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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ITA No.466 of 2011**% Decision Delivered On: 8<sup>th</sup> September, 2011

NANCY CRAFTS LTD. . . . APPELLANT

Through: Mr. Deepak Aggarwal,  
Advocate with Mr. R.K.  
Chauhan, Advocate.

VERSUS

COMMISSIONER OF INCOME TAX . . . RESPONDENT

Through: Mr. Abhishek Maratha, Sr.  
Standing Counsel with Ms.  
Anshul Sharma, Advocate.**CORAM :-****HON'BLE MR. JUSTICE A.K. SIKRI**  
**HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers 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?

**A.K. SIKRI, J.** (ORAL)

1. Admit.
2. The following substantial question of law arises for consideration:

“Whether under the facts and circumstances of the case, the Tribunal was justified in upholding the action under Section 147 read with Section 148 of the Income Tax Act initiated by the Assessing Officer?”



3. With the consent of the counsel for the parties, we have heard the appeal finally today itself on the aforesaid question.
4. The brief facts of the case are that the assessee is engaged in the activity of manufacturing and exports of garments. For the Assessment Year 2001-02, the assessee filed the return of income at ₹34,63,640/- on 30.10.2001. Thereafter, the case for the impugned year was selected for scrutiny and notice under Section 143(2)(ii) of the Income Tax Act (hereinafter referred to 'the Act') was issued by the Assessing Officer (AO) and complied with by the assessee to the satisfaction of the AO and the returned income of the assessee was accepted and for the same, the assessment order was passed on 25.2.2003. Thereafter, assessment was sought to be opened by issuance of notice under Section 148 of the Act on 31.3.2008. After receiving the said notice, the assessee asked for the reasons recorded for issuance of the said notice. Though according to the assessee, these reasons were not supplied, instead, the notice under Section 148(2) was served upon the assessee on 21.7.2008 wherein the clarifications were asked on the following two counts:



"1. Please explain why the foreign exchange of ₹8,00,000/- which was not received in India within the six months from the end of F.Y. 2000-01 should not be excluded from the export turnover for calculation of deduction u/s 80 HHC.

2. Please explain why the interest income of ₹16.01 lacs should not be deducted from the profit of business for calculation of deduction u/s 80 HHC of the IT Act."

5. The assessee objected to the aforesaid notice, which objection was rejected. Thereafter, assessment was framed on 10.10.2008 re-computing the deduction under Section 80HHC of the Act by including sum of ₹8 lacs received in foreign exchange as well as interest income of ₹16,00,661/- for the purpose of calculation under Section 80HHC of the Act.
6. The assessee preferred appeal thereagainst before the CIT (A), which was partly allowed. However, validity of notice under Section 148 was upheld.
7. The assessee filed further appeal before the Income Tax Appellate Tribunal ('the Tribunal' for brevity). Though the appeal was partly allowed for statistical purpose, the same was restored the matter back to the file of the AO for fresh consideration, the Tribunal has also upheld the order of the



CIT (A) affirming the validity of notice under Section 148 of the Act.

8. In the instant appeal, the assessee has questioned the orders of the Tribunal as according to the assessee, there was no reason to reopen the assessment because the entire issue was dealt out even at the time of original assessment and the issuance of notice under Section 148 read with Section 147 of the Act only amounts to change of opinion.
9. Admittedly, notice under Section 148 of the Act was issued after expiry of four years from the end of relevant assessment year. Proviso to Section 147 of the Act stipulates that no action can be taken under this provision unless the AO is able to demonstrate that the income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment year. Further, it is also necessary to point out that while carrying out the assessment order, the AO has not made any inquiry on the issues regarding which the assessment is sought.



10. The learned counsel for the assessee had drawn our attention to 'reasons-to-believe' recorded by the AO for reopening of the case. These reasons are as follows:

"Return of income in this case was filed on 30-10-2001 declaring an income of Rs.34,63,640/-. Return of income was processed u/s 143(1) of the IT Act at returned income on 10-09-2002. Assessment u/s 143(3) of the IT Act was made on 25-02-2003 at income of Rs.34,63,640/-.

On perusal of the assessment records it is found that out of the total export turnover of Rs.6929.17 lakh convertible foreign exchange of Rs.8 lakh was not received within the stipulated period of six months. It was further noted that 90% of interest income of Rs.19.01 lakh was also not deducted from the profit of business. The omission resulted in excess allowance of deduction of Rs.11.66 lakh in respect of export profit.

I therefore have reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for above assessment year, the income chargeable to tax to the extent of Rs.11.66 lacs as mentioned above, has escaped assessment within the meaning of Section 147 of the Act."

11. Admitted facts are that the AO, during the course of original assessment proceedings, had made specific inquiry about the nature of interest income. The assessee had also given due reply thereto. Submitting that the interest income was assessable as business income because interest income was earned on fixed deposit with bank kept as margin money. This was so admitted even by the Tribunal. However, the



Tribunal has still affirmed the validity of reassessment proceedings stating:

“7..... But neither the Assessing Officer has made inquiry about the nexus interest received and interest payment and not there is any reply on this aspect. In the P & L account of the assessee as available on page No.2 of the paper book, the assessee has reduced the amount of interest received from interest payment and only the interest payment was debited to P & L A/c. Under these facts, we are not in agreement with Ld. AR of the assessee that all material facts were disclosed by the assessee has not furnished any detail about the nexus of interest received and interest payment and in the absence of that, it cannot be said that all facts were disclosed fully and truly before the Assessing Officer.”

12. We are not in agreement with the aforesaid approach of the Tribunal.
13. That the entire material was placed by the assessee before the AO on specific query put by the AO, which was for the AO to apply his mind on the same. We have to keep in mind that the impugned notice issued after the expiry of four years from the end of relevant assessment year. It was, in fact, done merely because the AO did not inquire from a particular angle and for this assessee cannot be faulted with. It cannot be said that the assessee had not furnished the details of the nexus of interest received and interest paid and on that basis faulting the assessee by alleging that the



assessee had not disclosed fully and truly of facts before the AO. It would be pertinent to point out that the reply to the queries given by the assessee are as follows:

“Query No.1

1. Please explain why the foreign exchange of Rs.8,00,000/- which was not received in India within the six months from the end of F.Y. 2000-01 should not be excluded from the turnover for calculation of deduction u/s 80HHC.

In fact that an amount under question seems to be Rs.7,99,726/- and not Rs.8,00,000/- as pointed out by you honour which is related to the receipt on 02/06/2000. We may made it clear that during the course of Asstt. Proceedings a tabular chart for an export sale and realization for the financial year 2000-01 was placed on the record where the realization relating to Bill NO. 9 4 6 and 9 6 9 dated 10<sup>th</sup> April, 2000 was shown as 02/06/2002. It was pointed out during the course of Asstt. Proceedings that since its receipt is beyond the stipulated period also allowable for the claim of exemption u/s 80HHC of Income Tax Act, 1961, therefore, why it should not be excluded in allowing the deduction u/s 80 HHC of Income Tax Act, 1961. It was explained that it is only a typographical mistake in assessee company's detail while the banker's certificate confirming the realization is already on the record which clearly states its date on 02.06.2000. The Ld. A.O. after its verification admitted the fact and allowed it and did not take any adverse action in this respect. However, the photography of such detail and the banker's certificate filed during the course of Asstt. Proceedings are also enclosed for your ready reference.

However, further again probably on audit objection the notice dated 12/02/2004 u/s 154 was issued by taking the same facts that the receipt of payment in foreign exchange is beyond the Period as the details filed by the assessee – company. Again it was



brought to the notice that the Ld. A.O. who framed an assessment has considered all the factors and his attention was also invited to the banker's certificate by the filing a written submission vide letter dated 23<sup>rd</sup> February, 2004. The photocopy of the letter is enclosed. It was recorded on the order sheet and the proceedings initiated u/s 154 were vacated.

In these circumstances as the facts stated above when the assessment has been framed u/s 143(3) by considering the concerned matter and it was again made it clear during the course of proceedings initiated u/s 154, the initiation of proceedings u/s 148 on this issue is not only unjustified rather illegal and is against the natural law of justice.

### **Interest Received – Rs.16.01 lacs**

The second query relating to interest income of Rs.16.01 lacs should not be deducted from the profit of business for calculation u/s 80 HHC of Income Tax Act, 1961 is also not justified.

It was fully explained during the course of Asstt. Proceedings that interest received relates to interest on "Margin Money" which the assessee company deposited on account of business exigency and interest received thereon was inextricably linked with business activities of the assessee it deserves to be allowed as held in the case of Damajit Singh Vs. Assistant Commissioner of Income Tax (121 Taxman 303).

Further in the instant case the assessee-company is exclusively an exporter where they have to furnish the "bank guarantee" to the foreign buyers for the execution of the orders and such facility has been provided by the banker's by forcing them to have the "Margin Money" with then thus, such deposits are exclusively related to business activities. Moreover, during the course of Asstt. Proceedings the assessee-company have also placed on the record the banker's certificate confirming the facts that margin money has been kept with the banker for the following purpose:-



- i) As cash collateral for waiver of ECGA Cover.
- ii) As margin against issue of bank guarantee by us on behalf of the company.
- iii) As margin against issue of letters of credit by us on behalf of the company.

The contents of the certificate evidently proves that such deposits are related to the business requirement. The photocopy of such certificate filed during the course of Asstt. Proceedings is enclosed.

As the facts submitted above under these circumstances, where these facts have been fully discussed during the course of Asstt. Proceedings now merely on the change of opinion as decided by Delhi High Court and Supreme Court given above an initiation of proceedings deserves to be withdrawn.

That without prejudice to the above facts it is humbly submitted that in the subsequent year the relevant A.O. for the respective years added back an amount related to "interest received" but it was deleted by ITAT giving the full facts related to the assessee-company. The photocopy of such orders are on the record. However, the photocopy of I.T.A.T's order for Asstt. Year 1996-97 is enclosed."

14. The aforesaid explanation shows that it was a case of full disclosure and in fact, the Tribunal has totally ignored the same. We are, thus, of the opinion that it was not a fit case for initiation of re-assessment proceedings, as the case was covered by proviso to Section 147 of the Act. We, thus, answer the question in favour of the assessee and against the Revenue, as a result thereof, the impugned order of the Tribunal and re-assessment proceedings are set aside.



15. This appeal is allowed in the aforesaid terms.

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

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

**SEPTEMBER 08, 2011**

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