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

\+ ITA 271/2022

PR. COMMISSIONER OF INCOME TAX -7 ..... Appellant

Through: Mr.Puneet Rai, Sr.Standing Counsel for the Revenue.

versus

RITES LIMITED ..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 18.08.2022

Present Income Tax Appeal has been filed challenging the Order dated 17th May, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.59/Del/2018 for the Assessment Year 2009-10. In the impugned order, the ITAT has held as under:-

"8. In cases where assessment has been completed u/s.143(3) and same is being sought to be reopened after the expiry of four years from the end of the relevant assessment year, the statute put fetters on the power of the Assessing Officer in terms of first proviso to Section 147 which provides that, where an assessment under sub-section (3) of section 143 or 147 has been made for the relevant assessment year, then no action shall be taken under section 147/148 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 the 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. Thus, the reopening in the aforesaid circumstances is permissible only when, firstly, any income chargeable to tax has escaped assessment by the reason of the failure on the part of the assessee to make return; or secondly, failure to disclose fully and truly all material facts necessary for the assessment. In so far as the first condition is concern, it is an undisputed fact and also accepted by the Assessing Officer that return of income u/s.139(1) was filed on 25.09.2009 and also revised return was filed on 03.03.2013 which is mentioned in the assessment order u/s.143(3) as well as in reasons also. In so far as second condition is concerned, that is, the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment, same has not been ascribed by the Assessing Officer in his reasons recorded. Nor is it so from the plain reading of reasons recorded. If the Assessing Officer has to validly assume jurisdiction after coming to his prima facie reason to believe that income any chargeable to tax has escaped assessment due to failure on the part of the assessee disclosed fully and truly all material facts, then he has to demonstrate such failure in his reasons and it should not be mere bald statement. Here in this case, the reasons itself speaks that all the points on which Assessing Officer had sought to raise in his reasons recorded were already disclosed in the P&L account or in the audit report and nothing has been found which was not disclosed which could lead to any inference of income chargeable to tax has escaped assessment. There was absolutely no failure on part of the assessee to disclose truly and fully all material facts necessary for assessment. The duty of the assessee is to disclose all the primary facts necessary for the assessment in his return of income and in the audited financial statements. Thereafter, the legal inference has to be drawn by the Assessing Officer. The proviso to section 147 puts embargo of time limit of four years from the end of the relevant assessment year where assessments have been done under section 143(3), if the twin conditions provided therein are not met. Thus, the said proviso is an explicit safeguard which prohibits the Assessing Officer from exercising the power to re-assess where the assessment has already been completed u/s. 143(3). If is there any over sight or

inadvertent mistake of the Assessing Officer in the original assessment proceedings which has been discovered by him later on reconsideration of same material, then it tantamount to 'change of opinion', more so in cases where the reopening is hit by first proviso to Section 147 (supra). In such cases, law does not permit the Assessing Officer to reopen a concluded assessment after expiry of 4 years from the end of the relevant assessment year like in the present case."

Learned counsel for the Appellant states that the ITAT has erred in quashing the initiation of proceedings under Section 148 of the Income Tax Act, 1961 ('the Act') as void *ab initio.* He states that the ITAT has failed to consider that the issues on which additions were made during reassessment proceedings were not even discussed in the original assessment order, hence it is not a case of change of opinion.

However, a perusal of the paper book reveals that in the present case, there is no allegation of lack of true and full disclosure on the part of the assessee. Further, both the assessment and reassessment orders were passed on the materials which are already on record. The Supreme Court in ***PCIT vs. L&T Ltd., (2008) 268 Taaxman. 390*** has held as under:-

".....".Whether on the facts and circumstances of the case, the Tribunal was correct in law in holding that the notice issued u/s 148 was not valid on the ground that Assessing Officer has not demonstrated the failure of the assessee in disclosing the material fact?"

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"2. The appeal as arises out of the judgment of the Income Tax Appellate Tribunal in which it was held that the notice of reopening which was issued beyond the period of 4 years from the end of the relevant assessment year, was invalid. We may reproduce the reasons recorded by the Assessing Officer for issuing such a notice :

"(i) It was seen from the records that while computing the deduction u/s 80-IA, certain pass through components like Fuel adjustment Charges (FAC), electricity duty, wheeling charges, grid support charges etc. have not been considered for arriving at the market value of the electricity.

(ii) For the purpose of claiming deduction u/s 80-IA, excess profit from the generation of electricity has been shown as against '16% return on investment' fixed by the Ministry of Power.

(iii) Various expenses like interest, commission, brokerage and corporate overheads were not debited to the separate Profit & Loss A/c. Further, sales and administrative expenditure is not proportionate to the expenditure debited in consolidated P&L A/c to the profit of 80-IA units, which has resulted in excessdeduction u/s 80-IA.

(iv) The assessee claimed deduction u/s 80-IA, 80HHB, 80HHBA, 80-HHC, 80HHE etc. However, exemption claimed u/s 80-IA was not reduced from other chapter VI-A deduction as per provisions contained in Section 80-IA.

(v) Deduction u/s 80-IA was wrongly claimed in respect of work on contract basis for various Govt. Agencies, which cannot be considered as infrastructure provider."

3. Perusal of the reasons recorded by the Assessing Officer would show that the Tribunal was perfectly correct in coming to the conclusion that the notice of reopening of assessment was invalid. From the reasons we gather that there was no element of lack of true and full disclosure on the part of the assessee, which resulted into any income chargeable to tax escaping assessment. The reasons clearly reveal that the Assessing Officer was proceeding on the material which was already on record. In the absence of the statutory requirement of income chargeable to tax have been escaped assessment due to the failure on the part of the assessee to disclose truly and fully all material facts been satisfied, the Tribunal correctly held that the notice of reopening of assessment was invalid. No question of law arises."

Keeping in view the facts of the present case, this Court is of the opinion that no substantial question of law arises for consideration. Accordingly, the present appeal is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 18, 2022
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