*** HIGH COURT OF DELHI : NEW DELHI**

ITA No.1629, 1630 & 1631 of 2006

% Judgment reserved on: 25th March, 2008

Judgment delivered on: 2nd April, 2008

COMMISSIONER OF INCOME TAX ..... Petitioner.
Through: Mr.R.D.Jolly, Adv.

Vs.

SHRI TIRATH RAM AHUJA (HUF) ..... Respondent
Through: Amit Mahajan, Adv.

Coram:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

By way of this common judgment, all the above three appeals are being disposed of since the common question of law is involved in all these case.

2. The short question in these appeals raised by the Revenue is as to whether the Income Tax Appellate Tribunal (for short as 'Tribunal') was correct in quashing

the assessment framed under Sections 143(3) and 147 of the Income Tax Act, 1961 (for short as 'Act') ignoring the provisions of Section 149(1)(a) of the Act.

3. Brief facts leading to dispute are that the original assessments for the assessment years 1991-92, 1992-93 and 1993-94 were completed on 28th October, 1993, 26th November, 1993 and 18th January, 2004 respectively under Section 143(3) of the Act at an income of Rs. 3,27,170/-, Rs. 7,84,160/- and Rs.6,21,830/- respectively. Subsequently, the Assessing Officer came to know that ratable value in respect of properties bearing No.B-6 and B-7, Asaf Ali Road, New Delhi owned by the Assessee have been determined at Rs. 10,28,900/- by the Municipal Corporation of Delhi against Rs. 3,61,000/- declared by the Assessee on the basis of actual rent received. Thus, the Assessing Officer reopened the assessment for these three assessment years by issuing notice under Section 148 of the Act on 31st March, 2000.

4. In response to subsequent notices, the Assessee replied that since the property is let, hence his case is covered under Section 23(1)(b) of the Act and, therefore,

the annual value should be determined on the basis of the actual rent received.

5. The Assessing Officer was not satisfied as according to him the annual value of the property should be higher of the ratable value (as determined by the MCD) or the actual rent received. For this proposition, he relied on the judgment of Calcutta High Court in the case of ***CIT v. Satya Co.Ltd. (1994) 75 Taxman 193 (Cal)*** and completed the assessment by adopting annual value at Rs.10,28, 900/- as per the ratable value determined by the Municipal Corporation of Delhi**.**

6. Being aggrieved by the assessment order, the Assessee filed appeals before the Commissioner of Income Tax (Appeals) [for short as CIT(A)] which were decided in favour of the Assessee vide order dated 25th March, 2003.

7. Against thereby, Revenue had filed appeals (ITA Nos. 3750, 3751 & 3752/Del/2003 relevant for the assessment years 1991-92, 1992-93 and 1993-94 respectively) before the Tribunal and vide the impugned order dated 29th July, 2005, the appeals were rejected by the Tribunal. The Tribunal had quashed the re-assessment proceedings by

holding that the same is barred by limitation. It was held that the case is covered by the proviso to Section 147 of the Act and it is not the case where there has been failure on the part of the Assessee to disclose truly all facts on records but the Assessing Officer had reopened the assessment after he came to know that the Assessee had not disclosed the correct valuation of the property. The assessment was reopened on the basis of the subsequent information received from Municipal Corporation of Delhi, as such the proviso to Section 147 is not applicable.

8. Now the Revenue has filed present appeals is before this Court.

9. Thus the question arises in the present appeals is whether the reassessment by the Assessing Officer based on the subsequent information is valid or not.

10. It is contended by learned counsel for the Revenue that in the present case, the Assessee had himself not disclosed the correct facts including the valuation of the property in question before the Assessing Officer, hence the proviso to Section 147(1) of the Act is not applicable in

this case, and after amendment w.e.f. 1st April, 1989, the scope of Section 147 of the Act has been widen.

11. In this context, it is relevant to refer to the provisions of Sections 147 and 149 of the Act. Section 147 of the Act provides for assessment in cases where income has escaped assessment. It also provides that if the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment for the relevant year, then he is empowered, subject to the provisions of Section 148 to 153 of the Act, to assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under Section 147 of the Act, or to recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the relevant assessment year.

12. However, where an assessment under Section 143(3) of the Act or this Section has been made for the relevant assessment year and the initiation is taking place after the expiry of four years from the end of the relevant assessment year, the proviso to Section 147 of the Act

would be attracted and no action can be taken under Section 147 of the Act unless such income has escaped assessment by reason of the omission or failure on the part of the Assessee to make a return under Section 139 of the Act or failure to file a return in response to a notice under Section 142(1) or Section 148 of the Act, or to disclose fully and truly all material facts necessary for his assessment for that year.

13. Further, Central Board of Direct Taxes Circular No.549 dated 31st October, 1989 published in (1990) 182 ITR 29 (Statues) on "Income Escaping Assessment", sub-para (iv) 7.1 of which reads as under:-

> " A proviso to the new Section provides that an assessment, which has been completed under Section 143(3) or Section 147, i.e., a scrutiny assessment, can be re-opened after the expiry of four years from the end of the relevant assessment year only if income has escaped assessment due to the failure on the part of the Assessee to file a return of income or to disclose fully and truly all material facts necessary for his assessment."

14. The language employed in proviso to Section 147 of the Act shows that the disclosure thereby contemplated is to be with regard to material facts and, therefore, must

necessarily be in respect of such facts which exists at all material times between the filing of the return and the order of assessment. A material fact which is not in existence right up to the time of assessment cannot possibly be disclosed. Therefore, a fact which comes into existence subsequent to the making of the assessment cannot be a material fact within the purview of Section 147 of the Act. Further, the duty to disclose material facts necessarily postulates existence of a thing or material. If a material is not in existence or if a material is such of which the Assessee had no knowledge there would be no duty to disclose such material.

15. From the narration of facts given above, it is clear that the returns for all the three assessment years had been filed by the Assessee and there was no failure to file returns and further during the course of assessment for assessment years, all material facts had been disclosed fully and truly and assessment was completed under Section 143(3) of the Act after scrutiny. As the Assessee can be fastened with the duty to disclose such facts or materials as are in existence at the relevant time and which

are known to him, the initiation under Section 147 of the Act based on the order of Municipal Corporation of Delhi regarding ratable value was dated 31st March, 1994, which was not available at the time of original assessment, cannot be sustained. Therefore, the action of reassessment was taken on the basis of subsequent material which was not in existence at the time of original assessment, was not justified.

16. Further, it is only when the case falls under the proviso to Section 147 of the Act that the question of non-disclosure of materials facts would become relevant. In such cases, if the Asssessee has made full disclosure of material facts, then even if such income has escaped assessment, no action can be initiated by the Assessing Officer under Section 147 of the Act. However, where the said period of four years has not expired, the conduct of the Assessee regarding disclosure of material facts need not be the basis for initiating the proceedings and they can be commenced if the Assessing Officer has reason to believe that the income has escaped assessment notwithstanding that there was full disclosure of material

facts on record. (See Explanation 1 of Section 147 of the Act).

17. Furthermore, Section 149(1)(a) of the Act also provides that no notice under Section 148 of the Act shall be issued for the relevant assessment year if four years have elapsed from the end of the relevant assessment year and in case, if four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs.50,000/- or more for that year and if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 1 lac or more for that year.

18. In the present case, the Assessing Officer served the notice under Section 148 of the Act later than 4 years. There was no deliberate concealment of the facts by the Assessee. The assessment was reopened on the basis of the subsequent information received from Municipal Corporation of Delhi, as such the proviso to Section 147 of

the Act is not applicable and the provisions of Section 149 of the act will be applicable. Thus, in the light of the fact that the initiation by issuance of impugned notices was beyond the period of four years and the prerequisite conditions stipulated by Section 147 of the Act were not fulfilled, there was no case made out for upholding the proposed reassessment. Thus, the action of issuance of notice by the Assessing Officer is without jurisdiction and the assessment already completed under Section 143(3) of the Act cannot be reopened after a period of more than four years from the end of relevant assessment years.

19. Thus, we do not find any infirmity with the order passed by the Tribunal and no substantial question of law arises in this case.

20. Accordingly the appeals filed by the Revenue are, hereby, dismissed.

V. B. GUPTA, J.

MADAN B. LOKUR, J.

April 02, 2008
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