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

\+ **ITA 29/2017 & CM No.1009/2017**

PR. COMMISSIONER OF INCOME TAX ..... Appellant
Through: Mr. Ruchir Bhatia, Mr. Puneet Rai & Mr. Gaurav Khetrapal, Advocates.

versus

RMG POLYVINYL (I) LTD. ..... Respondent
Through: Mr. Kapil Goel & Mr. Mukul Gupta, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 07.07.2017

Dr. S. Muralidhar, J.:

1. This is an appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') against an order dated 12th April, 2016, passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1596/Del/2014 for the Assessment Year ('AY') 2008-09.

2. The question sought to be urged by the Revenue in this appeal is whether the ITAT was justified in holding that the reopening of the assessment by the Assessing Officer ('AO') under Section 147/148 of the Act was bad in law?

3. The admitted fact is that the Assessee filed its return of income for

the AY in question on 31st October, 2004 declaring an income of Rs.4,38,958. An intimation was sent under Section 143(1) of the Act. In other words the return was not processed under Section 143(3) of the Act.

4. Notice under Section 147 of the Act was issued by the AO to the Assessee on 25th March, 2011. The following reasons for the re-opening were furnished to the Assessee for reopening the assessment:

11.	Reasons for the belief that Information has been received from the income has escaped Investigation Wing of the Income-tax assessment.	Information has been received from the income has escaped Investigation Wing of the Income-tax assessment. Department that M/s Pine View Construction & Traders Pvt. Ltd. is a beneficiary of accommodation entries received from certain established entry operators identified by the Investigation Wing during the period relevant to A. Y 2004-05. A comprehensive investigation was carried out by the Investigation Wing for identification of entry operators engaged in the business of money laundering for the beneficiaries and on the basis of investigation carried out and evidences collected, a detailed report has been forwarded. In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the transaction mentioned in the enclosed Annexure-'A' of Rs.1,56,00,000. The accommodation entry provider; have given accommodation entries in the grab of share application money/ expenses/gift/purchase of shares etc. They

		have worked for commission. The assessee is a company incorporated on 11.09.1998. It is noticed that there is no return of come is available in the AST database of Income-tax Department. Therefore. it is clear that the assessee has not filed return of income for the A. Y. 2004-05 and consequently has not offered any income for taxation. Sources of the transactions are not explained. I, therefore, have reason to believe that on account failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income chargeable to tax to the extent of accommodation entry of Rs. 1,56,00,000 has escaped assessment within the meaning of section 147 of I.T. Act. 1961. To bring to tax the income which has escaped assessment, I proposed to issue notice u/s. 148 of the I.T. Act. 1961. Since, four years has expired from the end of the relevant assessment year, and no scrutiny assessment was completed under Section 143(3) in this case for the said assessment year, the reasons recorded above for the purpose of reopening of assessment is put up kind satisfaction of Addl. Commissioner of Income Tax, Range-14, New Delhi in terms of the proviso of Section 151(2) of the I.T. Act, 1961.

5. As it transpired subsequently there were at least two glaring errors in the above reasons. The first error was that the AO proceeded on the basis that "no return of income is available in the AST database of

Income-tax Department. Therefore, it is clear that the assessee has not filed return of income for the A. Y. 2004-05 and consequently has not offered any income for taxation." In the assessment order dated 30th December, 2011 passed consequent upon the reopening of the assessment, the very first line states that "the Assessee had filed return declaring income of Rs.4,38,958 on 31/10/2004 which was processed under Section 143(1) of the Act on 04.01.2005."

6. The second glaring error in the reasons was that the total of the accommodation entries was set out as Rs.1.56 crore. In the same assessment order dated 30th December 2011 in para 2.3 it is stated as under:

> "2.3 It is pertinent to mention here that in the reasons recorded there was some clerical error as certain single transactions were appearing in multiple and this resulted in working of the escaped income to the extent of Rs.1,56,00,000/-. However, the same has now been considered and stands corrected for the purposes of completion of proceedings."

7. In para 3.1 of the above assessment order, the AO has set out the information received from the Investigation Wing regarding the alleged bogus accommodation entries pertaining to 16 entities which sum in the aggregate works out to Rs. 78 lakhs.

8. Mr. Ruchir Bhatia, learned Senior Standing Counsel for the Revenue, relied on the decisions in ***Income-Tax Officer v. Selected Dalurband Coal Co. Pvt. Ltd. (1996) 217 ITR 597*** and ***ITO v. Purushottam Das Bangur (1997) 224 ITR 362*** to urge that at the stage of reopening of the assessment, the AO is not expected to undertake any detailed

inquiry; it was sufficient if on the basis of the information received he was *prima facie* satisfied that a case was made out for reopening the assessment as income had escaped assessment.

9. However, in neither of the above cases are the facts similar to those in the present case. The two glaring errors in the reasons in the present case are, in fact, unusual. What the AO might have done if he was aware, even at the stage of consideration of reopening of the assessment that a return had in fact been filed by the Assessee and that the extent of the accommodation entries was to the tune of Rs.78 lakh and not Rs.1.56 crore would be a matter of pure speculation at this stage. He may or may not have come to the same conclusion. But that is not the point. The question is of application of mind by the AO to the material available with him before deciding to reopen the assessment under Section 147 of the Act.

10. In this context the following observations of this Court in ***CIT v. Suren International (2013) 357 ITR 24 (Del)***are relevant:

> "....In the first instance, we do not find the reasons as recorded by the Assessing Officer to be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded."

11. There can be no manner of doubt that in the instant there was a

failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises – one regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.

12. Recently, in its decision dated 26th May, 2017 in ITA No.692/2016 (***Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.***), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material *per se* without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of Rs.78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.

15. For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law.

16. No substantial question of law arises from the impugned order of the ITAT.

17. The appeal is dismissed.

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18. For the reasons stated in the application, the delay in re-filing is condoned and the application is allowed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 07, 2017
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