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

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\+ **ITA 1655/2006**

THE COMMISSIONER OF INCOME TAX ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel with Mr Ruchir Bhatia, Junior Standing Counsel.

versus

M/S SLOCUM INVESTMENT P LTD ..... Respondent
Through: Mr Ajay Vohra, Senior Advocate with Mr Rahul Jain, Mr Vaibhav Kulkarni and Mr Aashish Gupta, Advocates.

WITH

8.

\+ **ITA 434/2010**

COMMISSIONER OF INCOME TAX DELHI ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel with Mr Ruchir Bhatia, Junior Standing Counsel.

versus

HCL CORPORATION LTD. ..... Respondent
Through: Mr Ajay Vohra, Senior Advocate with Mr Rahul Jain, Mr Vaibhav Kulkarni and Mr Aashish Gupta, Advocates.

WITH

9.

\+ **ITA 1656/2006**

THE COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr Rahul Chaudhary, Senior Standing Counsel with Mr Ruchir Bhatia, Junior Standing Counsel.

versus

M/S SLOCUM INVESTMENT P LTD ..... Respondent
Through: Mr Ajay Vohra, Senior Advocate with Mr Rahul Jain, Mr Vaibhav Kulkarni and Mr Aashish Gupta, Advocates.

WITH

10.

\+ **ITA 427/2010**

COMMISSIONER OF INCOME TAX ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel with Mr Ruchir Bhatia, Junior Standing Counsel.

versus

SHIV NADAR INVESTMENT P.LTD. ..... Respondent
Through: Mr Ajay Vohra, Senior Advocate with Mr Rahul Jain, Mr Vaibhav Kulkarni and Mr Aashish Gupta, Advocates.

AND

11.

\+ **ITA 1105/2008**

COMMISSIONER OF INCOME TAX DELHI ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel with Mr Ruchir Bhatia, Junior Standing Counsel.

versus

H.C.L. CORPORATION LTD. ..... Respondent

Through: Mr Ajay Vohra, Senior Advocate with Mr Rahul Jain, Mr Vaibhav Kulkarni and Mr Aashish Gupta, Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 30.07.2015

1. These appeals have been preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') against separate orders passed by the Income Tax Appellate Tribunals (hereafter 'Tribunal') in respect of block assessments made by the Assessing Officer (hereafter 'AO') for the period 1st April, 1995 to 24th January, 2002.

2. In ITA 1655/2006 and ITA 1656/2006, the Revenue impugns a common order dated 24th March, 2006 passed by the Tribunal in IT(SS)A No. 411/Del/2004 and IT(SS)A No. 45/Del/2005. These appeals were preferred against an order of Commissioner Income Tax (Appeals)-III [hereafter CIT(A)] dated 30th November, 2004; whilst the former was preferred by the Assessee -Slocum Investment Pvt. Ltd. (now known as HCL Corporation Ltd and hereafter referred to as SIPL), the latter was preferred by the Revenue.

3. In ITA Nos. 427/2010 and 434/2010, the Revenue impugns a common order dated 7th August, 2008 passed by the Tribunal in IT(SS)A No. 40/Del/07 and IT(SS)A No. 41/Del/07. These appeals emanate from protective assessments made by the AO in respect of Shiv Nadar Investment Pvt. Ltd. (hereafter 'SNIPL') & HCL Corporation Ltd. (hereafter 'HCLC'), as these companies had amalgamated with SIPL.

4. ITA 1105/2008 pertains to the penalty imposed on the Assessee under Section 158BFA(2) of the Act.

5. The principal controversy in these appeals arises from two sets of transactions; the first involving sale of shares of HCL Consulting Ltd– an unlisted company – by SIPL, HCLC and SNIPL (hereafter collectively referred to as the 'Assessee Companies') to Wintex Pvt. Ltd. (Mauritius) - a company incorporated under the laws of Mauritius – in June 1999 (hereafter referred to as 'WIPL'). According to the AO, the shares in question were sold by the Assessee companies at a value lower than their correct worth as a devise to evade tax and this constituted undisclosed income of the Assessee Companies.

6. The second set of transactions involved sale of shares of HCL HDX

Holdings (Mauritius) Pvt. Ltd. (hereafter 'HCL HDX, Mauritius') – a company incorporated under the laws of Mauritius - by the Assessee Companies to another Mauritian company- Vama Sundari Investment (P) Ltd. (hereafter 'VSI').

7. Briefly stated the relevant facts necessary to consider the controversy are as under:-

7.1 SIPL, SNIPL and HCLC – the Assessee Companies were three companies belonging to the HCL Group and each of the said companies held substantial shares in HCL Consulting Limited which was at the material time an unlisted company.

7.2 In June 1999, SIPL, SNIPL and HCLC sold 41,00,000, 14,50,000 and 14,50,000 shares of HCL Consulting Limited respectively, to WIPL at a price of Rs. 50 per share. HCL Consulting Limited issued bonus shares and thereafter the shares were split. Resultantly, by November 1999, WIPL held 3,21,93,750 shares of HCL Consulting Limited. HCL Consulting Limited changed its name to HCL Technologies Ltd. in October 1999 and came out with a public offer in November 1999. The shares of HCL Technologies Limited were quoted at a price which was significantly higher than the value

at which the Assessee companies had sold the shares to WIPL.

7.3 The Assessee Companies had invested in a Mauritian Company namely HCL HDX, Mauritius in the year 1997. Investments were made with approval of the Reserve Bank of India. In September 1998, the Assessee companies divested their shares held by them in HCL HDX, Mauritius to VSI a Company incorporated under the laws of Mauritius.

7.4 HCL HDX, Mauritius held 50% shares in HCL Deluxe N.V. a Dutch Company. This company was in effect a Joint Venture between HCL HDX, Mauritius and Deluxe Corp. USA, which held the balance 50% equity in HCL Deluxe N.V. In April 1999 HCL HDX, Mauritius sold its stake in HCL Deluxe N.V. to Deluxe Corp. USA.

7.5 By an order dated 27th August 2001, this Court approved a scheme of amalgamation whereby SNIPL and HCLC amalgamated with SIPL w.e.f. appointed date – 1st April, 2000.

7.6 On 24th January, 2002 the premises of the SIPL and premises of certain directors and employees of HCL group of companies were searched under Section 132 of the Act. The warrants of search were issued in the name of the three Assessee Companies as well as HCL Technologies

Limited. Thereafter, notices under Section 158BC were issued to the three Assessee Companies even though SNIPL and HCLC had been dissolved earlier.

8. The Assessee companies had disclosed the transactions in question, namely the sale of shares of HCL Consulting Limited and HCL HDX, Mauritius to WIPL and VSI in their respective returns. It is not disputed that the shares were valued as per the prevalent CCI guidelines and the transfer was with due permission of the Reserve Bank of India.

9. The AO was of the view that both the transactions i.e. the sale of the shares held by the Assessee companies in HCL HDX, Mauritius to VSI as well as shares held by the Assessee companies in HCL Consulting Limited to WIPL were at a price significantly lower than their worth and this was a device to avoid taxation. The AO was of the view that the transaction of sale of shares of HCL consulting to WIPL was not made at Arms Length price. The AO held that the management of the Assessee Companies was aware that the shares of HCL Consulting Limited would be listed at a significantly higher price pursuant to the Initial Public Offer (IPO) that was on the anvil. Thus, the management entered into a device to avoid tax by selling the shares to an associated Mauritian entity at a significantly lower

price. The AO also found that WIPL had, after the IPO, sold the shares of HCL Technologies Ltd. (earlier known as HCL Consulting Limited) at a significantly higher price and in view of the Indo-Mauritian Treaty, had effectively avoided payment of capital gain tax. The AO further found that WIPL was substantially controlled by the brother of Shiv Nadar and thus, WIPL was an associate enterprise. According to the AO, the provisions of Section 92 of the Act would be applicable and would entitle the AO to notionally enhance the value of the shares sold in the hands of the Assessee Companies and levy tax accordingly.

10. Insofar as the second transaction is concerned, the AO held that the Assessee Companies had sold their shares to VSI as they were aware of the imminent transaction with Deluxe Corp. USA. The AO held that the understanding with Deluxe Corp. prompted the Assessee's company to sell *"their shares first to a Mauritius based company, whose control is with Shiv Nadar group and then part the ways by selling their shares in Joint Venture to M/s Deluxe Corporation of USA, thus avoiding the capital gain tax in India as further transaction will be between Mauritius based company and US based company"*.

11. Aggrieved by the block assessment order passed by the AO, the

Assessee -SIPL preferred an appeal before CIT(A). The Assessee, *inter alia*, contended that there was no jurisdiction for the AO to make an addition under the block assessment as the transactions were duly disclosed in the books of accounts and there was no question of any undisclosed income having been unearthed in the search operations. The Assessee further contended that after the search operations, the assessment for the Assessment Year 2000-2001 was completed under Section 143(3) of the Act and the capital gains as declared by the Assessee Companies was duly accepted.

12. The appeal preferred by the Assessee was disposed of by CIT(A) by an order dated 30th November, 2004. Insofar as the addition with regard to undisclosed income relating to the first transaction i.e. sale of shares by the Assessee companies to WIPL is concerned, the CIT (A) upheld the decision of the AO. However, insofar as the second transaction is concerned, the CIT (A) held that the AO had erroneously proceeded to treat the shares of HCL Deluxe N.V. as that of HCL HDX, Mauritius. The CIT (A) noted that the transaction relating to the sale of shares of HCL Deluxe N.V. to Deluxe Corp. USA were between two non-resident companies and thus, could not be brought to tax under the Act.

13. Aggrieved by the decision of the CIT (A) in upholding the AO's addition in respect of undisclosed income pertaining to the first transaction – sale of shares of HCL Consulting Ltd. to WIPL, SIPL preferred an appeal before the Tribunal (being IT(SS)A No. 411/Del/2004). The Revenue also impugned the order of CIT (A) insofar as the CIT(A) had deleted the addition made by the AO in respect of the second transaction – sale of shares held by the Assessee companies in HCL HDX Holdings, Mauritius to VSI.

14. The questions before the Tribunal were:

(i) Can a search be conducted and a Section 158BC notice be served on a non-existent company?

(ii) Can the assessment of undisclosed or regular income of HCLCL or SNIPL be done in the hands of the assessee?

(iii) Can the successor be at all assessed for a block period referable to the predecessor? When a regular assessment cannot be made in such a situation, can a block assessment be so made? Can there be block period at all for the companies which ceased to exist?

(iv) Are the conditions necessary for invoking Section 92 satisfied in the present case? Can the invocation of Section 92 which gives rise to notional income be classified as undisclosed income?

(v) Can a disclosed transaction give rise to undisclosed income? Can a disclosed transaction be re-assessed in a block period?

15. By the impugned order dated 24th March, 2006, the Tribunal dismissed the appeal preferred by the Revenue and allowed the appeal preferred by the Assessee. The Tribunal held that the income of the amalgamating companies namely, SNIPL& HCLC could not be brought to tax in the hands of SIPL, by applying provisions of Section 170(2) of the Act, as there was a clear contradiction between the provisions that Section 170(2) and Section 158BA read with Section 158B(a) of the Act. The Tribunal further held that there was no provision under the Act by which the Predecessor's income for a block period could be taxed in the hands of the Successor and held that there was a lacuna in the Act in this regard. The Tribunal also held that the provisions of Section 92 of the Act (as on the statute book at the material time) was not applicable as the transaction was one relating to a capital asset and the same could not be termed as a business transaction to attract the provisions of Section 92 of the Act.

16. The Tribunal also held that prior to the sale, valuation was done by Purushottam Bhutan and Co. CA on the basis of the guidelines issued by the Controller of Capital Issues (CCI). Provisional RBI approval dated 23rd

September was also obtained. Final approval was granted vide letter dated 23rd October, 1999. The shares were shown as "investments non-trading" in books of accounts of the Assessee Companies. The sales were disclosed in the returns of income filed by the assessee for the AY 2000-01. Thus the Tribunal held that the undisclosed income assessed in the present case does not fall within the domain of Chapter XIV-B as there had already been a disclosure of the transaction in the regular books of account maintained by the assessee, HCLCL and SNIPL and since such disclosure was already made in the returns filed prior to the search, the impugned addition is liable to be deleted being beyond the scope and ambit of Chapter XIV –B.

17. The Revenue has challenged the order dated 24th March, 2006 passed by the Tribunal on several grounds and according to the Revenue, several questions of law arise from the order of Tribunal.

18. We have heard the learned counsel for the parties. We propose to first examine one of the questions projected by the Revenue in these appeals viz., whether the 1TAT erred in law in holding that if there is a disclosure by the assessee in the regular return of income, then no assessment can be made in respect of such transactions in a block assessment as undisclosed income as a result of a search undertaken? We feel that this is the central issue in these

appeals. The answer to the said question will determine whether the other issues projected require to be examined.

19. In the regular assessments framed under section 143(3) of the Act, the AO accepted the transactions as disclosed by the Assessee Companies. It is also relevant to mention that the regular assessments were made subsequent to the search under Section 132 of the Act.

20. It is now well established that the provisions of block assessment are in addition to the provisions of regular assessment and are not intended to substitute the same. This Court in ***CIT v. Ravi Kant Jain: (2001) 250 ITR 141 (Del)*** stated the above principle as under:-

> "The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. Evidence found as a result of search is clearly relatable to sections 132 and 132A."

21. The Supreme Court in the case of ***Assistant Commissioner of Income-***

Tax and Anr. V. Hotel Blue Moon: (2010) 321 ITR 362 (SC)explained the scope of Chapter XIV-B of the Act as under:-

> "Chapter XIV-B provides for an assessment of the undisclosed income unearthed as a result of search without affecting the regular assessment made or to be made. Search is the sine qua non for the block assessment. The special provisions are devised to operate in the distinct field of undisclosed income and are clearly in addition to the regular assessments covering the previous years falling in the block period. The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. It is not intended to be substituted for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. Therefore, the income assessable in block assessment under Chapter XIV-B is the income not disclosed but found and determined as the result of search under Section 132 or requisition under section 132A of the Act."

22. It is not disputed that both the sets of transactions – the sale of shares of HCL Consulting in favour of WIPL and the sale of shares of HCL HDX, Mauritius to VSI - were duly disclosed by the Assessee Companies in their books of accounts.

23. It is also not the Revenue's case that the Assessee Companies had

received any consideration in excess of what had been duly disclosed by them. In other words, the transactions had been disclosed in the returns at the values at which they were effected.Thus, undisputedly, the Assessee Companies had not made any undisclosed gains. Clearly, the Assessee Companies could not be taxed on any notional income under Chapter XIV-B of the Act. The Tribunal held that as the Assessee Companies had duly disclosed the transaction in their regular returns of income prior to the search, no assessment could be made in respect of such transactions in a block assessment under Chapter XIV B of the Act. In these facts, we do not find any infirmity in the aforesaid view of the Tribunal and find no reason to interfere with the impugned order.

24. In view of the above, it is not necessary to decide other questions of law raised by the Revenue in ITA Nos. 1655/2006 and 1656/2006.The said appeals are, accordingly, dismissed. We clarify that all the questions of law raised in the said appeals are left open.

25. ITA 1105/200 relates to the penalty imposed by the AO which arises on account of additions made by the AO in block assessment. In view of our decision in ITA 1655/2006 and 1656/2006 above, this appeal is also dismissed.

26. ITA 427/2010 & 434/2010 arise out of the block assessments made in respect of SNIPL & HCLC on protective basis. As the impugned order dated 24th March, 2006 passed by the Tribunal in ITA 45/Del/2004 and 411/Del/2000 holding that the transaction in question were disclosed transactions and, therefore, could not have been subject matter of block assessment has been upheld, these appeals must fail and are, accordingly, dismissed.

27. No order as to costs.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JULY 30, 2015
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