

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

% Judgment delivered on : 24.01.2013

+ **W.P.(C) 7087/2012**

SHIVALIK BIMETAL CONTROLS LTD Petitioner

versus

INCOME TAX OFFICER Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Prakash Chand Yadav, Adv.

For the Respondent : Mr Sanjeev Rajpal, Sr. Standing Counsel.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V. EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the notice dated 28.03.2012 under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') whereby the assessment for assessment year 2005-06 is sought to be reopened. The petitioner on receipt of the said notice filed its objections on 08.05.2012. But, those objections were rejected by an order dated 24.08.2012.



2. The purported reasons for issuance of the impugned notice under section 148 of the said Act read as under: -

“Assessment u/s 143(3) was completed on 19.04.2007 on total income of ₹5,64,85,110/- u/s 115JB as against the normal income of ₹3,16,410/-. It has been noticed that while completing the assessment, disallowance u/s 80-IC could not be made as the conditions as laid down in that section are not fulfilled. This resulted in under assessment of the income to the tune of ₹1,32,50,439/-.

Section u/s 147 reads as under:

“Section 147....

Explanation 2 for the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment namely:

- (a)
- (b)
- (c) where the assessment has been made, but
 - i) income chargeable to tax has been under assessed; or
 - ii) such income has been assessed at too low a rate or
 - iii) such income has been made the subject of excessive relief under this Act; or
 - iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed:”



In view of explanation 2 (c)(i) & (iv) to section 147, as quoted above, I have reason to believe that taxable income to the tune of ₹1,32,50,439/- has escaped assessment. Therefore it is proposed to issue notice u/s 148 of the IT Act, 1961 in order to tax the above said escaped income. In view of the above, as per provisions of section 151, it is requested to kindly accord approval for issuance of notice u/s 148 in this case for the assessment year 2005-06.”

3. The learned counsel for the petitioner submits that this is a case where the conditions stipulated in the proviso to section 147 of the said Act would have to be satisfied because the notice has been issued after a period of four years from the end of the relevant assessment year. He further submitted that the conditions stipulated in the proviso are not satisfied and, therefore, the said notice is bad in law.

4. The learned counsel for the respondent/ revenue sought to support the issuance of the notice under section 148 of the said Act on the ground that it was a case of escapement of income as indicated in the notice itself. He also sought to rely on Explanation 2 in section 147 of the said Act.

5. We have considered the arguments advanced by the counsel for parties and we agree with the submission made by the learned counsel for



the appellant that the said notice is bad in law as the same has been issued beyond a period of four years from the end of the relevant assessment year without satisfying the condition precedent therefor. The proviso to section 147 of the said Act imposes an injunction on the revenue authorities prohibiting them from taking any action beyond the said period of four years unless (i) any income chargeable to tax has escaped assessment for such assessment year, (ii) by reason of the failure on the part of the assessee (a) to file a return under section 139 of the said Act or in response to a notice issued under sub-section (1) or section 147 or section 148 of the said Act or (b) to disclose fully or truly all material facts necessary for the assessment for that assessment year. In this matter it is not the case of the revenue that the assessee had failed to file the return under any of the provisions. Therefore, the only way in which the notice under section 148 of the said Act beyond the period of four years, could be justified would be if there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. It is not sufficient that the income chargeable to tax has escaped assessment but it must further be shown that this has escaped as a result



of failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment.

6. In the present case, the impugned reasons behind the notice dated 28.03.2012, which we have extracted above, does not even carry a whisper that there has been a failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment. Even the order rejecting the objections does not indicate as to what material fact has not been disclosed by the assessee.

7. In these circumstances the impugned notice dated 28.03.2012 cannot be sustained in law. The same is set aside and so, too, all proceedings pursuant thereto. The writ petition is allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 24, 2013

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