



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

Date of decision: 13.07.2012

+ **W.P.(C) 9095/2011, C.M. APPL. 20422/2011**

MARUTI CENTER FOR EXCELLENCE AND ANR.

..... Petitioners

Through : Sh. Ajay Vohra, Ms. Kavita Jha and Sh.  
Somnath Shukla, Advocates.

versus

INCOME TAX OFFICER (E)

..... Respondent

Through : Sh. N.P. Sawhney, Sr. Standing  
Counsel.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE R.V. EASWAR**

**MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)**

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1. In this writ petition, the petitioner-assessee (hereafter "assessee"), which is a society registered under the Societies Registration Act, seeks a writ in the nature of certiorari or any other writ, order or direction quashing the order dated 21.12.2011 passed by the Income Tax Officer (E) (hereafter "revenue"). It also prays quashing of the notice issued under Section 148, Income Tax Act,



1961 (hereafter “the Act”) and all further proceedings taken pursuant thereto.

2. The assessee filed its returns for the assessment year 2004-05 on 01.11.2004 declaring its income as NIL inter alia claiming exemption under Section 11 of the Act. During the assessment proceedings, the AO through letter dated 01.08.2006 sought from the assessee a copy of its certificate of registration under Section 12A along with certain other details in respect of claim of exemption under Section 11. These were provided by the assessee by letters dated 10.08.2006 and 18.08.2006. Its return was processed under Section 143(3) where the AO by order dated 30.08.2006 accepted the income declared. On 23.03.2011, notice under Section 148 of the Act was issued. The petitioner through letter dated 06.04.2011 sought the reasons recorded for reopening the assessment, and also submitted that the original return of income be treated as its return filed in response to the notice. The relevant portion therefrom is reproduced hereunder:

*“The assessee was granted registration u/s 12 vide order No. 1601 dated 25.02.2003. Subsequently it was found that the assessee has infringed the provisions of sec. 13(3) and benefits u/s 11 & 12 were denied. In view of this, the Ld. DIT€ vide notice dated 24.08.2010 required the assessee to show cause as to why the registration granted u/s 12A vide order dated 25.02.2002 should not be withdrawn. The ld. DIT€ vide order dated 22.02.2011 cancelled the registration granted u/s 12A to the society since inception.*”



*During the year the assessee has received interest of Rs. 48,883/- and corpus donation of Rs. 10, 00,49,883/-. Since the registration u/s12A of the Act was withdrawn, the assessee will not be entitled to get benefits u/s 11 and 12 of the Act. This would result in denying of exemption to the tune of Rs. 10, 00,49,883/-.*

*Therefore, I have reason to believe that the amount of Rs. 10,00,49,883/- has escaped assessment for the year under consideration.”*

By the impugned order, the assessee's objections were rejected; thus, the writ petition.

3. During the hearing, the assessee's counsel presented three main arguments. First, that the reopening was barred under Section 149 of the Act. Counsel pointed out that the notice was issued on 23.03.2011, it was served on the assessee on 26.03.2011, and the reasons recorded for reopening assessment were issued on 01.12.2011 and served on the assessee on 07.12.2011. It was contended that the proceedings initiated under Section 147 of the Act cannot be regarded as having been validly initiated unless reasons recorded for initiating the proceedings are served on the assessee within the period of limitation prescribed in Section 149. In the present case the time limit of 6 years was not met, as the assessment year was 2004-05. In support of this contention, counsel placed reliance on the decision in *Haryana Acrylic Manufacturing Company v. Commissioner of Income Tax*, 308 ITR 38 (Del).

4. Secondly, that since the notice under Section 148 was served after the expiry of 4 years, the requirement of the first Proviso had to be



met; this being a case where the returns were filed, the assessment could have been reopened only if income had escaped assessment due to the assessee's failure to disclose truly and fully all material facts. However, even this allegation is missing in the reasons recorded. This alone, it was contended, was sufficient for issuance of notice to be held bad in law. In this regard counsel placed reliance on the decision of this Court in *Haryana Acrylic* (supra), *Kaira District Cooperative Milk Producers Union Ltd. v. Assistant Commissioner of Income Tax* (1995) 216 ITR 371 (Guj), *Fenner India Ltd. v. Deputy Commissioner of Income Tax* 241 ITR 672 (Mad), *Dulichand Singhania v. Assistant Commissioner of Income Tax* 269 ITR 182 (P&H) and *Hindustan Lever v. ACIT & Ors.* 268 ITR 332. Furthermore, it was independently contended that the assessee had not, in fact, failed to disclosed truly and fully all material facts. He submitted that it disclosed all material facts under its return and the two letters dated 10.08.2006 and 18.08.2006 all the primary facts had been disclosed. He took support from the decision in *Calcutta Discount Co. Ltd. v. Income Tax Officer*, (1961) 41 ITR 191 (SC).

5. Thirdly, it was argued that the reassessment was due to a mere change of opinion, and therefore, impermissible. He placed reliance on the decision in *Commissioner of Income Tax, Delhi v. Kelvinator of India Limited* [2010] 320 ITR 561 (SC). It was contended that it is essential that the AO should substantiate his satisfaction on "tangible material"; since the reasons recorded disclose no more than a change in opinion, the proceedings are liable to be quashed. Counsel further urged that the subsequent cancellation of registration under Section 12A is not



a valid ground. In this connection he placed reliance on the decision of this Court in *Commissioner of Income Tax v. SIL Investments Ltd.*, ITA 700/2010 and 701 of 2010.

6. The revenue, in response, contended that firstly, the writ petition was not maintainable as there was alternate remedy of statutory appeal available with the assessee. He placed reliance on *JagdishPreshad Gupta v. Joint Commissioner of Income Tax* 283 ITR 583 (Del). Secondly, he argued that the reassessment proceedings were valid as the certificate of registration under Section 12A had been cancelled since inception; and therefore the assessee was not entitled to any exemption under Sections 11 and 12 of the Act. It was pointed out that the Director of Income Tax (Exemptions) had found in its order dated 22.02.2011 that the assessee was not involved in charitable activities as defined under Section 2(15) to be eligible for registration under Section 12A. Lastly, it was urged that the reassessment proceedings were valid as it had been in compliance with the observations of the Supreme Court in *G.K.N. Driveshafts (India) Pvt. Ltd. v. Income Tax Officer & Ors.* 259 ITR 19 (SC).

7. This Court has considered the submissions. At the outset, it is noted that the assessment year was 2004-05. The notice under Section 148 was issued on 23.03.2011. Thus, the requirement of the proviso to Section 147 would set in. In this case, there is no dispute about the assessee having filed its return. Thus, the condition that the assessee had failed to fully and truly disclose all material facts must be shown to be met. The ground for reassessment, as discernible from the reasons



recorded, is that the assessee's certificate of registration was cancelled from inception. It is also noted that the reasons recorded does not contain even a whisper of an allegation that the assessee had failed to disclose fully and truly all material facts. This alone is ground for reassessment proceedings to be set aside in view of the decisions of this Court *Haryana Acrylic and WelIntertradePvt. Ltd. and Anr. v. Income Tax Officer*, 308 ITR 22 (Del). The assessee's contention in this regard is therefore accepted.

8. A bench of this Court in *WelIntertrade* (supra) observed as follows:

*“9... In the present case, the question of making of a return is not in issue and the only question is with regard to the second portion of the proviso, which relates to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Insofar as this pre-condition is concerned, there is not a whisper of it in the reasons recorded by the Assessing Officer. In fact, as indicated above, the Assessing Officer could not have made this a ground because the Assessing Officer had required the petitioner to furnish details with regard to loss occasioned by foreign exchange fluctuation which the petitioner did by virtue of the reply dated 05.02.2002. Since the petitioner had fully and truly disclosed all the material facts necessary for the assessment, the pre-condition for invoking the proviso to Section [147](#) of the said Act had not been satisfied.*

*10. In this connection, it may be relevant to note one decision, although there are several others. The said decision is that of the Punjab and Haryana High Court in the case of *Duli Chand Singhania v. Assistant Commissioner of Income Tax*. In the said decision, the*



*High Court of Punjab and Haryana was faced with a similar situation. The court noted that there was not even a whisper of an allegation that the escapement in income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The court observed that absence of this finding, which is the sine qua non for assuming jurisdiction under Section 147 of the Act in a case falling under the proviso thereto, makes the action taken by the Assessing Officer wholly without jurisdiction. We agree with these observations of the Punjab and Haryana High Court and are of the view that in the present case also, the Assessing Officer has acted wholly without jurisdiction.”*

These observations were followed in *Haryana Acrylic* where the Court held:

*“20. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to Section 147. If this condition is not satisfied, the bar would operate and no action under Section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled.”*



9. Therefore, we notice that the fundamental pre-condition to exercise of jurisdiction to issue notice under Section 148 was not met. The High Court under Article 226 certainly has power to quash such reassessment proceedings. The mere presence of an alternate remedy by way of appeal and revision before the tax authorities is not necessarily an efficacious remedy. This Court can definitely issue appropriate writs to afford effective and meaningful relief to the assessee. Reference is made to a decision of this Court in *Basu Distributors Pvt. Ltd. v. Income Tax Officer* [2007] 292 ITR 29 (Del).

10. For the above reasons, we are of the opinion that the petition has to succeed; the same is accordingly allowed. It is clarified that this order will not prevent the DIT from carrying out its enquiry in order to decide whether the benefit of registration under Section 12A is warranted; however, the petitioners' assessment, which has been completed in respect of the relevant year in question, i.e. 2004-05, cannot be reopened.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**R.V. EASWAR**  
**(JUDGE)**

**JULY 13, 2012**