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% 15.07.2011

Present: Mr. Kamal Sawhney, Sr. Standing Counsel for the Revenue

+CM APPL. 12445/2011

Exemption allowed subject to just exception.

Application stands disposed of.

ITA 853/2011

Regular assessment was completed under Section 143 (3) of the Income-Tax Act on 26th March, 2004. However, after a lapse of more than four years, notice under Section 148 of the Act was issued seeking reopening of the assessment which was objected to by the assessee. The Assessing Officer, however, rejected the objections of the assessee and went ahead with the assessment. As per the Assessing Officer, the reasons for reopening the assessment was that the assessee had not furnished computation of book profit under Section 115JA of the Act either in the original return furnished on 30th November, 2000 or in the revised return furnished on 27th March, 2002. According to the Assessing Officer even in the return filed in response to notice under Section 148 of the Act, such details were not furnished. He accordingly made addition on this ground under the provisions of Section 115JA of the Act thereby the claim setoff , of brought forward loss or unabsorbed depreciation would be restricted to ₹ 12.54 crores only as against claim of ₹ 21.35

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crores originally granted. The assessee preferred appeal thereagainst challenging the reassessment on the ground that notice under Section 148 was invalid and there was no case for reopening of the assessment. The reassessment order was also challenged on merits. The CIT (A) rejected the contention of the assessee insofar as issue of reopening of the assessment was concerned. However, the appeal on merits was allowed by the CIT (A) and the order of the reassessment was upset restoring the original order on this count.

In these circumstances, both the Revenue as well as the assessee filed the appeals The Revenue challenged the order of the CIT (A) on merits restricting the depreciation. The assessee challenged on the issue of reopening of the reassessment. The appeal of the assessee has been allowed by the ITAT and for this reasons the Tribunal did not go into the merits of the case.

From the order of the Tribunal, we find that three reasons are assigned by it quashing the notice under Section 148 of the Act which are as under:-

(i) Though the notice under section 148 of the Act was issued after expiry of four years from the end of the relevant previous year, in the 'Reasons to Believe' given by the Assessing Officer, there was not even a whisper that the assessee had not disclosed fully and truly all material facts relating

to the assessment and there was no allegations in the recorded reasons about such failure.

(ii) In the 'Reasons to Believe' the Assessing officer had stated that the information was received from the Commissioner and only for that reason the reassessment was opened with application of mind independently by the Assessing Officer on this aspect. He, thus, followed the directions of the Additional Commissioner of Income Tax mechanically.

(iii) In the reasons it was not even stated that it had not been alleged that the income had escaped assessment on the part of the assessee to disclose all material facts necessary for the assessment for that year. Furthermore, the Tribunal found that the material particulars were supplied by the assessee when the original assessment took place and the Assessing Officer had dealt with the assessee while granting depreciation. Since the notice was issued after the expiry of four years, sanction as required under Section 151 which is a pre condition was not obtained.

Challenging the aforesaid order the only argument pressed by the Revenue is that letter was received from the Commissioner asking the Assessing Officer to reopen the assessment, it should be treated as requisite approval as in such circumstances, seeking formal approval under Section 151 of the Act was a mere formality.

We find that in this behalf the Tribunal has rightly observed that the question of approval arises only after the reasons have been recorded by the Assessing Officer and in the absence of recording reasons, there was no question of pre existing approval. When there is a specific provision it has to be followed meticulously. Admittedly, there was no such approval and earlier letter of the Commissioner could not be treated as approval.

That apart, since there is no challenge to the order on other grounds on which notice under Section 148 of the Act was quashed by the Tribunal, we find that even if this ground did not succeed still the outcome would remain the same.

We find that no substantial question of law arises. This appeal is accordingly dismissed.

A.K. SIKRI, J.

M.L.MEHTA, J.

July 15, 2011
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