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

\+ ITA 643/2011

CIT ..... Appellant
Through Mr. Amit Shrivastava, Advocate for Mr. Kamal Sawhney, Sr. Standing Counsel.

versus

INDIA TERMINAL CONNECTOR SYSTEM LTD. ..... Respondent
Through Dr. Rakesh Gupta, Mr. Ashwani Taneja & Ms. Rani Kiyala, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

O R D E R

% 21.03.2012

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961(Act, for short) in the case of India Terminal Connector System Limited pertains to assessment year 2001-02. Having heard learned counsel for the parties and having perused the impugned order dated 28th September, 2010 passed by the Income Tax Appellate Tribunal (tribunal, for short), we formulate the following substantial question of law:

> "Whether the Income Tax Appellate Tribunal was right in setting aside reassessment proceedings under Section 147/1487 of the Income Tax Act, 1961 on the ground that the Assessing Officer has failed to prove and establish that the assessee had failed to disclose fully and truly material facts at the time of the original assessment?"

2. Having heard learned counsel for the parties on merits, we proceed to pronounce our decision.

3. The assessee is a company and for the assessment year in question had filed return on 25th October, 2001 showing income of Rs.38,73,870/-. An assessment order under Section 143(3) dated 9th December, 2002 was passed determining, the total income at Rs.39,73,739/. Pursuant to the first appellate order and after giving appeal effect the income was revised to Rs.39,47,552/-.

4. Subsequently, a notice under Section 148 of the Act dated 28th March, 2008 was issued and the assessee filed a letter dated 10th June, 2008 stating that the original returned filed may be treated as the return filed in response to the said notice. The allegation against the assessee was that they had received accommodation entries of Rs.42,03,250/- as per information received from the Investigation Wing. The reasons recorded by the Assessing Officer have been mentioned in the order passed by the tribunal and read as under:-

> "1. In this case, the assessment was completed u/s 143(3)(i) on 25.10.2001 as a total income of Rs.39,73,740/- against the returned income of Rs.3873870/-.
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> 2. Certain investigations were carried out by the Directorate Income Tax (Investigation)-I, New Delhi

in respect of the bogus/accommodation entries provided by certain individuals/companies. The name of the assessee company figures as one of the beneficiaries of these alleged bogus transactions given by the Directorate after making the necessary enquiries. The name and other particulars of the above said assessee are as under:-

Name of the assessee/ beneficiary	Name of the bank of beneficiary	Name of the operator	Instrument No.	Operator's No. and Bank	Date on which entry taken	Amount (in Rs.)
M/s India Terminal Connector Systems Ltd.	OBC, GT Road	Sekhawati Finance Pvt. Ltd.	21154	1200235, Innovative Wazirpur	25-Jan-01	50000
-do-	-do-	Chintpuni Credits		50058, SB DG	16-Jan-01	50000
-do-	-do-	Particular Manage Finlease Pvt. Ltd.		50050, SB DG	16-Jan-01	50000
-do-		Profan Finance & Investment Pvt. Ltd.	269453	5035, Indian Bank, Ch. Chowk, Delhi	15-Mar-01	12014
-do-		Teem Metals Ltd.	900116	2789 Vijaya Bank, Ram Nagar	13-Apr-00	50050
-do-		Dinanath Luhariwala Spinning Mills Pvt. Ltd.	7461	1200217, Innovative Wazirpur	14-Mar-01	50075
-do-	OBC	M .V. Marketing Pvt. Ltd.	916209	567, Feedrer Karol Bagh	14-Mar-01	50060

In view of the above information, it is evident that the assessee company has introduced its own

> unaccounted money in its bank by way of accommodation entries. Therefore, I have reasons to believe that the income amounting to Rs.42,03,250/- has escaped assessment, which is required to be assessed to tax under the provisions of section 147 of the IT Act, 1961."

5. By order dated 18th December, 2008, the Assessing Officer computed the income of the assessee at Rs.81,50,800/-. He made an addition of Rs.42,03,250/- on account of the said accommodation entries. In the first appeal, the assessee challenged the reopening on the ground that jurisdictional pre-conditions were not satisfied. The CIT(Appeals) did not agree with the said contention and upheld the reopening. However, he deleted the addition on merits and held that the Assessing Officer was free to take action against the share holders.

6. Revenue preferred second appeal before the tribunal in ITA No. 2338/Del/2010. The assessee preferred cross-objection, which was registered as C.O. No. 194/Del/2010.

7. By the impugned order, the tribunal has examined the cross-objection and has allowed the same. It does not deal with the appeal of the Revenue against the order of the CIT(Appeals) deleting the addition on merits. Therefore, we are only required to examine whether or not the reasoning given by the tribunal to

quash the reassessment proceedings on the ground th... jurisdictional pre-conditions are not satisfied, is correct or not. The exact reasoning given by the tribunal reads as under:-

> "6.1 In the present case also reopening has been done on the basis of information received from Investigation Wing. As referred above the Hon'ble Delhi High Court has observed that the condition that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment has got to be satisfied, and the Assessing Officer has to prove and establish that assessee has failed to disclose fully and truly material facts necessary for the assessment and he has to state so in the reasons records. In the present case also there is no whisper of the allegation in the reasons recorded that the assessee has failed to disclose fully and truly all material facts necessary for assessment. Original assessment was completed u/s 143(3) and shares application money were duly reflected. Hence, on similar basis, adhering to the doctrine of staire decises, we hold that assessment is bad ad-initio in as much as necessary ingredients of reopening were not there."

8. We have already reproduced the reasons given by the Assessing Officer. The reasons given by the Assessing Officer are clear and specific. The investigation had been conducted and on the basis of information received, the Assessing Officer formed a prima facie or tentative opinion that the assessee had received bogus credit entries of Rs.42,03,250/- from the parties mentioned in the table. The reasons mention the name of the operator, the

instrument number, the bank account and the date on which th entry was made. The amount involved in respect of each entry was mentioned. The Assessing Officer has further recorded that the assessee company had introduced its unaccounted money in the bank by way of accommodation entries. In view of what was recorded and stated in the "reasons to believe", it is not possible to agree with the findings recorded by the tribunal that the Assessing Officer had failed to state/record that the assessee had not made true and full disclosure of the material facts and the said factum was not mentioned and cannot be elucidated from the reasons. Reasons recorded by the Assessing Officer have to be read as a whole in entirety and in a holistic manner. Mere reproduction of the language of the Section is not sufficient. We have to read and understand the reasons recorded and whether on the basis of said reasons the Assessing Officer had come to the conclusion or drawn an inference that the assessee had not made full and true disclosure of material facts. As per the "reasons to believe" mentioned above, the Assessing Officer had come to a prima facie or a tentative opinion that the assessee had introduced his unaccounted money in the form of accommodation entries. The name of the operator, who had given the accommodation entry and the

amount thereof is mentioned. At this stage, a final finding conclusion is not required to be recorded by the Assessing Officer. Recording of reasons is for initiation of the reassessment proceedings, which is the starting point. Referring to the said aspect in ***AGR Investment Limited versus Additional Commissioner of Income Tax and Another***, (2011) 333 ITR 146 (Del.), it has been observed that the phrase "reasons to believe" would mean the cause or justification for the Assessing Officer to know or suppose that income had escaped assessment. It does not mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. At that stage, the final outcome of the proceedings is not relevant. The only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether or not the material would conclusively prove escapement is not the aspect or concern at that stage but this aspect has to be examined subsequently in the reassessment proceedings. Further, we have to ascertain whether the Assessing Officer had applied his mind to the information and independently arrived at the belief on the basis of the material which was produced before him. In ***AGR Investment Limited*** (supra), the Division Bench had referred to an earlier

decision in ***Sarthak Securities Company Private Limited versu*** ***ITO***, 174 (2010) DLT 161(DB). In the said case also reassessment proceedings were initiated on the basis of information received from Directorate of Investigation regarding bogus/accommodation entries. The decision in ***Sarthak Securities Company Private Limited*** (supra) was elucidated and explained.

9. We may note here that the information provided by the Directorate of Income Tax Investigation was not available with the Assessing Officer during the course of the first/original proceedings. The said information constitutes new and fresh evidence on which the Assessing Officer could have drawn inference and formed a prima facie opinion whether or not to initiate reassessment proceedings. In the case of ***AGR Investment Limited*** (supra), the Division Bench in the penultimate paragraph has recorded as under:-

> "**23.** The present factual canvas has to be scrutinized on the touchstone of the aforesaid enunciation of law. It is worth noting that the learned counsel for the petitioner has submitted with immense vehemence that the petitioner had entered into correspondence to have the documents but the Assessing Officer treated them as objections and made a communication. However, on a scrutiny of the order, it is perceivable that the authority has

passed the order dealing with the objections in a very careful and studied manner. He has taken note of the fact that the transactions involving Rs. 27 lakhs mentioned in the table in annexure P-2 constitute fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income. The Assessing Officer has referred to the subsequent information and adverted to the concept of true and full disclosure of facts. It is also noticeable that there was specific information received from the office of the Director of Income-tax (Inv-V) as regards the transactions entered into by the assessee-company with a number of concerns which had made accommodation entries and they were not genuine transactions. As we perceive, it is neither a change of opinion nor does it convey a particular interpretation of a specific provision which was done in a particular manner in the original assessment and sought to be done in a different manner in the proceeding under section 147 of the Act. The reason to believe has been appropriately understood by the Assessing Officer and there is material on the basis of which the notice was issued. As has been held in Phool Chand Bajrang Lal [1993] 203 ITR 456 (SC), Bombay Pharma Products [1999] 237 ITR 614 (MP) and Anant Kumar Saharia [1998] 232 ITR 533 (Gauhati), the court, in exercise of jurisdiction under article 226 of the Constitution of India pertaining to sufficiency of reasons for formation of the belief, cannot interfere. The same is not to be judged at that stage. In SFIL Stock Broking Ltd. [2010] 325 ITR 285 (Delhi), the Bench has interfered as it was not discernible whether the Assessing Officer had applied his mind to the information and independently arrived at a belief on the basis of

material which he had before him that the income had escaped assessment. In our considered opinion, the decision rendered therein is not applicable to the factual matrix in the case at hand. In the case of Sarthak Securities Co. Pvt. Ltd. [2010] 329 ITR 110 (Delhi), the Division Bench had noted that certain companies were used as conduits but the assessee had, at the stage of original assessment, furnished the names of the companies with which it had entered into trans- actions and the Assessing Officer was made aware of the situation and further the reason recorded does not indicate application of mind. That apart, the existence of the companies was not disputed and the companies had bank accounts and payments were made to the assessee-company through the banking channel. Regard being had to the aforesaid fact situation, the court had interfered. Thus, the said decision is also distinguishable on the factual score."

10. Recently this Bench had an occasion to deal with this question in ***Rajat Export Import India Private Limited versus Income Tax Officer***, W.P. (C) No. 8341/2011 decided on 18th January, 2012. This Court after referring to decisions in the field, elucidated and expressed the ratio in the following words:-

"11. In the view we have taken as above, it is not considered necessary to examine the statement of Vishal Aggarwal to find out whether the assessee has been implicated therein in any manner as being a recipient of accommodation entries. Nor do we dispute the contention taken before us by the learned counsel for the assessee that the validity of the reopening of the assessment should be judged only with reference to the reasons recorded by the Assessing Officer

> under Section 148(2) at the time of issue of notice of reopening and any other material sought to be relied upon later, with a view to strengthening or improving the reasons, cannot be looked into by the Court. That contention is sound and is supported by ample authority but it does not apply to the present case. In the present case it cannot be disputed at all that the material present before the Assessing Officer at the time of recording reasons for reopening the assessment did show a link between M/s. Shivam Softech Ltd., described as an entry provider, with the petitioner herein. Not only was there a link between the two names, but the material also disclosed the date on which the entry was taken, the cheque or DD number, the name of the bank and branch and the account number. With such precise material before the Assessing Officer, the existence of which is beyond challenge, it can hardly be said that the Assessing Officer could not have had even a prima facie belief that income chargeable to tax had escaped assessment in the hands of the assessee for the assessment year 2004-05."

11. In the said judgment, the decision in the case of ***Signature Hotels (P) Ltd. vs. Income Tax Officer*** *(2011) 338 ITR 0051* decided on 21st July, 2011 by one of us (Sanjiv Khanna, J.) was distinguished and the factual differences were pointed out. In view of the aforesaid position, we answer the question of law mentioned above in negative, i.e., in favour o f the Revenue and against the assessee. The appeal is accordingly allowed.

12. At this stage, learned counsel for the assessee submits that the matter has to be considered by the tribunal on merits as the

addition was deleted by the CIT(Appeals). This is correct. Learned counsel for the assessee further submits that one of the conditions raised by the assessee was that there was no valid approval under Section 151 of the Act and the said aspect has not been examined by the tribunal as they had decided the appeal as noticed above on a different contention/argument. It will be open to the tribunal to examine the question whether or not there was a valid approval under Section 151 of the Act and decide the appeal of the Revenue on merits. We clarify that we have not expressed any opinion either way on the said two aspects. To cut short the delay, it is directed that the parties will appear before the Additional Registrar of Tribunal on 30th April, 2012, when a date of hearing will be given.

SANJIV KHANNA, J.

R.V. EASWAR, J.

MARCH 21, 2012
VKR