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

Date of Decision: December 18, 2014

+ ITA 769/2014
COMMISSIONER OF INCOME TAX -9

..... Appellant

Through: Mr.Rohit Madan, Sr.Standing
Counsel with Mr.Ruchir Bhatia,
Advocate

versus

NARAIN DASS TANEJA

..... Respondent

Through: Mr.Salil Aggarwal and Mr.Prakash
Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act' in short) pertains to assessment year 2004-05. The Income Tax Appellate Tribunal (Tribunal, for short) by the impugned order dated 14.08.2014 has allowed the appeal of the respondent assessee, an individual, and has quashed the reassessment proceedings on the ground that the jurisdictional preconditions specified in Section 147 of the Act were not satisfied for two reasons; firstly the assessee had made full and true



disclosure of material facts that he had made investment of Rs.1,66,23,750/- in the share capital of a company namely M/s Ishwar Dass Sahni & Brothers Ltd. Further this fact was raised and examined during the course of the original assessment proceedings and informed to the Assessing Officer in response to his query/questionnaire dated 17.05.2006. The Tribunal in this connection has quoted reply given by the assessee to question No.4 before the original assessment order was passed.

3. Learned Senior Standing Counsel for the Revenue does not dispute the said position but submits that it appears that the aforesaid investment was not reflected in the books of M/s Ishwar Dass Sahni & Brothers Ltd.

4. The aforesaid submission does not carry any weight and is without substance because this is not the reason recorded by the Assessing Officer before issue of notice under Section 148 of the Act. The reasons recorded by the Assessing Officer for issue of notice under Section 148 of the Act read as under:-

“Reasons recorded u/s 147 of the I. T.Act, 1961

1. *Unexplained investment*

The assessee filed return of income declaring loss of Rs.6,21,629!- for assessment year 2004-05 on 01.11.2004.



The assessment in this case was completed u/s 143(3) on 17.11.2006 at an income of Rs.6,21,629/-.

It was observed from the records that the assessee has invested as share capital a sum of Rs.1,66,23,750/- in M/s Isher Dass Sahni and Bros. Pvt. Ltd. But the accounts of the assessee did not reflect this investment and therefore had to be added in the Income of assessee as unexplained investment u/s 69 however, the above point was not taken in consideration while framing the assessment.

2. *Recommendation*

In view of the above facts, I have reason to believe that the income of the assessee, Sh. Narain Dass Taneja has escaped assessment within the meaning of section 147 of the I.T. Act 1961 to the tune of Rs.1,66,23,750/- for assessment year 2004-05 by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. "

5. When we read the aforesaid grounds or reasons, it is apparent that the Assessing Officer had proceeded on the basis that the respondent assessee had not reflected investment of Rs.1,66,23,750/- in his books and, therefore, addition under Section 69 of the Act was warranted. The Assessing Officer did not proceed or record the reason that M/s Ishwar Dass Sahni & Brothers



Ltd. had not recorded this investment by the respondent assessee in their books of accounts. The plea now taken by the Revenue is contrary to the reasons recorded.

6. In the present case, the return of income originally filed was made subject matter of regular assessment under Section 143(3) dated 17.11.2006. In the course of original assessment proceedings as recorded and held by the Tribunal, queries with regard to investment were raised by the Assessing Officer and reply and submissions were made by the assessee. The Tribunal has also recorded that the records of the Assessing Officer were incomplete and some papers were missing. However, it has given a categorical finding that the assessee had disclosed the factum of investment of Rs.1,66,23,750/-. The present case was reopened after 4 years of the end of the assessment year in which return of income was filed and, therefore, the reopening must also satisfy the additional requirement that the assessee had failed to make full and true disclosure of material facts. In the reasons to believe, it is recorded that the assessee had not made full and true disclosure because he had not disclosed the investment of Rs.1,66,23,750/- and, therefore, Section 69 of the Act should have been invoked. The finding of the Tribunal is that the assessee had made this disclosure at the time of original assessment by



responding to question No.4. The answer given by the assessee to question

No. 4 reads :-

"Q.No.4. The assessee has not made any investment in immovable properties during the year under consideration. Further, the assessee is submitting herewith details of investment made in unquoted shares in the following companies :

Name of Company	No. of shares	Amount
a) Deluxe Properties & Ind. Ltd.	300	3000.00
b) Isherdas Sahni & Bros.Pvt.Ltd.	2500	16623750.00

Regarding investment in 2500 shares of M/s Isherdas Sahni & Bros. Pvt.Ltd., the assessee has already submitted the relevant details before your goodself in assessment proceedings for assessment year 2003-04."

The said factual position is not disputed. The reason to believe, therefore, is factually incorrect and without foundation. In fact, they were contrary to the record and ignore the query raised during the original assessment and answered.

7. In view of the aforesaid factual matter, we do not see any reason to interfere with the impugned order and the appeal is accordingly dismissed.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

DECEMBER 18, 2014/km