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

Date of Decision: 03.01.2014

\+ **W.P.(C) 142/1998**

M/S. RALSON INDIA LTD. ..... Petitioner

Through: Mr. Anoop Sharma and Mr.Manu Kr. Giri, Advocates.

versus

DY. COMMISSIONER OF INCOME TAX AND ANR. ..... Respondents

Through: Mr. Rohit Madan, Adv. and Mr.Ruchir Bhatia, Adv. for CIT

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE R.V.EASWAR**

**S. RAVINDRA BHAT J. (OPEN COURT)**

1. The petitioner seeks a direction for quashing of a notice under Section 148 of the Income Tax Act issued by Revenue on 26.04.1995 in respect of the Assessment Year 1991-92.

2. It is urged that in respect of the above Assessment year, the petitioner/assessee had filed its return on 31.12.1991. During the pendency of the assessment proceedings, the assessee's premises were subjected to search on 13.10.1992. In the light of the materials found by the Income Tax Authorities, a questionnaire was addressed to the assessee on 21.05.1993. Reliance is placed by the assessee/petitioner upon

various proceedings of the Income Tax Authorities in respect of Assessment Year (AY) 1991-1992, specially the order sheets made after 21.05.1993. It is argued that the nature of queries sought in response to its reply do illustrate and clearly brings out that the Revenue wishes information with respect to a host of matters including deposits made by four concerns i.e. M/s. Maha Shveta Traders Ltd., M/s. Remico Testiles (P) Ltd., M/s. Marvex Enterprises (P) Ltd. and M/s. Prabhat Enterprises (P) Ltd. The Revenue had also put to the Managing Director of the assessee/petitioner during the course of assessment proceedings for the AY 1991-92, an affidavit of one Sanjay Dadhich. After considering the explanation, the assessee's returns were accepted and the Assessment Order framed under Section 143(3) on 20.09.1993. Upon receipt of the notice under Section 148 and the reply, the respondent authorities proceeded with the matter. Thereupon, claiming that the notice issued under Section 143(2) on 17.04. 1997 in the re-assessment proceedings was time-barred, this Court was approached under Article 226. In this proceeding the petitioner has also questioned the merits of the opinion.

3. The Revenue in its reply relied upon the reasons recorded for re-opening assessment, made in the file on 26.04.1995. The relevant reasons are as follows:

*"The assessing officer while making the assessment u/s 143(3) of I.T. Act in the case of Ralson (India) Ltd., had not made additions on account of investment in four fictitious companies namely M/s. Mahashaveta (P) Ltd., M/s. Remico Textiles Ltd., M/s. Prabhat Enterprises Ltd. and M/s. Marvex Enterprises (P) Ltd. No discussion in this regard has been made in the assessment order. We have now got certain new information from the bank that the assessee company opened a new account No. 772A with PNB, Dhandari Kalan and utilised the FDRs of four fictitious firms for availing of overdraft facility. For the reasons mentioned here under an amount of Rs.89.50 lacs being undisclosed investment in the aforesaid four companies during the previous year has escaped assessment.*

*(1) Late Sh. R.D. Aggarwal, the then C.A. had made this scheme of converting black money of M/s. Ralson (India) Ltd. into white by making four fictitious companies.*

*It has been informed by the ACIT (Inv.) Circle - 2(1) vide letter dated 6.3.95 that after the death of Sh. Ramesh D. Aggarwal on 30.09.91 the four 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 Sh. Sanjay Dadhich was deprived by the authorities from operating the bank account in the names of these companies. At the time of submitting these resolutions to the bank Sh. O.P. Pahwa the previous Chairman/Managing Director of M/s. Ralson (India) Ltd. had already expired. In case these companies under reference were not bogus and were genuinely held by Sh. Sanjay Dadhich or Sh. R.D. Aggarwal there was no authority vested with any other person who could legally stop the operation of bank account of the company by Sh. Sanjay Dadhich. As I have already informed the banks of M/s. Ralson (India) Ltd. i.e. P.N. B., Dhandari Kalan, Ludhiana has not responded to the notices given by Sh. Sanjay Dadhich through his advocate to the Manager, Punjab National Bank and appears to have given no reply in a circumlocutory manner. In fact it was M/s. Ralson (India) Ltd. Account who ultimately benefitted from these F.D.Rs. as it had availed of overdraft facility in account No. 722A and the payments were also received by its persons in fictitious names.*

*It has been also informed by Inv. Circle 2(1) that one of the recipient of the payment encashed against bearer cheques is Mr. Murli and this fact is established for the documents seized from the residence of its Managing Director, Sh.Sanjeev Pahwa.*

*It has been further informed that the various facts gathered in the course of investigation clearly established the direct involvement of M/s. Ralson (India) Ltd. in the purchases of M/s. Panacea Drugs and Pharmaceuticals, a sick industrial unit, when Sh. Pahwa, the Managing Director of Ralson (India) Ltd. found cornered on account of the operation of bank overdraft account No. 772A he started foisting the entire blame on Sh. R.P. Majahan who was the financial controller of the company at the relevant time. Since this overdraft account was operated during the period when Sh. R.P. Mahajan was the Financial Controller of the company all the acts of omission and commission on his part are binding on this company.*

*In view of the foregoing, I am of the opinion that an amount of Rs.89.50 lacs which was the amount of black money converted into deposits of four fictitious firms belongs to M/s. Ralson (India) Ltd. and the said income has escaped assessment in AY 91-92."*

4. It is argued that having regard to the nature of the Assessment Order originally made by the Department on 20.09.1993 which is silent with respect to the explanation afforded by the writ petitioner, the reasons recorded are based mostly under Section 148. Counsel for the Revenue

sought to support the reasons for reopening the assessment and placed particular reliance upon the Full Bench decision of this Court in **Commissioner of Income Tax Vs. Usha International Ltd., [2012] 348 ITR 485.** It was argued that even though a questionnaire was addressed to the assessee in the previous assessment proceedings on 21.05.1993, a look at the reply furnished clearly shows that the explanation was highly unsatisfactory. The counsel sought to urge in these circumstances that the omission and failure of the Assessing Officer to record satisfaction with regard to the explanation in this regard constituted sufficient grounds and a valid "reason to believe" and so a re-assessment was necessary. It was urged that in fact, the previous Assessment Order was a case of "no opinion".

5. Counsel for the writ petitioner relied upon various orders made during the course of the assessment proceedings; in fact the entire order sheets for the period from 27.06.1992 to 16.09.1993 have been produced as Annexure R-5. Learned counsel relied particularly upon the various orders made after 21.05.1993. On that date, Income Tax Authorities issued under cover of a letter a questionnaire containing various details in respect of which particulars and information had been sought. These included *inter-alia,* materials which were found by the Department in the

course of the search and seizure operations conducted on 13.10.1992. The Income Tax Authorities sought details of the accounts which the assessee had with 8 named individuals besides several concerns including the four i.e. M/s. Maha Shveta Traders Ltd., M/s. Remico Testiles (P) Ltd., M/s. Marvex Enterprises (P) Ltd. and M/s. Prabhat Enterprises (P) Ltd. Likewise the list of the FDRs seized from the residence of one R.P. Mahajan, apparently belonging to the company and other materials as well as the details of cash, stock etc. the total of which worked out to be Rs.7,95,97,739.10 were also sought. Counsel for the petitioner urged that, after taking into account these explanations given in writing and after affording opportunity of hearing, the original Assessment Order was framed on 29.09.1993. Counsel emphasises that no new material was found and that the re-assessment was sought to be conducted only on the basis of an apparent impermissible ground. Learned counsel for the petitioner relied upon the decision of the Supreme Court reported in **Commissioner of Income Tax Vs. Kelvinator of India Limited [2010] 320 ITR 561.** It is argued that once certain material is considered by the Assessing Officer in respect of which an enquiry has been made, mere failure to record that the explanation was satisfactory would not constitute "reason to believe" justifying re-assessment proceedings.

6. This Court has carefully considered the submissions. There is no dispute that in this case the original assessment proceedings had not been finalized; at that stage on 13.09.1993, the petitioner's premises were subjected to raid, search and seizure operations. Based upon the materials which the Revenue came by in that operation, enquiries were raised in the assessment proceedings. A formal notice was issued on 21.05.1992; even the Managing Director of the assessee/petitioner was issued notice under Section 131. The order sheet would disclose that the affidavit of Sanjay Dadhich which has been cited in the re-assessment notice was confronted to the Managing Director of the assessee/petitioner. The Assessing Officer apparently took note of the reply and the submissions made and finalized the original assessment proceedings on 21.09.1993. The question which arises then is whether omission and failure to record the satisfaction as to the reply by the assessee by the Assessing Officer would constitute justifying 'reason to believe' under Section 147, to issue notice of re-assessment.

7. In a previous Full Bench decision of this Court in **Commissioner of Income Tax Vs. Kelvinator of India Ltd.,** reported as [2002] 256 ITR 1, this Court expressed disagreement with the Gujarat High Court's observations in **Praful Chunilal Patel v. Makwana (M.J.), CIT (Asst.)**

**[1999] 236 ITR 832 (Guj).** The Gujarat High Court held that, if looking back, it appears to the Assessing Officer that a particular item even though reflected on the record, was not subject to and was left out while making the Assessment Order, that amounted to justifiable "reasons to believe", warranting re-assessment. The Full Bench expressed its disagreement in the following terms:

> *"We are, with respect, unable to subscribe to the aforementioned view. If the contention of the Revenue is accepted the same, in our opinion, would confer an arbitrary power upon the Assessing Officer. The Assessing Officer who had passed the order of assessment or even his successor officer only on the slightest pretext or otherwise would be entitled to reopen the proceeding. Assessment proceedings may be furthermore reopened more than once."*

8. Thereafter, it was again emphasised that:

> *"in the event it is held by reason of Section 147, if the Income Tax Officer exercises its jurisdiction for initiating proceedings for re-assessment only upon a mere change of opinion, the same may be held unconstitutional."*

9. The Revenue's appeal to the Supreme Court was unsuccessful. The Full Bench's opinion was confirmed and reiterated in **Kelvinator's**

**case** (supra). The Court held that:

> *"therefore, post 01.04.1989 power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reasons to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of mere 'change of opinion' which cannot be per se reason to reopen. We must also keep in mind the difference between power to review and power to re-assess. The Assessing Officer has no power to review, he has the power to re-assess. But reassessment has to be based on fulfilment of certain pre-conditions and if the concept of change of opinion is removed, as contended on behalf of the Department, the, in the garb of reopening the assessment renew would take place. One must treat the concept of 'change of opinion' as an inbuilt test to check the abuse of power by the Assessing Officer. Hence, after 01.04.1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment."*

10. The Full Bench decision in Usha International (supra) relied upon by the Revenue reiterates this aspect.

11. The court also notices that in Usha (Supra) there was no blanket proposition that omission to discuss or deal with material furnished in the

course of original assessment proceedings, can result in formation of "reasons to believe" under Section 147. This is evident from the following observations:

> *"there may be cases where the Assessing Officer does not and may not raise any written enquiry but still the Assessing Officer in the first round/ original proceedings may have examined the subject matter, claim etc. because the aspect or question may be too apparent and obvious. To hold that Assessing Officer in the first round did not examine the question or subject matter and form an opinion, would be contrary and opposed to normal human conduct. Such cases have to be examined individually. Some matters may require examination of the assessment order or queries raised by the Assessing Officer and answers given by the assessee but in other cases, a deeper scrutiny or examination may be necessary."*

12. The decision of the Supreme Court in Kelvinator is categorical in that "change of opinion" cannot *per se* be reason to reopen assessment. In the original proceedings, once the Assessing Officer has called for certain material and, after taking that into account or consideration, has framed the assessment, and if the concept of "change of opinion" is to be removed, as was urged by the Revenue, the Assessing Officer would be left with unbridled and arbitrary powers. In the present case, the record

clearly reveals that each of the materials in respect of the four firms and the other documents were put to the assessee in the course of original assessment proceedings which culminated in the order of 29.09.1993. The "tangible material" that can lead to "reasons to believe" must be material that is attributable to the assessee and not material that is attributable to a change in the opinion of the Assessing Officer, on the material already available prior to original assessment. "Reasons to believe" contained in the order of 26.4.95 therefore do not constitute valid 'reasons to believe' in the form of tangible material which the Revenue came across after completion of original assessment.

13. Consequently, the said notice dated 26.4.95 and consequential proceedings cannot be sustained. They are hereby quashed. The petition is allowed without any orders as to costs.

**S. RAVINDRA BHAT, J**

**R.V.EASWAR, J**

**JANUARY 03, 2014**
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