IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 31.10.2014

W.P.(C) 1790/2014 & CM 3748/2014

STANDARD CHARTERED GRINDLAYS PVT. LTD. ..... Petitioner

versus

DY. DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION), CIRCLE 2(2), NEW DELHI & ORS. .... Respondents

Advocates who appeared in this case:
For the Petitioner : Ms Shashi M. Kapila
For the Respondents : Mr Rohit Madan, Sr. Standing Counsel for Income Tax Deptt. with Mr. Ruchir Bhatia.

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') dated 28th March, 2013 in respect of the assessment year 2006-07. The writ

petition is also directed against the proceedings pursuant to the issuance of the impugned notice dated 28th March, 2013.

2. The learned counsel for the petitioner submitted that the notice under Section 148 of the said Act was issued beyond four years from the end of the relevant assessment year. As such, the conditions stipulated in the first proviso to Section 147 of the said Act would be relevant. The said proviso requires as of condition precedent that there should, *inter alia*, be a failure on the part of the assessee to fully and truly disclose all material particulars necessary for his assessment.

3. The learned counsel submitted that there has been a full and true disclosure of all the material particulars. She drew our attention to the purported reasons behind the issuance of Section 148 notice. The reasons recorded were as under:-

> "The income of assessment of M/S Standard Chartered Grindlays ltd. for the assessment year 2006-07 was completed after detailed scrutiny in December 2008 at an income of Rs. 6,16,54,229/- .the above assessed income included interest income from investment and interest on interest tax refunds. During the course of perusal of records ,it is revealed that tax had been computed on the entire income at the rate of 15 percent instead of 40% plus surcharge .The mistake resulted in short levy of tax of Rs.

> 2,00,08,155/- including interest 'under section 234B of the IT Act, 1961.
>
> In view of the above, I have reasons to believe that the income chargeable to tax assessment within the meaning of Section 147/148 of the IT Act, 1961."

4. With regard to the above recorded reasons, the learned counsel for the petitioner pointed out that the same does not even allege that the petitioner/assessee has not made a full and true disclosure of the material particulars. All that is referred to is that there is a mistake which resulted in the short levy of tax of Rs. 2,00,08,155/- on account of the tax rate being taken as 15% instead of 40% plus surcharge.

5. The learned counsel for the petitioner further submitted that in any event, the entire issue was considered during the original assessment proceedings which culminated in the assessment order under Section 143(3) of the said Act dated 1st December, 2008. The learned counsel drew our attention to the computation of income filed along with the return by the assessee, copy of which is found at pages 47 to 49. On examining the said computation of income, we note that the petitioner had categorically stated that tax was payable under the India-Australia Double Tax Avoidance Treaty

as per Article 11(2) at the rate of 15%. The Note appended to the computation of income was as under:-

> "The assessee is a tax resident of Australia. Accordingly, the provisions of India-Australia Double Tax Avoidance Agreement shall apply to the extent beneficial to the assessee."

6. The learned counsel for the petitioner further pointed out that in the order sheet entry in the proceedings before the Assessing Officer on 28th November, 2008 it is recorded as under:-

> "Mrs. Shashi Kapila A/R attended. She is asked to furnish note explaining why the branch office may not be treated as the PE of the assessee in India and why the interest income may not be taxed as per Art. 11(4) of the DTAT between India & Australia. Case is adjd. 1.12.2008."

7. This was responded to by the assessee by a letter dated 1st December, 2008 wherein *inter alia* the following explanation was given:-

> "4. Accordingly, Standard Chartered Grindlays Ltd. had no banking operations or any other business operations in India with effect from 1st September 2002. During the period under consideration, the assessee company did not render any services nor carry on any business. As the assessee company had no business income, there can be no Permanent Establishment in India as contemplated under Article 5 read with Article 7 of the Indo-Australian DTAT.

> The concept 'Permanent Establishment' contemplates a fixed place of business. When there is no business operations at all then there can be no fixed place of business or PE in India. As no business is carried on by the assessee company, hence Article 11(4) of the Indo -Australian DTAT would not be applicable. This is applicable only to income assessable under the head of income "Business & Profession". Whereas the income earned by us would be taxable under the residuary head of income "Other Sources".
>
> 5. During the year under consideration, the only item of income in respect of which the company was liable to tax, was on the interest earned on investments made in the past on Tax Savings Bonds. The interest on bonds were due to investments made in earlier years under sec.54EA /54EC to shelter capital gains arising on sale of certain properties in earlier years.
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> 6. In addition the assessee also received interest on tax refunds as a consequence of certain favourable orders received from the appellate authorities. These too were duly offered to tax during this year.
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> 7. As the assessee is a tax resident of Australia, the provisions of the Indo-Australian DTAT would be applicable to the extent they are more beneficial to the assessee. Accordingly as per the provisions of Article 11(2) of the Indo-Australian DTAT a tax rate @ 15% would be applicable to the interest income."

8. Consequent upon the above explanation, the assessment order was framed by the Assessing Officer on 1st December, 2008. In the said assessment order, it has been clearly recorded as under:-

> "The return of income was filed on 26/10/2006 declaring total income at Rs. 6,16,54,229/-. The return was processed

> u/s 143(1) of the IT Act, 1961. Subsequently the case was selected for scrutiny and statutory notice u/s 143(2) was issued on 26/10/2007. In response to the same Mrs. Shashi Kapila, AR attended from time to time and filed the details as called for and the case was discussed with her.
>
> The assessee is a tax resident of Australia. During the year under consideration till it has declared interest income of Rs. 6,16,54,229/- and offered the same for taxation @ 15% in view of Article 1(2) of the DTAA between India and Australia. The assessee has furnished evidences for in support of its claiming income & taxability which are placed on record.
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> After discussion the return income of the assessee of Rs. 6,16,54,229/- is accepted."

9. We have heard the counsel for the parties and are of the view that the writ petition has to be allowed. First of all, the reasons recorded do not even allege that there has been any failure on the part of the assessee to make a full and true disclosure of the particulars necessary for making the assessment. Secondly, there is, in fact, no non-disclosure inasmuch as the petitioner had made it clear in the computation of income that the rate of tax applicable was 15% in view of the Article 11(2) of the India-Australia Double Tax Avoidance Treaty. As per the said Article, the rate of tax more beneficial to the assessee would have to be applied. The said rate of 15%

was accepted by the Assessing Officer, in view of the provisions of the Double Tax Avoidance Treaty.

10. It is clear from this that the Assessing Officer has considered this aspect of the matter and such consideration could not have been done unless and until the petitioner/assessee had made the full and true disclosure of the material particulars.

11. We may also point out that in respect of the assessment years 2005-06 and 2007-08. Similar notices under Section 148 were issued. The petitioner had filed writ petitions being WP(C) Nos. 3785/2014 and 3788/2014 in respect of them. However, during the pendency of the writ petitions, the Revenue had withdrawn the notices under Section 148 in respect of those assessment years and this was recorded in the order of this Court disposing of those petitions on 23rd January, 2014.

12. The learned counsel for the respondents states that notice impugned in this petition has not been withdrawn because the Revenue's audit objections are still alive. Be that as it may, the notice is without jurisdiction and therefore, the same stands quashed.

13. The proceedings pursuant to the said notice under Section 148 dated 28th March, 2013 also stand quashed.

14. The writ petition is allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

OCTOBER 31, 2014
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