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

\+ ITA 769/2010

THE COMMISSIONER OF INCOME TAX-IV ..... Appellant
Through Mr. Sanjeev Sabharwal, sr. standing counsel.

versus

DEEPAK KNITS AND TEXTURISE PVT. LTD ..... Respondent
Through Mr. R.M. Mehta, Advocate.

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

O R D E R

% 29.03.2012

Having heard learned counsel for the parties in this appeal under Section 260A of the Income Tax Act, 1961 (Act, for short), which pertains to the assessment year 2001-02, we formulate the following substantial question of law:-

> "Whether the Income Tax Appellate Tribunal was right in quashing the proceedings under Section 147/148 of the Act on the ground that the jurisdictional pre conditions are not satisfied?"

2. As we have heard learned counsel for the parties, we proceed to pronounce our decision on the aforesaid substantial question of law.

3. The respondent-assessee is a company and for the assessment year in question, an assessment order under Section 143(3) of the Act was passed on 24th January, 2003. The Assessing Officer while

passing the said assessment order had recorded as under:-

> "From the perusal of the balance sheet, it is seen that an addition of Rs.30,00,000/- has been made to its share capital during the year under consideration. Apart from the above, the company has also raised loan and advances from Rs.21,91,288/- to Rs.85,70,860/- in order to verify the genuineness of these transactions made by the assessee company for the above year, the A.R. vide order sheet dated 22.11.2002 was requested to furnish documentary evidence to this regard. Necessary confirmations alongwith the copy of documents have been filed by the A.R. in respect of the above transactions made, which have been examined and placed on record. Expenses debited to P & L A/c have also been test checked from the books of accounts produced."

4. Subsequently, the Assessing Officer vide reasons recorded on 24th August, 2006, issued a re-assessment notice under Section 148 of the Act. For the sake of convenience, the "reasons to believe" recorded by the Assessing Officer are reproduced below:-

> "Addl. CIT, Range 10, New Delhi has forwarded a letter dated 19.07.2006 with CIT, Delhi-IV New Delhi letter N.CIT-IV/S &S/200/07/814 dated 28.06.2006 enclosing a list of accommodations entry and beneficiaries pertaining of assessee's of range-10 of New Delhi charge with direction to the AO to Act upon immediately.
>
> The name and other particulars of the above said Assessee are as under:-

SI. No. In the	Name of the assessee/beneficiaries	Name of Bank of the Assessee	Name of The operator	Operator Account No.	Date of entry

list					
87	Deepak Knits & Texturise (P) Lt.	Canara Bank east of Kailash	Star Garments P. Ltd.	2258-Jai Laxmi Coop Bank	29.03.01
88	Deepak Knits & Texturise (P) Lt.	Canara Bank east of Kailash	Manohar Lal Manish Kumar	356- Jai Laxmi Coop Bank	
89	Deepak Knits & Texturise (P) Lt.	Canara Bank east of Kailash	Manju Agencies	2258-Jai Laxmi Coop Bank	30.03.01
90	Deepak Knits & Texturise (P) Lt.	Canara Bank east of Kailash	Star Garments P. Ltd.	3150-Jai Laxmi Coop Bank	30.03.01
91	Deepak Knits & Texturise (P) Lt.	Canara Bank east of Kailash	Manju Agencies	2258-Jai Laxmi Coop Bank	30.03.01

These transaction pertains to the period for the F.Y. 2000-01 relevant Assessment Year 2001-02. Assessment for the Assessment year was completed u/s 143(3) on 24.01.2003 on an income of Rs.247203 and the period falls beyond four year, in which the AO cannot issue notice u/s 147/148 of the Income Tax Act, 1961 of his/her own without the approval of higher authorities.

After verifying the assessment records, the information received from the DG (Inv.) through CIT, Delhi-IV New Delhi I have reason to believe that the assessable income has escaped the assessment to the tune of Rs.23,41,827/- and action is required to be taken under the provisions of section 147/148 of the Income Tax Act, 1961.

> Necessary approval for the issue u/s 148 may pleased be accorded"
>
> (emphasis supplied)

5. The assessee objected to the re-assessment proceedings by filing objections, which were rejected vide order dated 14th December, 2007. Thereafter, the Assessing Officer passed an assessment order dated 26th December, 2007 making addition of Rs.75,00,000/- as income from undisclosed sources by applying Section 68 of the Act. He held that the shareholders, in fact, were merely accommodation entry providers and, therefore, the entire share capital of Rs.30,00,000/- and the share premium of Rs.45,00,000/- were income from undisclosed sources. We may, however, note that it is a contention of the assessee that the entries on account of share capital was only to the extent of Rs.15,00,000/-, but addition made was for Rs.75,00,000/-. This aspect/question is not required to be decided for the present order.

6. In the first appeal, the assessee did not succeed and the addition was sustained. Challenge to the reopening was also not accepted.

7. Assessee accordingly filed second appeal before the Income Tax Appellate Tribunal (tribunal), which has been allowed by the impugned order dated 27th February, 2009. The tribunal noticed that the present case is covered by the first proviso to Section 147(1) of the Act and held that the re-assessment proceedings could not have been

initiated by the Assessing Officer as there was no failure on the part the assessee to make full and true disclosure. The tribunal has held that in the "reasons to believe" the Assessing Officer had not specifically mentioned that there was failure or omission on the part of the assessee to make full and true disclosure of all material facts and, therefore, the said jurisdictional pre condition was not satisfied in the present case. For the sake of convenience, we are reproducing the paragraph 9 of the order passed by the tribunal, which is relevant and gives out the reasoning adopted and given by the tribunal:-

> "9. A perusal of the reasons recorded by the AO for reopening the assessment for the year under consideration as given above shows that there was no allegation made by the AO about escapement of income as a result of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. As per the first proviso to Section 147, an assessment completed u/s 143(3) cannot be reopened after the expiry of four year 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 disclose fully and truly all material facts necessary for his assessment for that year. In the case of ITO Vs. Lakhmani Mewal Das—103 ITR 437 Hon'ble Supreme Court has held that both the conditions mentioned in Section 147 viz. the non-disclosure of material facts fully and truly on the part of the assessee and the escapement of the assessable income on that account must coexist to confer jurisdiction on the ITO to issue the notice u/s 148. In the case of Dhanraj Singh & co. Vs. CIT & Another—132 CTR 323, Hon'ble

> Patna High Court has held that there being no allegation whatsoever either in the show cause notice or in the reasons recorded that there was any failure on the part of the assessee to disclose fully and truly all material facts, initiation of reassessment proceedings after a period of four years would be invalid. In the case of Kaira District Cooperative Milk Producers Union Ltd. Vs. CIT—216 ITR 371, Hon'ble Gujarat High Court has held that where in the reasons recorded for initiating the proceedings u/s 147, there is no mention about the satisfaction of the Assessing Officer or the formation of belief as to the escapement of income owing to the failure on the part of the assessee to disclose the material facts necessary for assessment, issue of notice u/s 148 would be invalid."

8. We have quoted above the reasons to believe recorded by the Assessing Officer. In the underline portion/reasoning, it has been stated that that the Assessing Officer after verifying the assessment records and information received from the Director General (Investigation) through CIT, Delhi-IV, had come to the conclusion that the assessable income had escaped assessment. The earlier portion of the assessment order refers that the information, which was furnished to the Assessing Officer and supplied by the Additional CIT, Range-10, New Delhi. The "reasons to believe" refer to the information i.e. a list of accommodation entries provided and name of the beneficiaries was furnished.

9. Mere reproduction of the language of the proviso and

observation by the Assessing Officer that there was failure or omissi on the part of the assessee to disclose fully and truly all material facts is not necessary. It has to be examined whether the Assessing Officer had drawn an inference or given a finding that there was omission or failure on the part of the assessee to disclose fully and truly material facts. The requirement is that there should be full and true disclosure of the material facts before the Assessing Officer. In the present case, the tribunal has not referred to the letter dated 19th July, 2006 written by the Additional CIT and the information, which was enclosed with the said letter. What was the nature and character of the said information has not been considered and examined by the tribunal. This was required to be considered in view of what has been stated in underlined/emphasized paragraph of the "reasons to believe" wherein it has been observed that the Assessing Officer had examined the information received from the Director General (Investigation). This can be and should be ascertained by referring to the reasons recorded and if required and necessary from the document/material mentioned. Further, at the stage of initiation, only a prima facie or tentative view is required and final conclusion/decisiveness is not mandated. The requirement is that the tentative view should not be based on mere suspicion. In case accommodation entries were provided, then the

material facts stated by the assessee would not be true. They wou not meet the condition "fully". In this connection, we reproduce the observations of the Supreme Court in ***Income-Tax Officer, Cuttack and Others Vs. Biju Patnaik*** *(1991) 188 ITR 247*:-

> "It is undoubtedly true that the notice does not prima facie disclose the satisfaction of the two conditions precedent enjoined under section 147(a), but in the counter affidavit filed by the Income tax Officer in the High Court, he stated all the material facts. The respondent had inspected the record and the record also bears out the existence of the material facts. The proceedings drawn up which are abstracted earlier also show that the Income tax Officer had applied his mind to the fact on record and was prima facie satisfied that the reopening of the assessment for the assessment year 1957-58 was needed due to those stated facts. Thus, though ex facie the notice does not disclose the satisfaction of the requirement of section 147(a), from the record and the averments in the counter affidavit, it is clear that the Income tax Officer had applied his mind to the facts and, after prima facie satisfying himself of the existence of those two conditions precedent, reached the conclusion for reopening the assessment. It is settled law that, in an administrative action, though the order does not ex facie disclose the satisfaction by the officer of the necessary facts if the record discloses the same, the notice or the order does not per se become illegal."

10. Initially the onus is on the Revenue to satisfy and show that the jurisdictional pre-conditions for reopening are satisfied in a case. It has also to be shown and established by

the Revenue that the Assessing Officer had duly applied his mind a reached an opinion on the basis of the information and material that there was failure or omission on the part of the assessee to make full and true disclosure of all the material facts. This aspect is required to be examined and gone into by the tribunal and only on being satisfied, if necessary after scrutinizing the record, hold that the jurisdictional pre conditions are satisfied and the reassessment proceedings can be treated as valid. When required Revenue should produce the original records before the tribunal to disclose and show that the requirement is satisfied. In the present case the tribunal has not examined and dealt with the issue/question as mandated and required by the section and judicial pronouncements. It will be, therefore, appropriate if the tribunal examines the material/documents, which were available before the Assessing Officer and then reach a finding whether there was failure or omission on the part of the assessee to make full and true disclosure of all the material facts and examine other issues/aspects relating to jurisdictional pre conditions.

11. We may also note that the learned counsel for the assessee has raised several other contentions and that reopening otherwise was not justified and in accordance with law. The assessee will be entitled to raise all contentions before the tribunal.

12. In view of the aforesaid, the substantial question of la mentioned above, is answered in negative i.e. in favour of the Revenue and against the assessee and an order of remit is passed to the extent indicated above.

To cut short the delay, the assessee will appear before the Assistant Registrar of the Tribunal on 14th May, 2012, when a date of hearing will be fixed.

SANJIV KHANNA, J.

R.V.EASWAR, J.

MARCH 29, 2012
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