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

% **DECIDED ON: 29.08.2012**

\+ ITA 317/2012

COMMISSIONER OF INCOME TAX-II ..... Appellant
Through: Mr. N.P. Sahni, Sr. Standing Counsel.

versus

MOHAN CLOTHING CO. PVT. LTD. ..... Respondents
Through: Mr. S. Krishnan, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The revenue is in appeal against the order of the Income Tax Appellate Tribunal (in short "the Tribunal") where it allowed, without examining the merits, the assessee's appeal on the ground that the reasons for reopening were not supplied within six years from the end of the relevant assessment year.

2. The factual matrix before the Tribunal's decision is that the assessee was assessed under Section 143(3) of the Income Tax Act, 1961 (hereafter "the Act") for AY 2002-03 on 31.12.2004. On 27.3.2009, Addl. CIT Range-14, Mumbai received information that the assessee had used accommodation entries during the financial year 2001-02 in respect of

purchases from M/s Manoj Mills, Aastha Silk Industries and M/s Shree Ram Sales and Synthetics. Consequently, notice under Section 148 of the Act was issued, after recording the reasons in writing for re-assessment, and taking the necessary approvals. During the course of re-assessment proceedings, the Assessing Officer (AO) observed that the assessee had relied on accommodation entries from M/s Manoj Mills amounting to ₹22,11,176/-, from M/s Aastha Silk Industries amounting to ₹5,00,013/- and from Shree Ram Sales & Synthetics amounting to ₹11,88,338/-, with the total aggregating to ₹38,99,527/- on account of bogus transactions. These accommodation entries, the AO noted (in his order dated 15.12.2009), were made in lieu of cash payment or equivalent amount plus commission thereon to the entry operator. The AO was *inter alia* of the view that to correlate the sales, the purchase bills were prepared by the assessee by getting the bill book printed in the names of various firms. In conclusion the AO made an addition of the aggregate amount of ₹38,99,527/- on account of bogus transactions.

3. The CIT (A), by order 02.12.2010, besides rejecting the appeal on its merits, also dismissed the assessee's contention that the reassessment proceeding was invalid on the ground that it was initiated after the limitation period. In second appeal, the Tribunal without going into the merits, allowed the assessee's appeal on the ground that the reasons for reopening were not supplied within six years from the end of the relevant assessment year, and therefore the reassessment proceeding was liable to be quashed. In this regard, he took support from the decision of an earlier Division Bench of this Court in *Haryana Acrylic Manufacturing Co. v. Commissioner of*

Income Tax and Another, [2009] 308 ITR 38 (Delhi).

4. The impugned order, after reproducing certain extracts from *Haryana Acrylic* (supra), held as follows:

> "*A plain reading of the above exposition of law by the Hon'ble Jurisdictional High Court makes it clear that the issuance of the notice and the communication and furnishing or reasons would go hand in hand. The reasons are to be supplied to the assessee before the expiry of period of six years. If it has not been done validity u/s 148 could not be upheld. In this case, reasons were not supplied before the expiry of the six years from the end of the relevant assessment year. Under the circumstance, the reassessment in this case is bad in law, hence we quash the same.*"

5. The limited ground urged by learned Senior standing counsel for the Revenue Mr. N.P. Sahni was that there is no requirement in law that when a notice for reassessment under section 148 is issued, together with the notice, the assessee must also be served with the reasons for reopening assessment. He stated that the Supreme Court decision in *GKN Driveshafts* (India) Ltd. *vs Income Tax Officer and Ors.* (2003) 179 CTR SC 11, which clarified the procedural aspect of the law in relation to reopening assessment, did not direct any such condition. He further placed reliance *A.G.Holdings Pvt. Ltd. vs Income Tax Officer* [2012] 21 TAXMAN 34(Delhi). For the contention that issuance of notice, and not service of notice upon the assessee is a pre-condition for assuming jurisdiction, he placed reliance on two more decisions viz. *R.K. Upadhyaya v. Shanabhai P. Patel* [1987] 166 ITR 163 (SC).

6. Learned counsel for the assessee defended the impugned judgment, contending that since the notice under section 148 was served on the

assessee after the expiry of six years from the end of relevant assessment year, the Assessing Officer had lost jurisdiction to reopen assessment. Additionally, he contended that the requirement of furnishing "reasons to believe" to the assessee along with the notice, was also not met within the time prescribed i.e. six years from the end of the relevant assessment year.

7. This Court has considered the arguments of the parties. The decisions cited by the learned counsel for the revenue are exactly on the issue that arises in this case. The relevant provisions to the extent they are material, are reproduced below:

> *"147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, 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 this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*
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> ***
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> *"148. Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period…*
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> ***"*
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> *149 (1) No notice under section 148 shall be issued for the relevant assessment year,—*
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> *(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*

(b) if four years, but not more than six 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 one lakh rupees or more for that year.

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The Supreme Court emphasized the need to issue notice, within the prescribed period, in *R.K. Upadhyaya v. Shanabhai P. Patel* [1987] 166 ITR 163 (SC), in the following terms:

"Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitations, jurisdiction becomes vested in the Income-tax Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income-tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment. The High Court in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in [1964]53ITR100(SC) ."

In G.K.N. Driveshafts (supra), it was held that:

"[W]e clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order."

A.G.Holdings (supra) held that:

"There is no requirement in Section 147 or Section 148 or Section 149

that the reasons recorded should also accompany the notice issued under Section 148. The requirement in Section 149(1) is only that the notice under Section 148 shall be issued. There is no requirement that it should also be served on the assessee before the period of limitation. There is also no requirement in Section 148(2) that the reasons recorded shall be served along with the notice of reopening the assessment. The requirement, which is mandatory, is only that before issuing the notice to reopen the assessment, the Assessing Officer shall record his reasons for doing so. After the decision of the Supreme Court in GKN Driveshafts (India) Ltd. (supra) the Assessing Officer is duty bound to supply the reasons recorded for reopening the assessment to the assessee, after the assessee files the return in response to the notice issued under Section 148 and on his making a request to the Assessing Officer to that effect."

8. The decisions cited above point out the fallacy in the impugned order. *R.K. Upadhyaya* clarifies that serving of the notice is a pre-condition to making the assessment order under section 148. It is not the service of notice upon the assessee that confers jurisdiction in the Assessing Officer to reopen assessment; instead, his jurisdiction is derived from the conditions specified in section 147, viz. the existence of reasons to believe that income has escaped assessment. Thus, since the notice was issued within the six year limit prescribed under Section 149, i.e., on 27.3.2009, there is no infirmity with the assumption of jurisdiction by the AO even though the service of the notice was after the expiry of the six year period.

9. Secondly, *A.G. Holdings,* a decision of an earlier Division Bench of this Court, elucidates that there is no requirement under the Act, or under even the judicially laid down procedure to furnish the assessee with the "reasons to believe" on the basis of which reassessment proceedings under section 147 are intimated. The contentions of the assessee, in this regard, have no merit are thus rejected. The decision in *Haryana Acrylic* (supra),

being consistent with that in *G.K.N. Driveshafts* (supra), merely held that when reasons are sought, they should be supplied within reasonable time. In *Haryana Acrylic* the reasons were supplied more than three and a half years after they were sought. In the present case, however, the assessee filed his response to the notice under Section 148 on 10.4.2009. The record further reveals that the reasons recorded for reopening were made available to the assessee company on 31.9.2009. The reassessment order was made on 15.12.2009, and it is clear from the same that the assessee had adequate notice of the "reasons recorded", and had presented objections against it. It is clear that the opportunity that was conceived in *G.K.N. Driveshafts* to be given to assessees before reassessment was satisfactorily accorded to the assessee in the present case. Hence, there was no shortcomings in the reassessment proceedings.

10. For the above reasons this Court is of the opinion that the Tribunal's order cannot be sustained. The same is accordingly set aside. The matter is remanded back to the Tribunal, which shall consider assessee's appeal on its merits and decide in accordance with law.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

AUGUST 29, 2012