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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1560/2014

INDUS TOWERS LIMITED THROUGH: ITS AUTHORISED
SIGNATORY MR. AMISH MEHTA, CHIEF FINANCIAL
OFFICER

..... Petitioner

Through: Mr. Mihir Joshi, Senior Advocate with
Mr. Gajendra Maheshwari and Mr. Prakash
Kumar, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE- 11(1) &
ANR.

..... Respondents

Through: Mr. Dileep Shivpuri, Senior Standing
Counsel with Mr. Sanjay Kumar, Advocate.

CORAM:**JUSTICE S.MURALIDHAR****JUSTICE CHANDER SHEKHAR****ORDER****29.05.2017**

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Dr. S. Muralidhar, J.:

1. This writ petition by Indus Towers Limited ('ITL') challenges a notice dated 22nd February, 2013 issued to the Petitioner by the Deputy Commissioner of Income Tax, Circle-11(1), New Delhi ('DCIT') under Section 148 of the Income Tax Act, 1961 ('Act') seeking to re-open the assessment for Assessment Year ('AY') 2009-10. It also seeks to challenge the order dated 20th January, 2014 passed by the DCIT disposing of the objections by the Petitioner to the initiation of proceedings under Section



147 of the Act by the aforementioned notice. The consequent assessment proceedings are also sought to be quashed.

2. When the writ petition came up for hearing first on 10th March 2014, this Court while directing notice to issue in the petition restrained the Respondents from making a final order in respect of the impugned reassessment notice till the next date of hearing. That interim order has continued since.

3. The brief facts are that the Petitioner is the successor to India Cellular Towers Infrastructure Ltd. ('ICTIL'). ICTIL and India Cellular Limited ('ICL') filed a scheme of arrangement ('demerger scheme') under Sections 391 to 394 of the Companies Act, 1956 on 17th/24th April, 2009 for transfer of the passive infrastructure (PI) assets owned by ICL to ICTIL with effect from 1st January, 2009. On 3rd and 31st August 2009, the High Court of Delhi and High Court of Gujarat, respectively, approved the demerger scheme. ICTIL filed a return of income for the AY 2009-10 on 26th September, 2009. On 29th September, 2009, the demerger scheme became effective upon its submission to the Registrar of Companies. As a result, the PI assets owned by ICL stood transferred to ICTIL with effect from 1st January, 2009.

4. On 31st March, 2010, ICTIL filed a revised return of income upon the demerger scheme becoming effective.

5. In terms of Section 144 of the Act, the last date for issuance of notice by



the Assessing Officer ('AO') to ICTIL for carrying a scrutiny assessment under Section 143(3) of the Act was 30th September, 2010.

6. ICTIL, Vodafone Infrastructure Limited ('VIL'), Bharti Infratel Ventures Ltd. ('BIVL') filed a scheme of arrangement (merger) on 31st May, 2011 before this Court for transfer of all the tower companies to the Petitioner herein i.e., Indus Tower Limited ('ITL') with effect from 1st April, 2009.

7. On 22nd February 2013, the AO i.e., Respondent No.1 herein issued a notice under Section 148 of the Act to ICTIL for re-opening the assessment for AY 2009-10, which already stood concluded by the order under Section 143(1) of the Act, requiring ICTIL to file its return of income within 30 days of the receipt of the notice. Among the reasons for re-opening was the receipt of capital assets by ICTIL on 'nil' consideration from ICL. It was further stated therein that the demerger approved by the High Court was not compliant with the Act.

8. ICTIL replied to the above notices on 21st March, 24th September and 31st October, 2013 raising objections to the initiation of reassessment proceedings for AY 2009-10. ICTIL requested that the revised return filed by it on 31st March, 2010 under Section 139(5) of the Act should be considered as the return filed in response to the notice under Section 148 of the Act.

9. The said objections were disposed of by Respondent No.1 by the impugned order dated 20th January, 2014 reiterating the reasons for re-opening the assessment.



10. Meanwhile, by an order dated 18th April, 2013 in Co. Pet. 14 of 2012, this High Court approved the scheme of merger of ICTIL, VIL and BIVL to form the Petitioner i.e., ITL. As a result, ICTIL ceased to exist. Thereafter, the present petition was filed.

11. Two broad submissions have been advanced by Mr. Mihir Joshi, learned Senior counsel appearing for the Petitioner:

(i) Even where proceedings under Section 147 of the Act are sought to be taken with reference to intimation under Section 143(1) of the Act, there should exist reason to believe that income chargeable to tax has escaped assessment. In the facts and circumstances of the present case, certain disclosures were made in the return of income (original as well as revised) explaining the reasons for revising the return whereas the factual details pertaining to the transfer of infrastructure assets along with copies of the orders of the High Court were submitted. Therefore, the alleged formation of belief by the AO of income having escaped assessment is a mere change of opinion and an afterthought without any legal basis. The proceedings have been initiated on the basis of no material and, therefore, assumption of jurisdiction was plainly unsustainable in law.

(ii) In terms of the proviso to Section 153(1), the time limit for completion of the assessment for AY 2009-10 was 31st December, 2011 (21 months from the month of the AY). Further, the proviso to Section 143(2) of the Act requires that notice for assessment should be issued within six months from



the end of the Financial Year ('FY') in which the return was furnished by an Assessee. In the present case, the original return was filed by ICTIL on 25th September, 2009 while the revised return was filed on 31st March, 2010. Therefore, the AO had time till 30th September, 2010 to issue notices under Section 143(2) of the Act. After the merger scheme was approved by this Court and ICTIL ceased to exist, notice in the meanwhile was issued on 22nd February, 2013 under Section 148 of the Act. The last date for issuance of the notice under Section 143(2) of the Act was 30th September, 2013. However, the notice under Section 143(2) of the Act was issued only on 18th September, 2014.

12. It must be mentioned here that although this was not initially urged as a ground, by CM No. 574 of 2015 the Petitioner sought to amend the writ petition to incorporate this as a ground. This CM was allowed by the Court by its order dated 13th January, 2015 and the amended writ petition was taken on record even while continuing the interim order.

13. In response to the above submissions, Mr. Dileep Shivpuri, learned Senior Standing Counsel for the Department, submitted that as far as second submission is concerned, the facts speak for themselves. He had nothing further to add because there was no explanation for the failure to issue notice under Section 143(2) of the Act pursuant to the notice under Section 148 of the Act before 30th September 2013, the last date by which the notice ought to have been issued.

14. The law on this point is fairly well settled in the decisions in *ACIT v.*



Hotel Blue Moon [2010] 321 ITR 362 (SC) reiterated in *CIT v. Madhya Bharat Energy Corporation [2011] 337 ITR 389 (Del)* and *Principal Commissioner of Income tax v. Jai Shiv Shankar Traders (P.) Ltd. [2016] 383 ITR 448 (Del)*. In the last mentioned judgment, this Court held that the delay in issuing a notice under Section 143(2) of the Act would be fatal to the re-assessment proceedings.

15. For the aforementioned reasons, it is held that as far as the second ground is concerned, the Petitioner should succeed. In that view of the matter, the Court does not consider it necessary to examine the first ground of challenge.

16. The impugned notice dated 22nd February, 2013 issued to the Petitioner under Section 148 of the Act as well as the consequential order dated 20th January, 2014 disposing of its objections as well as the reassessment proceedings pursuant thereto are hereby quashed.

17. The writ petition is allowed in the above terms but, in the circumstances, with no order as to costs.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 29, 2017

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