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

\+ W.P.(C) 8130/2010

LEASE PLAN INDIA LIMITED ..... Petitioner

Through: Mr.Ajay Vohra, Ms.Kavita Jha and Ms.Bhoomika Chaudhary, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX.... Respondent

Through: Mr.Sanjeev Sabharwal and Mr.Sanjay Kumar, Advocates

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

ORDER

% 16.12.2013

1. The petitioner Lease Plan India limited has invoked writ jurisdiction of this Court to impugn notice under Section 148 of the Income Tax Act, 1961 (for short, ' the Act') dated 24.2.2010 for initiation of re-assessment proceedings in respect of assessments year 2005-06 under Section 147 of the aforesaid Act. The petitioner has also impugned order dated 28.10.2010 passed by the Deputy Commissioner of Income Tax, Circle –IV (I) by which the objections raised by the petitioner to initiation of re-assessment proceedings have been rejected.

2. The reasons to believe recorded by the assessing officer before initiation of proceedings read as under:

> "01. Assessment in this case was completed under Section 143(3) on 19.12.2008 at loss of Rs.84,60,129/- as against the returned

loss of Rs.84,60,129/-. Order under section 154 was passed wherein the income was assessed at Rs. ,07,57,199/- under section 115JB. Scrutiny of income tax assessment records reveled that as per balance sheet assessee had made provisions for bad and doubtful debts of Rs.98,29,651/- but only Rs.74,96,203/- was added back in the computation of the assessee. Therefore, Rs.23,33,448/- (Rs.98,26,651/- - Rs.74,96,203/-) needed to be added back in the taxable income of the assessee. The mistake resulted in under assessment of income of Rs.23,33,448/- involving tax effect of Rs.8,53,867/-.

02. Further scrutiny of records revealed that the assessee lease/hire purchased receivable amounting to Rs.71,44,57,935/- was not taken into account. The mistake resulted in under assessment of income of Rs.63,38,24,878/- involving tax effect of Rs.24,94,61,905/-.

03. In view of the above, I have reasons to believe that the income ofRs.23,33,448/- & Rs.63,38,24,878/- aggregating to Rs.63,61,58,326/- chargeable to tax has escaped assessment within the meaning of section 147/148 of the Income Tax Act, 1961/-."

3. The petitioner, for the assessment year 2005-06 had filed return of income which was subjected to regular scrutiny assessment under Section 143(3) vide order dated 19.12.2008. The returned income of loss of Rs.84,16,129/- was accepted in the said assessment order. Subsequently, an order under Section 154 was passed and income was assessed at a positive figure of Rs.7,57,199/- under Section 115 JB of the Act.

4. A perusal of the reasons recorded above, indicate two

reasons for issue of the reassessment notice. The second ground pertains to hire/lease amount receivables of Rs.71,44,57,935/- . It is recorded that this amount should have been treated as income but was not added/included, thus, resulting in under assessment. It is accepted position that the assessee was following Accounting Standards –19 issued by the Institute of Chartered Accountants of India, but for the purpose of computation of income, the entire lease rental of Rs.19,66,26,467/- relating to both financial lease/hire purchase including principal, interest etc., was offered to tax, instead of the amount of matured financed income which was credited to the Profit & Loss Account. This position is accepted as correct factual position by the respondent revenue.

5. In paragraph 13 to Form No. 3CD furnished under Section 44 AB of the Act with the original return of income, it was stated:

> " As per the accounting policy of the Company, the recoveries towards insurance premium, registration costs and road tax for vehicles leased are credited to the profit and loss account only to the extent of the element of interest for the year on the capital employed by the Company on such insurance premium, registration costs and road tax. Recoveries net of the aforesaid element of interest and as reduced by a corresponding charge for the year on account of insurance premium, registration cots and road tax are carried forward to the balance sheet as a "buffer account"and the balance, if any, at the end of the lease term, is debited or credited as the case may be, to the profit and loss account. However, if

lease is foreclosed, such balance is recognized as income/expense at the time of foreclosure.
(Also refer Note 2.15 of Schedule 16 of the audited financial statements as at and for the year ended 31 March 2005.)
Further, the assessee has reduced lease rentals comprising both principal and interest components amounting to Rs.196,626,647 from the lease receivables, received in respect of assets under finance leases executed on or after 1 April 2001 in accordance with Accounting Standard 19 issue by the Institute of Chartered Accountants of India. The interest income component of Rs.47,426,178 in respect of the above lease rentals has however been credited to the profit and loss account. Accordingly, a net amount of Rs.149,200,469 representing the principal component has not been credited to the profit and loss account."

6. The assessing officer in the order rejecting the objections has not dealt with the factual matrix but has merely recorded that this issue would be examined/decided at the time of passing of the order. Similar statement has been made in the counter affidavit. Counter affidavit records that Rs.71,44,57,937/- was considered as an asset but amount of Rs.4.74 Crores was credited to the Profit & Loss Account.

7. The petitioner assessee had shown Rs.4.74 Crores in the Profit & Loss account but in the Income Tax computation, the amount declared was the entire lease rentals accrued during the year i.e., 19,66,26,647/- which includes Rs.4.74 Crores. To this extent, there is no contradiction or contrary statement in the counter affidavit.

8. It is pointed out that Rs.71,44,57,937/- was the total quantum

of lease rentals receivables including the amounts which had to be received in future years, i.e., unexpired lease portion. This was accordingly shown as asset under Account Standards-19. It is obvious and beyond doubt that the lease rental payable in future cannot be added and treated as income of the current year.

9. It is stated that for similar reasons, assessment for subsequent year 2006-07 was re-opened but no addition to this extent was made in the re-assessment order. For the assessment year 2006-07, the petitioner herein had filed writ petition (Civil) No. 7847/2012 challenging the reassessment proceedings. The re-assessment proceedings were allowed to continue during the pendency of the writ petition. The writ petition was disposed of vide order dated 8.4.2013 recording that in the reassessment order itself no addition was made. Thus it was recognized and accepted that no income on this account had escaped assessment.

10. On the first aspect, the petitioner has stated that a provision of Rs.74,96,203/- was made on account of bad and doubtful debts but the said amount was duly offered for tax in the computation of taxable income. Our attention is drawn to the computation of income, Annexure A to the writ petition, wherein amount of Rs.74,96,203/- was added back under the heading "provision for doubtful loans/advances". The assessing officer in reason No.1 has stated that provision for bad and doubtful debts was Rs.98,79,961/- and not Rs.74,96,203/-. Our attention was drawn to Schedule 14 relating to Administrative Expenses where under the head "provision for doubtful debts Rs.74,96,203/- was indicated

and thereafter under the column 'doubtful advances and receivables written off' Rs.25,47,718/- was specified.

11. The petitioner assessee, as noted above, has in the computation of income added Rs.74,96,203/- as the said amount was not written off in the books of accounts and therefore, in terms of Section 36(1)(vii) read with Section 36(2), the said figure could not have been written off as bad and doubtful debt in the income returned.

12. The assessing officer in reasons to believe had taken the figure as 98,29,651/-, instead of Rs.74,96,203/-. Addition towards bad debts of Rs.23,33,448/- has not been explained or set out in the reasons to believe or in the order disposing of the objections. In the counter affidavit reference is made to column "doubtful advances & receivables written off". However, the said figure of Rs.25,47,718/-, does not tally with Rs.23,33,448/- which is the amount alleged to have escaped assessment under the "provision of bad and doubtful debts". The reasons to believe uses the expression "provision for bad and doubtful debts" and not "advances & receivables written off". There is conceptual difference between the "provision for doubtful debts" and "doubtful advances and receivables written off". Doubtful debts pertain and relate to debts which have already been taken into consideration in the Profit & Loss Account, but advances and receivable written off are payment made to the third parties without being taken into account in the Profit & Loss Account. These are treated as trade losses under Section 28 of the Act.

13. In view of the aforesaid position, we are not satisfied that the reasons to believe show reasonable nexus with the

formation of an honest and a reasonable belief that income had escaped assessment. Assessment/re-assessment proceedings cannot be initiated in mere suspicion, gossip and rumour and can be validly initiated when there is nexus between formation to believe based upon some material and the inference that there has been escapement of income. The test which is to be applied is whether any person properly instructed on facts and law would believe that income chargeable to tax had not been brought to tax.

14. In the present case, as noticed above, the assessee was already subjected to regular scrutiny assessment under Section 143(3) and the figures and details were called for by the assessing officer. It would be appropriate to refer to the decision of the Supreme Court in Sheo Nath Singh v. ACIT: (1971) 82 ITR 147 wherein interpreting the expression "reason to believe", it was held:

> " There can be no manner of doubt that the words 'reason to believe' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court." (Emphasis supplied)

15. In Ganga Saran & Sons (P) Ltd. v. ITO: (1981)130 ITR 1

(SC), it has been observed as under:

> " The important words under s. 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". *The belief entertained by the ITO must not be arbitrary or irrational. It must be reasonable or , in other words, it must be based on reasons which are relevant and material.* The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the ITO in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a hearing on the matters in regard to which he is required to entertain the belief before he can issue notice under S.147(a). *if there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment* and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

16. Referring to the said judgment in the case of ACIT v. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 291 ITR 500 (SC), it was elucidated:

> "16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing

> Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Delhi High Court in *Central Provinces Manganese Ore Co. Ltd. v. ITO* [1991 (191) ITR 662], for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see *ITO v. Selected Dalurband Coal Co. Pvt. Ltd.* [1996 (217) ITR 597 (SC)]; *Raymond Woollen Mills Ltd. v. ITO* [1999 (236) ITR 34 (SC)]."

At the stage of initiation of re-assessment proceedings only a tentative or prima facie view has to be taken, but even at this stage, there should be some basis for the formation or foundation that income has escaped assessment. Re-assessment notice is not justified on mere ipse dixit or

unfounded apprehension.

17. Writ petition is, accordingly, allowed and re-assessment proceedings are set aside/quashed. No costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

DECEMBER 16, 2013
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