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

Judgment delivered on: 08.10.2015

W.P.(C) 1873/2013 & CM No. 3570/2013

ORACLE SYSTEM CORPORATION ..... Petitioner

versus

DEPUTY DIRECTOR OF INCOME TAX ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr M.S. Syali, Sr. Advocate with Mr Mayank Nagi, Advocate

For the Respondents: Mr Rahul Chaudhary, Senior Standing Counsel for the Revenue

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition pertains to the assessment year 2004-05. The notice under section 148 dated 28.03.2011 and proceedings pursuant thereto including the order rejecting the objections dated 01.11.2011 are under challenge in this petition.

2. The original assessment under Section 143(3) was completed on

22.12.2006.

3. We have heard the counsel for the parties. Without going into great detail, the simple point taken by the learned counsel for the assessee is that this is a case of reopening of assessment beyond 4 years from the end of the assessment year and therefore the first proviso of section 147 of the Income Tax Act, 1961 would come into play. One of the pre-conditions for reopening of assessment stipulated in the first proviso is that there must be failure on the part of the assessee to fully and truly disclose all the material facts necessary for the assessment. It is the case of the petitioner/assessee that the reasons recorded for reopening the assessment do not even allege that there has been any failure on the part of the assessee to fully and truly disclose all the material facts necessary for the assessment.

4. Reliance has been placed by the learned counsel on the decision of this court in **Haryana Acrylic Manufacturing Co. Vs. CIT (2009) 308 ITR (Delhi)**. In that case, this court had observed as under:

> "In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, it is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary

> condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in Wel Intertrade P. Ltd. (2009) 308 ITE 22(Delhi) we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singania (2004) 269 ITR 192 (P&H) that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing Officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated March 29, 2004, under Section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated March 2, 2005, are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above."

5. The said decision was also followed in **Rural Electrification Corporation Ltd. Vs. CIT & Anr. 355 ITR 356 (Delhi)**.

6. The reasons in the present case, are as under:

> "Reasons for reopening – For the year under review. OIPL has been held to be the PE of the assessee in India. The royalty was paid at 15%. The assessee company is earning royalties in India linked to the PE. Therefore, this royalty income must be taxed @ 20%

> gross instead of 15%. Further, the royalty income offered by the assessee includes Rs. 11,064,710 towards the interest on delayed royalty which should be taxed at 41.82 percent. ”

7. It is be evident from the above quoted recorded reasons, that there is no whisper of the petitioner having failed to disclose fully and truly all material facts necessary for his assessment. Therefore, the necessary ingredient for inviting the provisions of Section 147 is missing. As such, the initiation of the re-assessment proceedings pertaining to assessment year 2004-05 does not have the backing of law. Consequently, the impugned notice under Section 148 and all proceedings pursuant thereto including the order disposing of the objections are set aside.

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

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

OCTOBER 08, 2015
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