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

*Date of decision: 11.12.2012*

+ W.P.(C) 8484/2010

ROLLATAINERS LIMITED

..... Petitioner

Through: Mr. Ajay Vohra, Ms. Kavita Jha and  
Mr. Somnath Shukla, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr. Abhishek Maratha, sr. standing  
counsel with Ms. Anshul Sharma,  
Adv.

**CORAM:**

**MR. JUSTICE S. RAVINDRA BHAT**

**MR. JUSTICE R.V. EASWAR**

**R.V. EASWAR, J: (OPEN COURT)**

The petitioner is a company incorporated under the Companies Act, 1956 and is engaged, *inter alia*, in the business of manufacturing of packing materials. It filed the return of income for the assessment year 2003-04 declaring a loss of ₹2.48 crores. The return was accompanied by the computation sheet, profit and loss account and balance sheet as on 31.3.2003. The assessment was completed on 24.03.2006 under section 143(3) of the Income Tax Act at a loss of ₹11.32 crores. An appeal against the assessment is stated to be pending. On 31.8.2007, the respondent issued a notice under Section 148 reopening the assessment on the ground that income chargeable to tax had escaped assessment. Pursuant to the said notice, a reassessment was



completed under Section 147/143(3) on 23.12.2008 in which an addition of ₹2.45 crores was made, which is also to be challenged in appeal before the Income Tax Appellate Tribunal.

2. On 26.03.2010 another notice under Section 148 was issued reopening the assessment. The reasons recorded by the assessing officer under Section 148(2) for reopening the assessment are as follows: -

*“The assessment in this case was completed on 24.03.2006 at an income of ₹11,32,76,728/- under section 143(3) & at a loss of ₹8,87,75,611/- u/s 148 dt.23.12.2008.*

*During the year the assessee in its computation of income claimed deduction or(sic) ₹2,52,14,220/- on account of previous year income shown in the revised return for the assessment year 2002-03 but the assessment record of the AY 2002-03 revealed that the sum of ₹2,52,14,220/- pertain to the losses arising from the operation of paper board unit of Kundli and the operation of this unit was transferred to R T Paper Board w.e.f. 1.10.2001 under MOU consequently the effect to this was given in the revised return for the AY 2002-03 revising the loss to ₹38,49,710/- from the originally returned loss of ₹2,90,64,000/-. Therefore, the deduction of ₹2,52,14,220/- was not admissible to the assessee in AY 2003-04. The mistake to allow inadmissible deduction resulted in incorrect allowance and carry forward of loss of ₹2,52,14,220/-. Thus the assessee has failed to disclose all material facts truly and fully that were necessary for assessment. Here it is relevant to mention the explanation 1 in section 147 that states that “production before the AO of account books or other evidence from which material evidence could with the diligence have been discovered by the AO will not necessarily amount to disclosure with the meaning of the foregoing proviso.*

*In view of above facts, I have reason to believe that income chargeable to tax amounting to ₹2,52,14,220/- has escaped*



*assessment in the case and the same is to be brought to tax under section 147/148 of the I.T.Act Sanction for issue of notice u/s 148 as prescribed u/s 151 to reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to the notice subsequently during the course of assessment proceedings may kindly be accorded.*

*(Signature of Officer)*

*Sd/-*

*Name B. Srinivas Kumar*

*Designation DCIT Circle-15(1)*

*Dated: 11.03.2010”*

The petitioner's objections to the effect that the reassessment was without jurisdiction were rejected by the assessing officer by order dated 14.12.2010. The petitioner has filed the present writ petition challenging the notice under Section 148 on 26.3.2010 and the order passed by the assessing officer rejecting the petitioner's objections. Both are sought to be quashed.

3. The short question before us is whether the notice issued under Section 148 on 26.3.2010, beyond the period of four years from the end of the assessment year 2003-04, is without jurisdiction. Under the first proviso to Section 147, an assessment made under Section 143(3) can be reopened beyond the period of four years from the end of the relevant assessment year only if income chargeable to tax had escaped assessment due to the failure of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year. Explanation 1 below the Section says that “production before the assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the assessing officer will not necessarily amount to disclosure within the



meaning of the foregoing proviso". We have to therefore, examine what the disclosure was by the assessee at the time of the original assessment.

4. On 01.10.2001, the petitioner entered into a Memorandum of Understanding with another company by name R.T. Paper Board Ltd. under which the paper board division of the petitioner was to be hived off to the other company. The transfer was to take effect from 01.10.2001 subject to approval from financial institutions which came only after 31.12.2002. Till that time, both the income and the expenses relating to the paper board division for the period from 1.10.2001 to 31.12.2002, covering parts of two different accounting years, were accounted for in the books of the petitioner. For the period from 1.10.2001 to 31.3.2002 which was relevant to the assessment year 2002-03, there was an excess of expenses over the income with respect to the paper division and such excess amounted to ₹2,52,14,220/-. This was accounted for in the petitioner's books of account for the year ended 31.03.2002. Accordingly, the aforesaid loss relating to the paper board division was included in the return of income filed originally for the assessment year 2002-03. Similarly, the income/expenses for the period 01.04.2002 and up to the date on which the financial institutions granted approval, i.e. the period which fell in the accounting year ended on 31.03.2003 relevant to the assessment year 2003-04 was also accounted for in the books of the petitioner company. However, once the approval was granted and the loss relating to the paper board division had to be removed from the petitioner's books, a revised return of income was filed by the petitioner for the assessment year 2002-03 from which the loss figure of ₹2,52,14,220/- was removed. As a result of the exclusion of the said loss, the loss declared in the original return was reduced to



₹38,49,710/-. In other words, the loss suffered in the paper board division which was transferred to R.T. Paper Board Ltd. w.e.f. 1.4.2001 was not claimed in the revised return of income filed by the petitioner for the assessment year 2002-03. This is clear from the note appended to the revised return (pages 120-135, Annexure G of the writ petition). Page 125 is a reconciliation of the loss after transferring the income and expenses relating to the paper board division for the period from 1.10.2001 to 31.3.2002. It sets out the following position.

<i>S. No.</i>	<i>Particulars</i>	<i>₹</i>	<i>₹</i>
1.	<i>Loss as per Balance sheet filed with Original return</i>		<i>-29064000</i>
2.	<i>Less :</i>		
	<i>Loss transferred to R T Paper Board Limited</i>	<i>25214220</i>	<i>25214220</i>
	<i>Revised loss for filing I. Tax Return</i>		<i>-3849780</i>

*Note : Detail of prior period income & expenditure transferred to R T PAPER BOARD LIMITED, a subsidiary Company, is attached. This annexure is as per TAR for the A.Y. 2003-04."*

The note appended to the revised return reads as under (relevant portion):

*"Consequent to restructuring, return is being revised as per under mentioned details.*

*1. In the return of A.Y. 2003-04 a sum of ₹25214220/- has been shown as previous year income in the Balance Sheet. The necessary details of the same have been given in the Note No.B-2(e) of the Financial Statement. This amount pertains to the losses arising from operations of Paper Board Unit of Kundli. The operations of this unit have been transferred to RT Paper Board Limited w.e.f. 01.10.2001 under MOU. The approval of this MOU came from FIs in the A.Y. 2002-03 i.e. after filing of the*



*original return. Consequently, the effect to this has been given in this return.”*

The revised return for the assessment year 2002-03 was filed in March 2004 and has been taken cognizance of in the assessment order passed on 28.3.2005 under Section 143(3) of the Act. In the first page of the assessment order, the note appended to the revised return and extracted above has been quoted and the assessment was completed on that basis.

5. In the books of account for the assessment year 2003-04, (year ended 31.03.2003) which is the year under consideration, the loss accounted for in the books of account of the petitioner for the year ended on 31.3.2002 was reversed. This fact was disclosed in note No.B-29e) of the audited accounts. Annexure H to the writ petition is the financial accounts for the year ended 31.3.2003 along with the schedules and notes. The note referred to above reads as follows.

*“e) Further, in terms of the ‘Memorandum of Understanding’ entered with R T Paper Board Limited, a wholly owned subsidiary company, the following income and Expenses pertaining to Paper Board Division including Speciality Paper Board Division, which have been incurred during the period from 01.10.01 to 31.12.02 have been transferred.*

<i>Particulars</i>	<i>1.10.2001 to 31.03.2002</i>	<i>1.4.2002 to 31.12.2002</i>
	<i>Amount</i>	<i>Amount</i>
<b><i>Income :</i></b>		
<i>Gross Turnover</i>	297.45	0
<i>Less : Excise duty</i>	2.05	0



<i>Net turn over</i>	<b>295.40</b>	<b>0.00</b>
<i>Service fee</i>	1.06	0
<i>Other income</i>	11.01	0.13
<i>Decrease in stocks</i>	-59.72	0
<b>Total income (A)</b>	<b>247.75</b>	<b>0.13</b>
<i>Expenses :</i>		
<i>Raw material consumed</i>	113.10	0.00
<i>Administrative and other expenses.</i>	261.28	229.87
<i>Interest</i>	25.67	143.79
<i>Depreciation</i>	99.84	149.95
<b>Total expenditure (B)</b>	<b>499.89</b>	<b>523.61</b>
<b>Excess of expenditure over income transferred to R T Paper Board Ltd.</b>	<b>-252.14</b>	<b>-523.48</b>

In the computation of income for the year ended on 31.03.2003 i.e. for the assessment year 2003-04, the loss of ₹2,52,14,220/- was reduced from the book with the narration “previous year income shown in revised return for the assessment year 2002-03”.

6. The result of filing revised return of income for the assessment year 2002-03 in March 2004 and filing the return of income for the assessment year 2003-04 on 2.12.2003 was this : the loss of ₹2,52,14,220/- was not claimed in the revised return of income for the assessment year 2002-03 and the reversal of the aforesaid loss in the books of account for the year ended 31.03.2003, relevant to the assessment year 2003-04 could not be subjected to tax for that



assessment year. This was consistent with the position that neither the income nor the loss relating to the paper board division could be considered to belong to the petitioner on and after 01.10.2001. The reduction of the income for the assessment year 2003-04 by the loss of ₹2,52,14,220/- was therefore consistent with the memorandum of understanding; the petitioner had also reduced the income for the assessment year 2003-04 by the aforesaid loss. The ultimate position was that since the loss relating to the paper board division incurred between 01.10.2001 to 31.3.2002 was reduced from the loss of the petitioner company to show a reduced loss for that year, the profit shown for the year ended 31.3.2003 relating to the assessment year 2003-04 should correspondingly be reduced by the aforesaid loss. This position was duly informed to the assessing officer in the return and the documents and accounts accompanying it.

7. The factual position set out above would show that the complete particulars relating to the memorandum of understanding and its impact on the profit and loss of the petitioner company was disclosed by the petitioner in its return of income. When the assessment for the assessment year 2003-04 was first completed on 24.3.2006, all the relevant facts had been disclosed by the petitioner by way of the notes to the accounts. There was no failure on the part of the petitioner to disclose the primary facts. Since all the primary facts have been disclosed by the petitioner in the original return for the assessment year in question (i.e. 2003-04) there was no escapement of income chargeable to tax because of the petitioner's failure to furnish the primary facts. The notice issued under Section 148 is therefore, without jurisdiction. The same is hereby



quashed as also the order passed by the respondent on 6.12.2010 dismissing the petitioner's objections.

The writ petition is accordingly allowed with no order as to costs.

**R.V.EASWAR, J**

**S. RAVINDRA BHAT, J**

**DECEMBER 11, 2012**

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