THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.05.2010

+ ITA 700/2010 and 701/2010

COMMISSIONER OF INCOME TAX … Appellant

-versus-

SIL INVESTMENTS LTD. ... Respondent

Advocates who appeared in this case:
For the Appellant : Ms Suruchi Aggarwal and Mr Anish Kr
For the Respondent : Ms Kavita Jha

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE V.K. JAIN

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

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. These appeals are directed against the common order dated 11.09.2009 passed by the Income Tax Appellate Tribunal in ITA No.2769/Del/2009 and 2770/Del/2009, pertaining to the Assessment Years 2001-02 and 2002-03 respectively. An identical issue had been raised before the Tribunal in both these matters. The issue was with regard to the validity of the assessment made by the Assessing Officer under Section 143/147 of the Income Tax Act, 1961 on account of the challenge to the invocation of the provisions of Section 147 of the Act for re-opening of the assessments which had been completed earlier.

2. It is an admitted position that the original assessments had been completed prior to four years of their reopening and, therefore, the notices under Section 148 could only be issued by invoking the proviso to Section 147 of the Income Tax Act, 1961. The said proviso makes it clear that no case can be re-opened after four years from the end of the relevant assessment year unless there is any income chargeable to tax which has escaped assessment for such assessment year, *inter alia* by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year.

In the present case, what has happened is that after the original assessments were made, an amendment to Section 80 HHC was brought about by way of Taxation Laws (Amendment) Act, 2005 with retrospective effect from 01.04.1998. In terms of this amendment, certain conditions were to be fulfilled for allowability of the deduction under Section 80HHC in respect of the Duty Entitlement Pass Book scheme where the turnover of the assessee was more than Rs 10 crores. It is also an admitted position that these conditions were not there in the relevant section at the time when the assessee filed the return or even when the original assessments were made. It was, therefore, the contention of the assessee that it could not have furnished details or disclosed facts indicating fulfillment of such legal conditions which were not even applicable on the date on which the return was filed and on which the original assessments were completed. It is only on the basis of the subsequent amendment which has been introduced with

retrospective effect that the Revenue has sought to invoke the provisions of Section 147 for the purposes of re-opening of the assessments.

3. The Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal agreed with the submission made by the assessee and held the invocation of Section 147 to be invalid. The re-assessments under Section 147/148 were set aside on this ground.

4. We have heard the counsel for the Revenue and have also examined the orders passed by the authorities below. It is clear that for invoking the proviso to Section 147 beyond the period of four years, there must be failure on the part of the assessee to either make a return under Section 139 or in response to a notice under Section 147/148 or to disclose fully and truly all material facts necessary for the assessment for that assessment year. Insofar as the filing of the return is concerned, that is not in dispute and, therefore, the focus is entirely on whether the assessee had failed to disclose fully and truly all material facts necessary for the assessment. The Tribunal, on an examination of the material on record, concluded that all the relevant facts were available on record and that it could not be said that at the time when the assessee filed the return, he had failed to disclose fully and truly all material facts necessary for the assessment because the amendment which was introduced retrospectively was not there at all. The Tribunal also observed, and in our view rightly so, that the law cannot contemplate the performance of an impossible act. It was not expected of the assessee to foresee or forecast a future amendment which

was to be brought into effect retrospectively. Therefore, The Tribunal has rightly concluded that the proviso to Section 147 could not be invoked merely because there was an amendment in the future which was introduced retrospectively and covered the period in question. The Tribunal has correctly appreciated the law and applied the same to the undisputed facts. We see no reason to interfere with the impugned order as no substantial question of law arises for our consideration. However, we make it clear that we have only examined the jurisdictional issue qua validity of the Section 147 proceedings and have not examined the merits of the matter.

The appeals are dismissed.

(BADAR DURREZ AHMED, J)
JUDGE

(V.K. JAIN)
JUDGE

MAY 07, 2010
'bg'