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

\+ **WRIT PETITION (CIVIL) NO. 2770/2012**

Date of decision 31st July, 2013

CANON INDIA PVT LTD AND ANR

..... Petitioners

Through Mr. Prakash Kumar, Advocate.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX

..... Respondent

Through Ms. Suruchi Aggarwal, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

This writ petition impugns reassessment proceedings initiated for the Assessment Year 2006-07 vide notice under Section 148 of the Income Tax Act, 1961 (Act, for short) dated 24th March, 2011. We record that the reassessment proceedings have been initiated within four years from the end of the relevant assessment year and, therefore, the additional requirement mentioned in the first proviso to Section

147 is not required to be satisfied.

2. The petitioner had filed return of income for the Assessment Year 2006-07 on 28th November, 2006 declaring "nil" income under the normal provisions and Rs.3,15,36,278/- under Section 115JB of the Income Tax Act, 1961 (Act, for short). The assessment order under Section 143(3) read with Section 144C of the Act was passed on 14th December, 2009 making several additions. We are not concerned with the said additions, but state that the total income was assessed at Rs.39,67,07,990/- under the normal provisions.

3. As noticed above, subsequently the Assessing Officer recorded reasons to believe and issued reassessment notice dated 24th March, 2011. Reasons to believe recorded by the Assessing Officer read as under:-

> "As per information received by the Income Tax Department M/s Canon India Pvt. Ltd. has received a sum of JPY 89992707 (Rs.3,35,58,280/-)from M/s Canon Inc. Japan in F.Y. 2005-06 relevant to A.Y. 2006-07.
> The income tax return of the assessee for the A.Y. 2006-07 was filed on 28.11.2006 declaring an income of Rs.14,99,98,977/-. The return was processed u/s 143(1) of the I.T. Act, 1961. Notice u/s 143(2) was issued on 02.07.2008 and assessment was completed u/s 143(3) r.w.s. 144C of the I.T. Act, 1961 on 30.08.2010 at an income of Rs.38,94,75,850/- thereby making addition of Rs.23,94,76,875/-. However, the assessee has not disclosed the amount received from M/s Cannon Inc. Japan in its return of income. In view of the above

> facts, I have reason to believe that income chargeable to tax has escaped assessment owing to the failure on the part of the assessee to disclose fully and truly all material facts relevant for the assessment. Issue notice u/s 148 of the I.T. Act, 1961 for the A.Y. 2006-07."

4. Subsequent to the recording of the reasons dated 24th March, 2011, the petitioner wrote letter dated 28th March, 2011 that JPY 89,992,707 was disclosed and included in the income for the Assessment Year 2005-06.

5. A perusal of the 'reasons to believe' indicate that information had been received by the Income Tax Department about receipt of Japanese Yen 8,99,92,707 (Rs.3,35,58,280/-) from M/s Canon Inc. Japan in Financial Year 2005-06 relevant to the Assessment Year 2006-07. The reasons to believe further records that the income tax return for the Assessment Year 2006-07, which had resulted in the regular assessment order dated 30th August, 2010 did not take into consideration receipt of the said sum. It is specifically recorded that the petitioner had not disclosed this amount in the return of income for Assessment Year 2006-07 and, therefore, the Assessing Officer had reason to believe that income chargeable to tax had escaped assessment.

6. The respondent, it is apparent, had received information from

the tax authorities in Japan about deduction of tax at source by Can Inc. Japan on funds, which were transferred to Canon India Private Limited. This had resulted in deduction and deposit of Japanese Yen 8,99,92,707 with the tax authorities in Japan. The tax certificate received from Japan mentions the date of payment as 8th July, 2004 but was issued on 13th July, 2005. On receipt of the information and copy of the tax certificate, Assistant Director of Income Tax (Investigation), Gurgaon by issue of notice under Section 131(1)(A) of the Act had called upon the petitioner to produce books of accounts and other documents relating to all payments received from Japan of Rs.1 crore or more for the Financial Years 2004-05 and 2005-06 as per the chart enclosed as Annexure-A. Details were submitted by the petitioner vide letter dated 16th February, 2011. In reply, the petitioner had stated that amount of payments received mentioned in Annexure-A to the notice matched the company's record and there was no difference in the first and second item of the annexure. Regarding the third item pertaining to the year 2005, accounts were checked and the petitioner was unable to trace receipt of Japanese Yen 8,99,92,707. They would further check their records and had requested the authority to provide more details/information. The exact reply given by the petitioner in response to the said query is as under:-

> "Regarding the third line item of

> Annexure-A pertaining to year 2005 amounting to JPY 89,992,707, we have checked our records and have not been able to trace the said amount. However, we are further checking our records and in the meantime, request your goodself to kindly provide more details/information in relation to the same."

7. The said reply, as noticed above, was given on 16th February, 2011. Thereafter, the petitioner did not correspond nor furnished details or information till notice under Section 148 dated 24th March, 2011 was issued by the Assessing Officer of the petitioner from Delhi. It is apparent that the Investigation Wing at Gurgaon had communicated these details to the Assessing Officer, who then examined the same and recorded the reasons to believe mentioned above.

8. The contention of the petitioner is that after notice was received, they have been able to reconcile their records and have ascertained that Japanese Yen 8,99,92,707 was received and duly accounted for in their books for the earlier assessment year, i.e., Assessment Year 2005-06. Thus, as per the petitioner, the income in question has already been brought into books and taxed in the earlier assessment year. It is noticeable that this assertion or statement, was made by the assessee after reasons to believe were recorded and has not been checked or verified by the Assessing Officer in Delhi or by the Investigation Wing at Gurgaon. The said assertion has not been tested or examined. The

veracity of the same, therefore, is uncertain and requires scrutiny. To some extent, the petitioner themselves are to be blamed because they did not furnish and give the information on or before "reasons to believe" were recorded by the Assessing Officer and reassessment notice was issued on 24th March, 2011. They kept quiet and remained silent after writing letter dated 16th February, 2011.

9. The petitioner asserts that it is factually correct and true that receipt of Japanese Yen 8,99,92,707 was included and was brought to tax in the Assessment Year 2005-06. It is not possible for the Court to determine and decide the said contention. It is a question of fact. This aspect has to be examined and dealt with by the Assessing Officer during the course of the assessment proceedings. It is submitted that if the assertion made by the petitioner is correct, then they would be put to inconvenience/harassment and have to face reassessment proceedings. This is true and correct but as already noted above, to a large extent the assessee himself is responsible for the present situation as they did not furnish the requisite details in spite of the letter of the Investigation Wing of the Department. Reasons to believe have to be recorded by the Assessing Officer before notice is issued. The facts and averments made in the 'reasons to believe' have to be tested on the basis of facts and information available with the Assessing Officer on the said date. Reasons to believe cannot be substituted or altered.

They form the foundation of the jurisdiction of the Assessing Offic who initiates reassessment proceedings. At that stage, only a prima facie or tentative view is to be taken as it marks the beginning of the reassessment proceedings. Subsequently and when documents and papers are produced and the assessee is able to satisfy that no addition is required to be made, reassessment order is passed accepting the claim of the assessee. 'Reasons to believe' mean cause or justification of the Assessing Officer to believe that income has escaped assessment. It does not mean that the Assessing Officer should have finally ascertained the said fact by legal evidence or reached a firm conclusion, as this is determined and decided in the assessment order, which is the final stage before the Assessing Officer. As we are dealing with initiation of proceedings, it is not necessary that the material should conclusively prove escapement.

10. Learned counsel for the petitioner submitted that there have been cases where reassessment notices have been quashed pursuant to authoritative pronouncement on the question of law or because of decisions of higher authorities in the case of the assessee themselves relating to different years. This is correct but in such cases reassessment proceedings are quashed for the reason that it would be futile to allow reassessment proceedings to continue, when the subject

matter of the reason to believe had arisen in another year and stan decided in favour of the assessee or there is an authoritative pronouncement on the question of law and, therefore, facts need not be examined. In such cases, it would be fallacious and wrong to allow the said reassessment proceedings to continue as a mere formality. In the present case, there is a factual dispute whether or not Japanese Yen 8,99,92,707 were included in the receipts for the Assessment Year 2005-06. The said factual assertion made by the petitioner has not been examined or affirmed or denied. As far as Assessment Year 2006-07 is concerned, the petitioner admits that this amount was not shown in the return or as income. The Assessing Officer has proceeded on the basis of investigation made, relying upon communications exchanged between the Investigation Wing of the Department at Gurgaon and the petitioner-assessee. He did not have benefit of the letter dated 28th March, 2011 written by the petitioner before reasons were recorded and notice was issued. If letter dated 28th March, 2011 had been written before the reasons were recorded, the Assessing Officer was mandated to examine and consider the averments made therein before he recorded his reasons. In view of the averments made in the said letter, the assessee could have asserted and insisted that the Assessing Officer should have dealt with the assertion in the reasons recorded. This is not the position in the present case.

11. Keeping in view the aforesaid facts and balancing out equities, we feel it will be just and proper to direct that the petitioner should furnish complete and full details before the Assessing Officer in the reassessment proceedings in regard to receipt of Japanese Yen 8,99,92,707 in India and the fact that the said amount was shown in the taxable income and received in the previous year. In case the petitioner is able to satisfy the Assessing Officer on the said aspect, necessary and consequential assessment order will follow. Only in case the petitioner is not able to satisfy the Assessing Officer on the said aspect, the Assessing Officer can proceed with the reassessment in accordance with law. We clarify that only one assessment order can be and will be passed and the petitioner cannot insist that a separate order be passed. We hope and trust that the Assessing Officer will adhere and abide by the said direction.

12. With the aforesaid observations and direction, we dispose of the present writ petition. There will be no order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

JULY 31, 2013
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