Section 143(3) of the Act for the assessment years 2002-2003 and 2003-2004.

2. That the reasons given for the reopening of the assessment are identical for both the years and are reproduced below:-

> "The assessee company filed return of income on 31.10.2002 showing loss of Rs.5,36,51,509/-. The assessment was completed under section 143(3) of Income Tax Act 1961 on 7.3.2005 on total loss of Rs.5,36,51,509/.
> 2. It is seen from records that the assessee company has claimed lease rent of Rs.36,73,585/- and claimed leasehold improvements at Rs.65,44,733/-. During the course of assessment proceedings, the assessee company submitted written submission dated 14.12.2004.
> 3. the assessee vide its letter dated 5th December 2004 submitting that the assessee incurred a sum of Rs.64,44,733/- towards renovation of premises of the building used for research and development and office premises and such building was not owned by the assessee, however, the same building was taken on monthly rent from NSIC (National Small Scale Industries Corporation), New Delhi. The assessee occupied two floors of the building. Both the floors were renovated. The renovation was in the nature of partition made in wood, wall pending, show windows, etc. The assessee company also relied on certain decisions.

4. The provisions of explanation-1 of section 32 of Income Tax Act 1961 specifically provide as under:-

Explanation 1. Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension of or improvement to the building then, the provisions of this clause shall apply as it the said structure or work is a building owned by the assessee.

The above explanation was introduced with effect from 1.4.1988.

5. As stated in the reply referred to above, the renovation made by the assessee company is in the nature of permanent structure by way wood partitions, wall paneling etc. which cannot be covered under current repairs as provided in section 30 of Income Tax Act 1961. Such renovation as made by the assessee company, cannot be stated so as to keep the premises as restored to good condition or save it from exhaustion or compensation of loss. The repairs in the case of assessee, are meant to altogether change the user by way of expanding its capacity substantially and changeover of its look. The expenditure is certainly capital in nature on which depreciation may be allowed.

I have, therefore, reason to believe that the income of Rs.58,90,259/-(after deducting depreciation) has escaped assessment.

Proposal is submitted to learned Additional Commissioner of Income Tax, Range-4, New Delhi for granting approval to initiate the proceedings under Section 147 of Income Tax Act 1961.

Sd/-
Deputy Commissioner of Income Tax
Circle 4(1), New Delhi"

3. A reference to the reasons aforesaid show that it is the stand of the revenue that the expenses incurred by the petitioner/ assessee are not revenue but capital in nature. The scope of the proceedings under Section 147/148 of

the Act are now well established by a catena of judicial precedents. By virtue of proceedings under Section 147/148 completed assessments cannot be reopened on a mere change of opinion i.e. on the basis of the same set of facts and material which were in the knowledge of Assessing Officer, the Assessing Officer cannot issue notices under Section 148 merely because it felt that a decision which has been taken earlier is not correct and needs to be corrected. The proceedings for reopening of assessment on the ground of income escaping assessment is an exception to the finality of the proceedings arrived at under Section 143(3) of the Act during the regular assessment proceedings of the assessment years.

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4. The present cases fall clearly beyond the scope of the requirement of Section147 of the Act because this very issue was considered and dealt with in the regular assessment proceedings and the Assessing Officer applied its mind to the issue. This becomes clear from the following facts:

(i) After the case has been selected for scrutiny assessment, the Ld. AO vide letter dated 19/11/2004(Annexure A) raised certain queries and especially at Point No.9 of the said letter specifically required the assessee to address/submit on the issue of Lease Hold Improvements. The said query reads as under:-

"9. Please give details of leasehold improvements written off".

(ii) The Petitioner/assessee vide its Letter dated/reply dated 5/12/2004 (Annexure B) [To AO's Letter/query dated 19/11/2004], at Point No. 10 'Details of Leasehold Improvements Written Off', provided the specific relevant details regarding thereto.

(iii) Petitioner/assessee vide letter dated 14/12/2004 (Annexure C) again specifically addressed the issue of 'Expenditure on Leasehold improvements' the reasons which had led it to treat the same as revenue expenditure.

(iv) The Ld. Assessing officer vide communication dated 12/01/20[illegible] (Annexure D) raised certain queries contained in 11 points. At Point No. 5 the Ld. AO specifically directed the petitioner to furnish details of expenditure made on Leasehold Improvement & also obligated the petitioner/ assessee to provide production of invoices relating to the said expenditure on Leasehold improvements. The said direction of the Ld. AO in the letter dated such at Point No.5 reads as *"5. Please give details of the expenditure made on Leasehold Improvements. Produce original bills for verification."*

(v) The Assessee vide its letter dated 24/02/2005 (Annexure E) once again addressed the issue of 'Expenditure on Leasehold Improvements' as desired/required by the Ld. Assessing Officer.

(vi) The Assessee Vide its letter dated 7/03/2005(Annexure F Colly) presented all the relevant invoices as directed/desired/required by the Ld. AO pertaining to the issue of 'Leasehold Improvements' thereby fully informing the Ld. AO of all facts and circumstances encompassing the issue of 'Expenditure on Leasehold Improvements'

(vii) That after this issue had been in the manner indicated above had been abundantly examined, the Ld. AO only then proceeded to frame regular assessment U/s 143(3) vide its Assessment Order dated 7/03/2005.

5. The aforesaid facts clearly show that since this very issue of the expenditure being treated as revenue or capital with respect to the expenditure incurred in the lease hold premises was dwelt upon by the Assessing Officer. The impugned notices are, therefore, clearly misconceived and bound to be quashed. A reference to the reasons for reopening of the assessments, the underlined portions in para 2 above, shows that there is no new material for reopening of the assessments and the officer issuing the notices in fact relies upon the record and the correspondence on the very subject in the regular assessment proceedings. Clearly therefore, the notices are an abuse of the process of law because in the facts, such as those found in the present cases, if

harassment to a citizen is allowed, then, the conclusiveness of the regular assessment proceedings will have no meaning because the very issue which was considered and mind applied, would lose its finality.

6. In view of the above, the present writ petitions are allowed quashing the impugned notices dated 3.10.2006 issued under Section 148 of the Income Tax Act, 1961 and all the proceedings emanating therefrom. In view of the facts of the present cases, costs of Rs.25,000/- are awarded in favour of the petitioner and against the respondent.

VALMIKI J.MEHTA, J

A.K. SIKRI, J

September 24, 2009
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