

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

% Judgment delivered on: 16.12.2014

+ **W.P.(C) 1874/2014 and CM No. 3915/2014**

AVTEC LIMITED

... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Salil Kapoor, Mr Vikas Jain and Mr Varun Gupta

For the Respondent : Mr Balbir Singh and Mr Abhishek Singh Baghel

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the notice dated 28.03.2013 issued under Section 148 of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act') whereby the petitioner's assessment for the assessment year 2006-07 is sought to be re-opened. The petition is also directed against the order dated 14.03.2014 whereby the Assessing Officer has rejected the objections raised by the petitioner pursuant to the issuance of the impugned notice dated 28.03.2013.



2. The original assessment under Section 143(3) of the said Act was made on 24.12.2008. The notice under section 148 has been issued beyond four years from the end of the assessment year 2006-07, therefore, the proviso to section 147 would come into play.

3. The recorded reasons for initiating the re-assessment proceedings are as under:-

“M/s Avtec Limited. A.Y. 2006-07

28.03.2013 **Reasons for re-opening of assessment by issue of notice u/s 148**

I have, reason to believe that by reason of failure on the part of the assessee to disclose fully and truly all material facts for the said year necessary for the assessment of the said year, the aggregate amount to the extent of Rs. 22,76,19,293/- has escaped assessment as under:-

1. Insurance and other claims receivable of Rs.1,18,46,599/- were not included in the income.
2. Excess depreciation of Rs.1,66,79,750/- on buildings & vehicles was claimed and allowed.
3. There was understatement of closing stock by an amount of Rs.19,90,92,944/-

As in view of reasons cited above, the CIT also, having been satisfied that it is a fit case for the issue of notice u/s 148 has conveyed his approval/ sanction for issue of notice vide F. No. CIT/LTU/2012-13/1703 dated 28.03.2013, the proceedings u/s 147 are hereby initiated to assess the income chargeable to tax which has escaped assessment by issuing Notice u/s 148 of the Act.

DCIT, LTU, Delhi”



4. At this stage, itself we may point out that the learned counsel for the revenue does not press reasons (1) and (2) referred to above pertaining to insurance and other claims as well as the alleged excess depreciation. The entire matter before us was considered from the stand point of the allegation that there was an understatement of the closing stock by an amount of ₹ 19,90,92,944/- which has resulted in the escapement of income from assessment.

5. The petitioner submitted its objections on 27.02.2014. Paragraph 4 of the said objections specifically dealt with the alleged understatement of the closing stock and the same is reproduced herein below:-

“4. Alleged understatement of Closing Stock of Rs. 19,90,92,944/-

It is wrongly stated that there is understatement of closing stock by abovementioned amount. The figure of 19,90,92,944 is not closing stock rather it is opening stock which was transferred from HML to AVTEC Ltd as per Business Transfer Agreement dated 19 Feb 2005 as per which the transfer was effected on 28 June 2005.

This fact is clearly mentioned in schedule 18 of Balance Sheet & also in Note 3 of Schedule 21. The Audit report is annexed as Annexure 4.

From above its clear that notice of escapement of income is wrongly issued.”

6. The objections, however, were not accepted by the Assessing Officer who passed the impugned order dated 14.03.2014.



7. The learned counsel for the petitioner submitted that the notice under section 148 was issued beyond the period of four years from the end of the relevant assessment year and, therefore, it was necessary for the revenue to establish that there was failure on the part of the assessee to fully and truly disclose all material particulars necessary for the assessment. He submitted that in this context during the original assessment proceedings as also in the return and the balance sheet and Profit and Loss Account which were placed before the Assessing Officer and examined by him the position with regard to the closing stock has been fully disclosed. There has been no withholding of information and as such the notice under section 148 as also all proceedings pursuant thereto are misconceived.

8. The learned counsel for the petitioner also drew our attention to an internal note of the Assessing Officer to the audit objection which had been raised specifically with regard to the figure of ₹ 19,90,92,944/- as the stock of finished goods which had been received from Hindustan Motors Ltd. The note at point No. 7 reads as under:-

“7. Noting's on pre- may kindly be pursued where, while approving the draft replies to RA in respect of the audit objections raised by it for AY 06-07, the CIT has given directions for insuring that remedial action is initiated even if the objection is not accepted.

In this connection, the matter was examined and it may be stated that the objections raised by Para 2 (regarding alleged understatement of stock) and Para 10 (regarding alleged omission to incorporate insurance and other claims receivables) are factually incorrect and hence do not require any remedial action.



Regarding Para 3 (relating to the depreciation on assets not registered in the name of the assessee) also, the objection is at least partly incorrect in as much as depreciation on building is clearly admissible in light of the supreme court decision in case of Mysore Minerals. However, the issue may be a debatable one as far as vehicles are concerned, although available high court decisions favour the assessee on this issue. Now, considering the very nature of the issue involved action U/S 154 is out of question. Time limit for action U/S 263 has expired on 31st March 2011 (assessment was completed on 24th December 2008)

Time limit for action U/S 147 expires on 31st March 2013 but such time is available only if the statement of income is attributable to failure on part of the assessee to fully and truly disclose all material facts. This may not be possible because during the course of assessment proceedings a specific query was raised by the assessing officer (Item no. 5 of AO's letter dated 6th October 2008) and was replied by the assessee by the letter dated 7th November 2008. In these circumstances it may not be possible to involve the provision of section of 147 when the period of 4 years has already expired on 31st March 2011.

Submitted
ADD. CIT, LTU
22nd June 2012”

9. It was also brought to our attention that the balance sheet entries at page 86 of the paper book with regard to Schedule 18 (increase in inventories) clearly shows the stock of ₹ 19,90,92,944/-. The relevant entries of Schedule 18 are as under:-

“Schedule 18: Increase in Inventories	
Inventories as at March 31, 2006	
-Work in Progress	159,828,151
-Finished Goods	96,137,578
-Scrap	417,099
	256,382,828



Transfer from Hindustan Motors Limited as per Business Transfer Agreement (Refer Note No 3 of Schedule 21)	
-Work in Progress	91,782,338
-Finished Goods	107,260,996
-Scrap	49,610
	199,092,944
	(57,289,884)
Differential Excise Duty on Opening and Closing Stocks.	(352,935)
Increase in Inventories	(57,642,819)”

It was pointed out that the petitioner did not have any opening stock as of 01.04.2005. The initial stock was received on account of a transfer from Hindustan Motors Ltd. as per the Business Transfer Agreement in the course of the year. That initial stock which comprised of work in progress, finished goods and scrap amounted to ₹ 19,90,92,944/-. At the end of the year, that is, on 31.03.2006, the inventories were valued at ₹ 25,63,82,828/-. The difference between the said initial stock and the closing stock was ₹ 5,76,42,819/-, which is clearly reflected as the increase in inventories. This figure of ₹ 5,76,42,819/- has been indicated in the Profit and Loss Account under the head of Expenditure. The relevant entries under Expenditure are as under:-

EXPENDITURE		
Raw Materials and Components consumed	15	2,636,343,710
Personnel Expenses	16	270,749,587
Operating and Other Expenses	17	362,749,583
(Increase) in inventories	18	(57,642,819)
Financial Expenses	19	<u>134,201,383</u>
		3,346,401,444



10. It was pointed out by the learned counsel for the petitioner that under the head Expenditure the increase in inventories has been shown as a negative figure which implied that the said sum of ₹ 5,76,42,819/- has been reduced from expenditure, consequently, resulting in increase in income. It was, therefore, submitted by the learned counsel for the petitioner that all the stocks have been accurately indicated and the income has been correctly reflected in the return as well as in the accompanying documents including the balance sheet and the Profit and Loss Account which were the subject matter of assessment in the first round when the assessment order dated 24.12.2008 was passed under section 143(3) of the said Act. Consequently, the learned counsel submitted that there was full and true disclosure of all material facts and, therefore, the notice under section 148 was bad in law and was liable to be quashed.

11. The learned counsel for the respondent reiterated the stand taken by the Assessing Officer in the order dated 14.03.2014 and submitted that the stock position has not been accurately indicated.

12. After having heard the learned counsel for the parties, we are of the view that the position taken by the learned counsel for the petitioner is correct. The petitioner did not have any opening stock on 01.04.2005. By virtue of a Business Transfer Agreement dated 19.02.2005, the petitioner received a stock



valued at ₹ 19,90,92,944/- from Hindustan Motors Ltd. which became its initial stock in the year in question. There were additions to the said stock and the difference between the initial stock and the closing stock at the end of the year, that is, on 31.03.2006, came to ₹ 5,76,42,819/-. This has been reflected in the Profit and Loss Account as the same has been reduced from the expenditure as pointed out by the learned counsel for the petitioner. The clear implication of which is that the income, by the amount of ₹ 5,76,42,819/-, has been increased.

13. In these circumstances, we are in agreement with the submissions made by the learned counsel for the petitioner that there has been no failure on the part of the petitioner to make a full and true disclosure of the material facts pertaining to the closing stock and that the allegation raised by the respondents is not borne out by the records.

14. Before parting with this matter, we may also point out that the initial view of the Assessing Officer also coincided with the view taken by the petitioner but because there was some circular which had been issued by the CIT, even though the Assessing Officer disagreed with the audit objection, he had to take “remedial” steps under section 148 of the said Act. This also discloses the fact that the Assessing Officer had not applied his own mind but was dictated to by the circular which he felt he was bound to follow. The provision for reopening of assessment under section 147 specifically requires that it is the Assessing Officer who must have reason to believe that income



chargeable to tax has escaped assessment. The belief must be of the Assessing Officer himself and not of anybody else. In this case, it has been amply demonstrated by the learned counsel for the petitioner that although the Assessing Officer believed that no income had escaped assessment and he had disagreed with the audit objection yet he went on to issue the notice under Section 148 of the said Act. This cannot be countenanced in law.

15. In view of the foregoing the impugned notice dated 28.03.2013 as also the order dated 14.03.2014 are quashed. The writ petition is allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

I.S.MEHTA, J

DECEMBER 16, 2014
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