$~R-15 & 17

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

Decided on : 02.01.2014

\+ **W.P.(C) 137/1998**

\+ **W.P.(C) 143/1998**

M/S. RALSON (INDIA) LTD. ..... Petitioner
Through: Sh. Anoop Sharma, Advocate.

versus

DY. COMMISSIONER OF INCOME TAX AND ORS.
..... Respondents
Through: Sh. Sanjeev Sabharwal, Sr. Standing Counsel and Sh. Rohit Madan, Sr. Standing Counsel with Sh. Ruchir Bhatia, Jr. 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. These writ petitions challenge the legality of a notice issued under Section 147/148 of the Income Tax Act, 1961 ("*the Act*"), and pursuant thereto a notice under Section 143(2) of the Act, seeking to reopen assessments of M/s Ralson (India) Ltd., the assessee/petitioner, for the assessment year 1990-91.

2. For the assessment year 1990-91, the assessee filed a return of income on 31.12.1990, disclosing NIL income under Section 115J of

the Act. This return was accompanied with the statement of accounts and the Auditor's Report as required by Section 44AB of the Act. The Revenue, after scrutinizing the return and issuing notice under Section 143(2), passed an assessment order under Section 143(3) of the Act dated 23.03.1993. That order assessed the income at ₹44,77,640/-. The assessee appealed against this order to the Commissioner of Income Tax (Appeals), who by an order dated 20.07.1994 (in Appeal No. 43/93-4) partly allowed the appeal. The assessee further appealed against this order before the Income Tax Appellate Tribunal, Delhi, which was pending at the time of the filing of this writ petition.

3. Meanwhile, there was a search and seizure under Section 132 of the Act on the business as well as residential premises of the assessee and its Managing Director on 13.10.1992, whereby some books of account, vouchers and other documents, along with cash, were seized. Based on the material recovered, the Assessing Officer, who was still considering the returns for the year 1990-91 at the time, framed the assessment for the year on 23.03.1993 and 20.09.1993. Subsequently, on 26.04.1995, the Revenue issued a notice under Section 147/148 of the Act proposing to reopen this assessment on the ground that income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. In response, on 25.05.1995, the assessee replied to this notice contesting that no reasons exist for reopening the assessment of that year, and "*unless you intimate to us the reasons recorded and indicate the alleged escaped income we find yourself unable to comply with the terms of your above Notice.*" Further,

another letter was sent on 28.04.1997 to the Revenue indicating that "*in this case the assessment stands already finalized and closed*", and that "*till date reason for re-opening the assessment have not been given to us.*" Finally, the plea was taken that in view of the *proviso* to Section 143(2), the time period of 12 months within which a notice has to be served had expired, and thus, the impugned notice under Section 148 was time-barred. The re-assessment proceedings, however, were not discontinued, leading to the present writ petition.

4. The writ petitioners urge that the impugned notice under Section 148 is bad in law for a host of reasons. First, it is submitted that the impugned action under Section 147 could not be taken after 4 years from the end of the assessment in respect of which action has been taken. Secondly, it is submitted that there are no reasons to believe that income has escaped assessment. Thirdly, it is argued that a notice under Section 143(2) cannot be served on an assessee after 12 months from the end of the month in which the return is furnished pursuant to a notice under Section 148 of the Act. During the course of the proceedings, learned counsel for the assessee drew the attention of the Court to the reasons recorded by the Assessing Officer for reopening the assessment. As the assessment of the years 1989-90, 1990-91 and 1992-93 were all reopened together, this document – dated 26.04.1995 – pertains to all three years. The reasons provided by the Assessing Officer will be discussed below.

5. Section 147 permits the reopening of an assessment, and the issuance of notices etc., if the "*Assessing Officer has reason to believe*

that any income chargeable to tax has escaped assessment for any assessment year …" The scope of the phrase "*reasons to believe*" has been considered by the Supreme Court in various decisions. In *M/s. Phool Chand Bajrang Lal and Anr.* v. *Income Tax Officer and Anr.*, [1993] 203 ITR 456 (SC), the Court held as follows:

> "*27.....Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court of judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non- specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief....."*

6. Thus, while the Court will not judge the adequacy of the reasons provided by the Assessing Officer, the Court must assess whether the belief is based on relevant and specific information that could lead to such a belief. This well-accepted principle has found acceptance in *ITO, Calcutta and Ors. v. Lakhmani Mewal Das* 1976 (103) ITR 437 (SC); *Central Provinces Manganese Ore. Co. Ltd.* v. *Income Tax Officer, Nagpur*, [1991] 191 ITR 662 (SC), *Sri Krishna Pvt. Ltd. Etc.* v. *Income Tax Officer, Calcutta and Ors.*, (1996) 9 SCC 534. Equally, as held in *CIT v. Kelvinator of India Ltd.*, 2010 (320) ITR 561(SC) Section 148 does not clothe the Assessing Officer with power to review his previous order; nor is it such as to enable him to

correct a previous view, akin to revisional power under Section 263. The power to reopen an assessment cannot be also based on a change of opinion; it is narrowly premised on the unearthing of some "tangible material" which was hitherto unavailable. Then and then alone, would the AO be legitimately entitled to issue notice for re-assessment.

7. In this case, the reasons provided by the Assessing Officer for reopening the assessment pertain to three years, 1989-90, 1990-91 and 1992-93. Two reasons are provided: first, that on the basis of new information obtained from the bank, the assessee opened a previously undetected bank account and by using four fictitious companies availed of an overdraft facility. Thus, an undisclosed income of ₹89.50 lakhs had, in the opinion of the Assessing Officer, escaped assessment; and secondly, specifically in relation to A.Y. 1991-92, that the assessee had claimed depreciation on revalued assets not in accordance with the Companies Act, 1956, thus reducing the book provided for the purposes of Section 115J of the Act. This second reason, provided only for the year 1991-92 does not provide reasons for the assessment year under consideration. Equally, the first reason provided by the Assessing Officer, which led him to believe that income had escaped assessment, also does not relate to the year 1990-91. The reasons recorded by the Assessing Officer state:

> "*It has been informed by the … vide letter dated … that <u>after the death of Sh. Ramesh D. Aggarwal on 30.9.91</u> the found fictitious companies submitted to the Bank four copies of the fictitious resolution passed by each of them*

> *in which names of bogus and non-existent persons were mentioned as new directors of the company and in terms of these resolutions*"(emphasis supplied)

The bank account was operated to funnel income which would otherwise be undetected. Furthermore, and crucially, this Court notices that the assessee was asked – through a questionnaire – queries and details about the same "fictitious entities" in respect of which amounts were reflected in the returns and documents disclosed at the time of the assessment. Thus, there was no "tangible" material apart from what existed at the finalization of the original assessment, undermining the exercise of reassessment notice in this case.

8. This information received from the bank as to these 4 fictitious companies – which forms the information on which the Assessing Officer forms his belief under Section 147 – does not and cannot relate to the year 1990-91. As the reasons recorded above indicate themselves, the accounts were allegedly created, and thus, money transacted through them by the assessee, only after the death of one Ramesh D. Aggarwal on 30th August 1991, *after* previous year relevant to the assessment year 1990-91 had ended. At no point in this document are any reasons recorded, or any information alluded to, which relates to income that escaped assessment in the previous year relevant to the assessment year 1990-91, the relevant year in the present writ petitioners. In accordance with the rulings of the Supreme Court in *Phool Chand Bajrang Lal* (supra), and other decisions, the Court notes that there is no material or information on record that

relates to income in 1990-91 that may justify the reopening of assessment for the year 1990-91. Further, no reason to believe that income has escaped assessment for the year 1990-91 (as opposed to the other years under consideration by the Assessing Officer) has been provided. Thus, the reassessment notice served to the assessee in respect of the year 1990-91 by the Revenue is liable to be quashed.

9. As far as the question of the assessee's claim for depreciation of re-valued assets goes, in *Apollo Tyres Ltd.* v. *CIT*, [2002] 255 ITR 273 (SC), the Supreme Court held that the Assessing Officer cannot open the accounts which have been drawn in accordance with the Companies Act, 1956, certified by the chartered accountant, accepted by the general body of the company, and placed before the Registrar to which he has not taken any objection. Such being the position in law, the second ground for reopening the assessment is unsustainable.

10. For the above reasons, the writ petitions have to succeed. The impugned notice under Section 147/148 and all further proceedings are hereby quashed. The writ petitions are allowed in these terms.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

JANUARY 02, 2014