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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8600/2011

+ W.P.(C) 8603/2011

SQL STAR INTERNATIONAL LTD Petitioner
Through Ms. Anita Sumanth and Mr. Varun
Singh, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX ... Respondent
Through Mr. Kamal Sawhney, sr. standing
counsel

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

% 09.12.2011

CM 19436/2011 & 19437/2011 in WP(C) No.8600/2011
CM 19441/2011 & 19442/2011 in WP(C) No.8603/2011

Exemption allowed subject to all just exceptions.

Application is disposed of.

W.P.(C) 8600/2011
W.P.(C) 8603/2011

Mr. Kamal Sawhney, sr. standing counsel is present on



advance notice and states that the matter may be heard a disposed of at the admission stage itself.

2. The petitioner is a company and for assessment years 2004-05 and 2006-07 was served with the notice under Section 147/148 of the Income Tax Act, 1961 (the Act, for short) dated 28.3.2011 and 31.3.2011, respectively. In both the years it is an admitted position that regular scrutiny assessments under Section 143(3) were earlier made.

3. After service of the notices under Section 148 of the Act, the petitioner filed letters stating that the original returns may be treated as filed pursuant to the reassessment notice. The Assessing Officer was requested to furnish reasons for reopening. The reasons were furnished. The petitioner filed objections to the reopening stating, inter alia, that the jurisdictional pre-conditions were not satisfied. Reference was also made to court decisions and it was contended that it is case of change of opinion as the issues stated in the reason to believe were examined during the course of original assessment proceedings. In respect of assessment year 2004-05, the petitioner also raised the contention that full and true disclosure of material facts was made at the time of original assessment and there is no



material or evidence to show that there was omission or failure the part of the assessee.

4. The objections filed by the petitioner have been disposed of vide orders dated 3.11.2011 and 8.11.2011 for the assessment year 2006-07 and 2004-05 respectively. It is noticeable that the orders are substantially identical. The operative and reasoning portion of the two orders read:

"Order dated 8.11.2011 for 2004-05

In this case, the reasons for reopening were duly communicated to the assessee. The second limb of the Apex Court order is that the objections of the assessee have to be disposed off by a speaking order, which is being done now through this instant order. Therefore, the order of the Hon'ble Apex Court has been duly followed.

Further, the objection of the assessee that the proceedings initiated u/s 147 of the Act is time barred is also not acceptable as the notice u/s 148 for re-opening the assessment was issued after complying the provisions of Section 151 of the Act and therefore, issuance of notice was valid and within time.

In view of the above, the objection raised by the assessee is hereby rejected and directed to comply with the notices issued. Notice u/s 142(1) of the Act is enclosed for necessary compliance.

Order dated 3.11.2011 for 2006-07



In this case, the reasons for reopening were duly communicated to the assessee. The assessee has neither filed the return nor submitted that the return filed u/s 139(1) may be treated as return in response to notice u/s 148 of the I.T.Act. The second limb of the Apex Court order is that the objections of the assessee have to be disposed off by a speaking order, which is being done now through this instant order. Therefore, the order of the Hon'ble Apex Court has been duly followed."

5. The aforesaid order cannot be treated as an order in terms of the decision of the Supreme Court in the case of ***GKN Driveshaft (India) Ltd. Vs. ITO*** (2003) 259 ITR 19. In the said case it has been held that the Assessing Officer is bound to pass a speaking order. The speaking order must consider the objections raised by the assessee and must deal with the objections raised by the assessee and thereafter reject or accept the same with cogent reasoning. The Assessing Officer in the present case has not passed a reasoned or a speaking order. The contentions of the petitioner have not been considered, adverted to and specially dealt with.

6. In view of the aforesaid position we set aside the orders dated 8.11.2011 and 3.11.2011. Direction is given to the Assessing Officer to pass afresh order in accordance with law. Petitioner through its representative will appear before the Assessing Officer on



13th December, 2011 at 11 a.m. when hearing will be granted.

Dasti under signature of the Court Master.


SANJIV KHANNA, J


R.V.EASWAR, J

DECEMBER 09, 2011

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