$~

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

\+ ITA 1355/2010

THE COMMISSIONER OF INCOME TAX ..... Appellant
Through: Ms. Rashmi Chopra, Advocate

versus

M.G. MOTORS ..... Respondent
Through: Mr. Johnson Bara, Advocate.

% Date of Decision: 13th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?	No
2. To be referred to the Reporter or not?	No
3. Whether the judgment should be reported in the Digest?	No

MANMOHAN, J:

1. The present appeal has been filed under Section 260A of the Income Tax Act,1961 (hereinafter referred to as "Act") challenging the order dated 07th August, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 1127/Del/2005 for the Assessment Year 1997-1998.

2. Briefly stated the relevant facts of the present case are that on 06th March, 2000, the respondent-assessee's assessment after scrutiny was completed. However, during the course of proceedings under Section 263 of the Act for the assessment year 1999-2000, it was noticed that the respondent-assessee had claimed expenditure of

₹15,36,395/- under the heading "partners training expenses". Out of the said expenditure, ₹ 10,46,391/- was claimed in the assessment year 1997-1998. Consequently, on 30th November, 2004, notice under Section 148 of the Act was issued to the respondent-assessee.

3. In proceedings under Section 148 of the Act, the said expenditure was disallowed. Even the appeal filed by the respondent-assessee before the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] was dismissed.

4. However, the Tribunal allowed the appeal of the respondent-assessee after holding that the Assessing Officer (in short, "AO") had not made out any case in the reasons recorded for issuance of a notice under Section 148 of the Act. According to the Tribunal, there was no failure on the part of the respondent-assessee to disclose all material facts with regard to its claim for "partner training expenses".

5. Ms. Rashmi Chopra, learned counsel for the Revenue submitted that the Tribunal had erred in law in quashing the reassessment order under Section 147 of the Act.

6. Having heard learned counsel for the Revenue and having perused the impugned order, we are in agreement with the view of the Tribunal that the reassessment was barred by limitation as the period of four years had already expired from the end of the relevant Assessment

Year and as one of the conditions precedent in the first proviso Section 147 was not fulfilled in the present case.

7. In fact, the first proviso to Section 147 which provides extended limitation for reassessment i.e. beyond the period of four years reads as under:-

> *"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant Assessment Year, no action shall be taken under this section after the expiry of four years from the end of the relevant Assessment Year, unless any income chargeable to tax has escaped assessment for such Assessment Year by reason of failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that Assessment Year."*

8. From a plain reading of the above proviso, it is apparent that where an assessment under Section 143(3) has been made, as in the present case, no action can be taken under Section 147 of the Act, 1961 after expiry of four years from the end of the relevant Assessment Year unless two conditions are simultaneously fulfilled i.e. firstly, the AO must have reasons to believe the income chargeable to tax has escaped assessment and secondly, the AO must have reasons to believe that such escapement occurred either due to omission or failure on the part of the respondent-assessee to disclose fully and truly all material facts necessary for its assessment [***See CIT vs. Rajesh Jhavery Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 at 512; Haryana Acrylic***

Manufacturing Co. vs. CIT & Anr. (2009) 308 ITR 38 *and* ***Intertrade P. Ltd. & Anr. Vs. ITO (2009) 308 ITR 22 (Delhi)].***

9. In the present case, the Tribunal in its impugned order has concluded as under:-

> *"16. In the light of the position of law as discussed above, we have now to examine the facts of the present case as to whether the condition that there was omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment is satisfied in the present case. On perusal of the reasons record by the A.O. for initiating proceeding u/s. 147 of the Act, we find that the A.O. has initiated re-assessment proceedings for A.Y. 1997-98 and 1998-99, in the light of the order passed by the CIT u/s. 263 on 08.03.2004 for the A.Y. 1999-2000 holding that the expenditure claimed under the heard "partners training expenses" has been wrongly allowed by the A.O., and in the assessment for the A.Y. 2001-02, the expenses claimed by the assessee under the head "partners training expenses" has not been allowed as not having been incurred for the purpose of business. It is thus clear that the A.O. has reopened the assessment for the A.Y. 1997-98 and 1998-99, in the light of the findings or the decisions taken in the A.Y. 1999-2000 and 2001-02, with regard to the allowability of the expenses under the heard "partners training expenses". The A.O. has nowhere in the reasons recorded a finding that there was a failure on the part of the assessee to disclose fully and truly all material facts relating to the claim of expenses made under the head "partners training expenses". There is not even a whisper of an allegation in the reasons recorded that the escapement 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. The original assessment was completed u/s 143(3) of the Act in pursuance to the return of income filed originally on 31.10.1997. In the return of income, the assessee furnished copy of audit report obtained u/s.44B along with*

audited balance sheet, P&L account, trading account etc., details of depreciation, payment of interest, salary, commission etc. to partners, details of payment to persons specified in section 40(2)(b) of the Act and the details of the loans and advances etc. In the P&L account, the assessee has given a separate item of "partners training expenses" claimed at Rs.10,46,397/-. This is not the case where the partners training expenses has been included elsewhere in other heads of expenses. The assessee has claimed the expenses under the item as "partners training expenses" separately and distinctly in the P&L account. Whatever expenses have been claimed towards partners training expenses has been specifically mentioned in the P&L account. During the original assessment proceedings, audited copies of P&L account, balance sheet and trading account were duly examined by the A.O. as so mentioned by the A.O. himself in the assessment order so made u/s. 143(3) of the Act on 06.03.2000.

17. In the light of the discussion made and facts noted about, it is clear that the A.O. has not made out any case in the reasons recorded for issuing a notice u/s. 148 of the Act that there was a failure on the part of the assessee to disclose fully and truly all material facts with regard to the claim of partners training expenses made in the return of income. Further, we find that the assessee had disclosed fully and truly the facts of claiming partners training expenses at Rs. 10,46,391/- as so clearly stated in the P&L account as a separate and distinct item. Therefore, not-with-standing the fact that the first condition to invoke the provisions of Section 147 of the Act that there must be a reason to believe that income had escape assessment is satisfied in the present case, the second condition that there must be failure on the part of the assessee to disclose fully and truly all material fact necessary for assessment has not been satisfied or has been proved to be satisfied. At this stage, we would like to clarify that had it been a case of initiating proceedings u/s. 147 of the Act before the expiry of four years from the end of the relevant assessment year, it was not necessary for the A.O. to prove and establish that there was a failure on the part of the assessee to disclose fully and truly all material facts

necessary for his assessment, and only condition required to be satisfied by the A.O. would have been that he had reason to believe that any income chargeable to tax has escaped assessment. The CIT(A) has relied upon the decision of Hon'ble Gujarat High Court in the case of Prafful Chunni Lal Patel : Basant Chunni Lal Patel Vs. ACIT (1999) 236 ITR 832 (Guj.), which was rendered in the context of re-opening of the assessment within the period of four years from the end of the relevant assessment year, and the question about applicability of the proviso to section 147 was not a subject matter of consideration in that case. Thus, the decision of Hon'ble Gujarat High Court in the case of Prafful Chunni Lal Patel : Basant Chunni Lal Patel Vs. ACIT (1999) 236 ITR 832 (Guj.), relied upon by the ld. CIT(A) in both the assessment years 1997-98 and 1998-99, doesn't help the revenue on the facts of the present case in so far as A.Y. 1997-98 is concerned.

10. Consequently, as the AO has failed to prove and establish that there was failure on the part of the respondent-assessee to disclose fully and truly all material facts necessary for his assessment, we are of the opinion that the present case is not covered by the proviso to Section 147 of the Act. Accordingly, the present appeal being bereft of merit, is dismissed *in limine* but without any order as to costs.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 13, 2010
js