



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

+ **ITA No. 40/2009**

% Judgment reserved on : 2nd MAY, 2011
 Judgment delivered on : 3rd JUNE, 2011

COMMISSIONER OF INCOME TAX **... APPELLANT**

Through: Mr. M.P.Sharma, Advocate.
Versus

NARAYAN SECURITIES PVT. LTD. **... RESPONDENT**

Through: Mr. Salil Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE M.L.MEHTA

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| 1. Whether the Reporters of local papers be allowed to see the judgment? | NO |
| 2. To be referred to Reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

M.L. MEHTA, J.

- The present appeal filed under Section 260A of the Income tax Act, 1981 (for short 'the Act') is directed against the order of the Income Tax Appellate Tribunal (for short 'Tribunal') dated 25.07.2008 whereby the Tribunal held the reassessment proceedings under Section 147 to be invalid and quashed the



assessment framed by the Assessing Officer under Section 143(3)/147.

2. The Revenue being aggrieved by the said order, is in appeal before us. The appeal is admitted on the following substantial question of law.

a) Whether ITAT was correct in law and in the facts and circumstances of the case in quashing the re-assessment order passed u/s 143(3)/147 of the Income Tax Act, 1961?

b) Whether ITAT was correct in law in holding that no addition could be made in re-assessment if no additions in respect of the grounds on which the proceedings u/s 147 were initiated had been made by the A.O.?

3. The assessee is a Member of National Stock Exchange and had filed its return of income on 30th November, 1998 for the assessment year 1998-99 declaring income of Rs.84,837/-. Assessing Officer received information from the Additional Director of Income Tax (Inv) (Unit-I, New Delhi) that during the course of search and seizure operation under Section 132 of the Act subsequent investigation was carried out in the case of M/s Rakesh Nagar & Co. it was found that M/s Rakesh Nagar & Co. had deposited huge amount of cash in bank



account and issued cheques of various amounts in favour of the assessee. It was found that the bank account was used to launder funds and no real transaction had taken place. It was noted that the assessee had taken money through cheques, which had actually been handed over to the promoters of M/s Rakesh Nagar & Co. for an amount totaling to Rs.8294615/-. It is on this information, after recording reasons, that a notice under Section 148 was issued requiring the assessee to file its true and correct statement of income. The assessee filed reply stating that its return, originally filed, be treated in response to notice under Section 148. In response to notice under Section 143(2) books of accounts, vouchers and bills were called and verified from the return filed by the assessee. The statement of Director of the company was recorded. On perusal of the statement of the Director, the AO had come to the conclusion that there was real trading of shares by the assessee on behalf of M/s Rakesh Nagar & Co. and, therefore, no addition was made on account of the reasons recorded for reopening the case. However, during the re-assessment proceedings Assessing Officer found that the assessee company had incurred losses on account of purchase and sale of shares of Rs.17,98,761/- and also earned profit of Rs.20,89,360/- from other allied activities. The Assessing



Officer treated this amount of Rs.17,98,761/- being loss on trading of shares to tax by holding the same to be covered by the explanation to Section 73 of the Act. In appeal, CIT(A) confirmed the addition made by the Assessing Officer. The assessee carried appeal before the Tribunal.

4. The Tribunal relied upon the case of ***ITO v. Smt. Darshan Kaur*** of the Amritsar Bench of the Tribunal and also the case titled ***CIT v. Atlas Cycle Industries***, 180 ITR 319 and ***CIT v. M.P. Iron Traders*** 189 CTR 154, holding that the assumption of jurisdiction to frame the assessment by invoking Section 147 of the Income Tax Act was not justifiable in this case and consequently quashed the assessment framed under Section 143(3)/147. It is against this impugned order that the appeal has been preferred by Revenue.
5. The present case is squarely covered by the judgment of this Court in ITA No. 148/2008 titled as ***Ranbaxy Laboratories Limited v. Commissioner of Income Tax***, pronounced today, i.e., 3rd June, 2011 by this Court.



6. In view of the same, we answer the questions in affirmative in favour of the assessee and against the Revenue and consequently dismiss the appeal.

**M.L.MEHTA
(JUDGE)**

**A.K.SIKRI
(JUDGE)**

JUNE 03, 2011

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