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

% ***Judgment delivered on: 29.01.2025***

\+ W.P.(C) 4277/2022 & CM APPL. 33753/2022 (ADDL. DOCUMENTS)

NEW DELHI TELEVISION LTD .....Petitioner

Through: Mr. Sachit Jolly, Sr. Adv. with Ms. Soumya Singh, Ms. Disha Jham and Mr. Devansh Jain, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. ....Respondents

Through: Mr. Induraj Singh Rai, SSC with Mr. Sanjeev Menon, Mr. Rahul Singh, JSCs, Mr. Anmol Jagga and Mr. Gaurav Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. The writ petitioner impugns the reassessment action initiated by the respondents in terms of a notice dated 01 May 2020 and which pertains to **Assessment Year**[1] 2008-09. The writ petition itself represents the second foray of the petitioner with the earlier round of

[1] AY

litigation having ultimately ended before the Supreme Court and concluded in terms of its judgment rendered in **New Delhi Television Ltd. vs. Deputy Commissioner of Income Tax**[2]**.**

2. For the purposes of examining the challenge which stands raised, we at the outset, deem it apposite to take note of the principal reasoning which underlay the initiation of reassessment action in the second round. From the reasons which have been placed on the record and which are stated to have formed the bedrock for formation of opinion that income had escaped assessment, the **Assessing Officer**[3] has essentially based its conclusions on the affairs of **NDTV Networks PLC UK**[4] and other subsidiaries of the assessee and the funds that were raised overseas. The reasons recorded read thus:-

> "44. As discussed above, it is a matter of record that the assessee had an asset in the form of financial interest in the NNPLC located outside India and had signed an underwriter agreement to allegedly raise Rs. 405.09 crores, source of which was not proved from credible sources and accordingly unexplained deposit of Rs. 405.09 crore was income of the assessee through its hundred percent subsidiary the NNPLC. Taking into account, the concurrent findings of the AO, DRP and ITAT reached in A Y 2009-10 that floating of subsidiary companies by the assessee outside India and raising money through loss making companies were actually sham transactions and after lifting corporate veil that assessee and subsidiary companies were found to be one and the same and that the assessee routed its own undisclosed income through these companies, I have a reason to believe, on the basis of these credible information that Rs. 405.09 crore was actually income of the assessee company taxable in India which has escaped assessment. It is evident from these facts that the second proviso to Section 147 is clearly attracted in this case.
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> 45. In view of the facts and circumstances of the matter briefly

[2] 2020 SCC OnLine SC 446
[3] AO
[4] NNPLC

mentioned as above, I have reasons to believe that the Step Up Coupon Bonds of USD 100 million deposited in the bank account of M/s NDTV Network PLC, UK ("M/s NNPLC") is financial interest of the assessee, which was a company based in UK. Therefore the case of the assessee is covered by the second proviso of section 147 of the Income Tax Act, 1961.

46. Therefore. I have a reason to believe that the assessee company, directly or indirectly has substantial financial interest in the UK based company M/s NNPLC which has raised the 100 million USD through Coupon bonds and which is the subject matter of the present case.

47. In conclusion. I have reasons to believe that income of the assessee to the tune of Rs. 405.09 crores (equivalent value of USD l00 million at the relevant time) has escaped assessment and genuineness or the entire transaction of $100 million convertible coupon bonds/unsecured loans raised by M/s NNPLC is prima face dubious especially in the facts and circumstances of the case discussed above revealed through the findings of the AO in its remand report for the AY 2009-10 dated 13.12.2013 with respect to NNPLC, as well as the findings of Ld. DRP in the AY 2009-10 & the order of the Ld. ITAT for the AY 2009-10 holding the entire corporate structure to be 'sham', lifting the corporate veil, and confirming the addition m the hands of the Assessee. i.e. M/s New Delhi Television Limited and the findings of the Hon'ble Supreme Court confirming the reasons to believe of the revenue in reopening the case of the assessee for the present year.

48. It must be stated that the present reasons to believe arc being recorded for reopening the assessment of the assessee for the present year under the 2nd proviso to Section 147 and this action is without prejudice to the revenue's right to file and contest a review petition in the Hon'ble Supreme Court against the final judgment and order dated 03.04.2020 in Civil Appeal No. 1008 of 2020 in accordance with law and the present proceedings will be subject to the final outcome of the review petition of the department."

3. The allegations which are essentially levelled are more or less similar to those which obtained in the first round of litigation which ensued *inter partes*. This becomes apparent from the following facts which were noted by the Supreme Court itself in *New Delhi*

Television:-

> "**6.** The assessing officer relies upon the order of the DRP holding that there is reason to believe that funds received by NNPLC were actually the funds of the assessee. It was specified that NNPLC had a capital of only Rs.40 lakhs. It did not have any business activities in the United Kingdom except a postal address. Therefore, it appeared to the assessing officer that it was unnatural for anyone to make such a huge investment of $100 million in a virtually non-functioning company and thereafter get back only 72% of their original investment. According to the assessing officer "*The natural inference could be that it was NDTV's own funds introduced in NNPLC in the grab of the impugned bonds*." The details of the investors are given in this communication giving reasons. Mention has also been made of complaints received from a minority shareholder in which it is alleged that the money introduced in NNPLC was shifted to another subsidiary of the assessee in Mauritius from where it was taken to a subsidiary of the assessee in Mumbai and finally to the assessee. NNPLC itself was placed under liquidation on 28.03.2011. Therefore, the assessing officer was of the opinion that there were reasons to believe that the funds received by NNPLC were the funds of the assessee under a sham transaction and that the amount of Rs.405.09 crores introduced into the books of NNPLC during the financial year 2007-08 corresponding to the assessment year 2008-09 through the transaction involving the step-up coupon convertible bonds pertains to the assessee. The last portion of the communication dt. 04.08.2015 giving reasons to the assessee reads as follows:—
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> "7. In view of the above facts and circumstances of the case and considering the findings of the DRP holding the funds received by NNPLC as the funds of the assessee New Delhi Television Limited under sham transactions, there is a reason to believe that the funds amounting to Rs.405.09 crores introduced into the books of NNPLC during the FY 2007-08 in the form of Step Up Coupon Bonds pertain to the assessee New Delhi Television Limited only. I have therefore reason to believe that the income of the assessee New Delhi Television Limited for AY 2008-09 amounting to at least Rs.405.09 crores has escaped assessment. It is also recorded that the escapement is due to failure on the part of the assessee to disclose fully and truly all facts material for assessment."

4. As is manifest from the above, the AO in the first round had

sought to invoke Section 148 of the **Income Tax Act, 1961**[5] **,** relying upon the order of the **Dispute Resolution Panel**[6] to hold that the funds received by NNPLC, which was a wholly owned subsidiary of the petitioner, were actually the funds of the writ petitioner itself. It had borne in consideration the fact that NNPLC had undertaken no business activity in the United Kingdom. It was this and other circumstances which had ultimately led to the AO coming to form the prima facie opinion that NNPLC was virtually a non-functioning company and the natural inference thereof being that it was the petitioner's own funds which had been introduced in the wholly owned subsidiary in the garb of bonds which had come to be issued.

5. The petitioner challenged the first round of reassessment before this Court in W.P(C) 11638/2015 which came to be dismissed on 10 August 2015. It was aggrieved by the aforesaid judgment handed down on that writ petition that led to the institution of the appeal before the Supreme Court.

6. The Supreme Court, as would be apparent from a reading of its decision in *New Delhi Television*, had proceeded to frame the following three principal questions which were found to arise:-

> "**11.** In our opinion, the following issues arise for consideration in this case:—
> (i) Whether in the facts and circumstances of the case, it can be said that the revenue had a valid reason to believe that undisclosed income had escaped assessment?
> (ii) Whether the assessee did not disclose fully and truly all material facts during the course of original assessment which led to the finalisation of the assessment order and undisclosed income

[5] Act
[6] DRP

escaping detection?
(iii) Whether the notice dated 31.03.2015 along with reasons communicated on 04.08.2015 could be termed to be a notice invoking the provisions of the second proviso to Section 147 of the Act?"

7. Insofar as Question (i) is concerned and which pertained to whether a valid reason to believe could be said to have existed with respect to income having escaped assessment, the Supreme Court observed as follows:-

"**13.** We would like to make it clear that we are not going into the merits of the allegations made against the assessee. At this stage we are only required to decide whether the revenue has sufficient reasons to believe that undisclosed income of the asseessee has escaped assessment and therefore there are grounds to issue notice. Obviously, during the assessment proceedings the assessee will have the right to place material on record to show that the transaction in question was a genuine transaction.

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18. The main issue is whether there was sufficient material before the assessing officer to take a *prima facie* view that income of the assessee had escaped assessment. The original order of assessment was passed on 03.08.2012. It was thereafter on 31.12.2013 that the DRP in the case of AY 2009-10 raised doubts with regard to the corporate structure of the assessee and its subsidiaries. It was noted in the order of the DRP that certain shares of NNPLC had been acquired by Universal Studios International B.V., Netherlands, indirectly by subscribing to the shares of NNIH. As already noted above it was recorded in the reasons communicated on 04.08.2015 that NNPLC was not having any business activity in London. It had no fixed assets and was not even paying rent. Other than the fact that NNPLC was incorporated in the U.K., it had no other commercial business there. NNPLC had declared a loss of Rs.8.34 crores for the relevant year. It was also noticed from the order of the assessing officer that the assessee is the parent company of NNPLC and it is the dictates of the assessee which are important for running NNPLC.

19. Pursuant to the directions of the DRP, the assessing officer passed the final assessment order for AY 2009-10 on 21.02.2014 which also disclosed similar facts.

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22. A perusal of the aforesaid judgments clearly shows that subsequent facts which come to the knowledge of the assessing officer can be taken into account to decide whether the assessment proceedings should be re-opened or not. Information which comes to the notice of the assessing officer during proceedings for subsequent assessment years can definitely form tangible material to invoke powers vested with the assessing officer under Section 147 of the Act.

23. The material disclosed in the assessment proceedings for the subsequent years as well as the material placed on record by the minority shareholders form the basis for taking action under Section 147 of the Act. At the stage of issuance of notice, the assessing officer is to only form a *prima facie* view. In our opinion the material disclosed in assessment proceedings for subsequent years was sufficient to form such a view. We accordingly hold that there were reasons to believe that income had escaped assessment in this case. Question No. 1 is answered accordingly."

8. Question (ii) and which pertained to whether the petitioner had made a full and true disclosure came to be answered in its favour as is evident from the following conclusions which the Supreme Court came to record:-

"**33.** In our view the assessee disclosed all the primary facts necessary for assessment of its case to the assessing officer. What the revenue urges is that the assessee did not make a full and true disclosure of certain other facts. We are of the view that the assessee had disclosed all primary facts before the assessing officer and it was not required to give any further assistance to the assessing officer by disclosure of other facts. It was for the assessing officer at this stage to decide what inference should be drawn from the facts of the case. In the present case the assessing officer on the basis of the facts disclosed to him did not doubt the genuiness of the transaction set up by the assessee. This the assessing officer could have done even at that stage on the basis of the facts which he already knew. The other facts relied upon by the revenue are the proceedings before the DRP and facts subsequent to the assessment order, and we have already dealt with the same while deciding Issue No. 1. However, that cannot lead to the

conclusion that there is non-disclosure of true and material facts by the assessee.

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35. We are clearly of the view that the revenue in view of its counter-affidavit before the High Court that it was not relying upon the non-disclosure of facts by the assessee could not have been permitted to orally urge the same. Even otherwise we find that the assessee had fully and truly disclosed all material facts necessary for its assessment and, therefore, the revenue cannot take benefit of the extended period of limitation of 6 years. We answer Question No. 2 accordingly."

9. The last question which then survived for evaluation of the Supreme Court was whether the respondents had made an adequate disclosure of the action for reassessment being based on the Second Proviso to Section 147 as it stood at the relevant time. In order to appreciate the issue which arose we deem it appropriate to extract Section 147 as it stood at the relevant time during the law:-

"**Section 147 - Income escaping assessment.**

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) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years 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 make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his

assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) Where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

(c) were an assessment has been made, but—
(i) income chargeable to tax has been under assessed ; or
(ii) such income has been assessed at too low a rate; or
(iii) such income has been made the subject of excessive relief under this Act ; or
(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(ca) where a return of income has not been furnished by the

> assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
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> (d) where a person is found to have any asset (including financial interest in any entity) located outside India.
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> *Explanation 3.*—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.
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> *Explanation 4.*—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."

10. The Second Proviso to Section 147 essentially was an embodiment of the intent of the Legislature to extend the power of reassessment even to cases where the assessee may have made a full and true disclosure. It was in the aforesaid context that the Second Proviso acted as an exception by stipulating that no part of the First Proviso would apply to a case where income in relation to any asset (including financial interest in any entity) located outside India chargeable to tax had escaped assessment.

11. The Supreme Court while dealing with the reliance which was placed on that provision by the Revenue ultimately came to observe as under:-

> "**45.** In our view this is not a fair or proper procedure. If not in the first notice, at least at the time of furnishing the reasons the

> assessee should have been informed that the revenue relied upon the second proviso. The assessee must be put to notice of all the provisions on which the revenue relies upon. At the risk of repetition, we reiterate that we are not going into the merits of the case but in case the revenue had issued a notice to the assessee stating that it relies upon the second proviso, the assessee would have had a chance to show that it was not deriving any income from any foreign asset or financial interest in any foreign entity, or that the asset did not belong to it or any other ground which may be available. The assessee cannot be deprived of this chance while replying to the notice."

The appeal thus came to be allowed in the following terms:-

> "**48.** We accordingly allow the appeal by holding that the notice issued to the assessee shows sufficient reasons to believe on the part of the assessing officer to reopen the assessment but since the revenue has failed to show non-disclosure of facts the notice having been issued after a period of 4 years is required to be quashed. Having held so, we make it clear that we have not expressed any opinion on whether on facts of this case the revenue could take benefit of the second proviso or not. Therefore, the revenue may issue fresh notice taking benefit of the second proviso if otherwise permissible under law. We make it clear that both the parties shall be at liberty to raise all contentions with regard to the validity of such notice. All pending application(s) shall stand(s) disposed of."

It was on the basis of the liberty as granted by the Supreme Court in terms noted above that proceedings for reassessment came to be initiated all over again.

12. We have already extracted the principal reasons which appear to have constituted the foundation for the formation of an opinion that income had escaped assessment. As we view, the disclosures which are made in the reasons to believe, we find that the AO has yet again, relied upon and confirmed the formation of belief basis the view that had been expressed by the DRP of NNPLC being in abuse of organisation and legal form and allegedly set up without a reasonable

business purpose. It has thus reiterated its earlier position that the money and funds which were held in NNPLC were in fact unaccounted income of the assessee and thus the provisions of Section 68 of the Act being attracted. It is these allegations which are then reiterated in Paras 44 to 48 of the reasons to believe and where the AO attempts to base the case on the Second Proviso to Section 147.

13. Mr. Jolly, learned senior counsel who led the challenge on the writ petition has firstly submitted that the Second Proviso to Section 147 itself could not have been invoked since there was no income of the writ petitioner which could have been traced to NNPLC. According to learned senior counsel, the allegations as levelled even if taken at their face value would only lead one to arrive at a conclusion that an asset was located outside India. According to Mr. Jolly, the reasons as recorded by the AO neither satisfy the test of income "in relation to any asset chargeable" or tax having escaped assessment in the concerned AY.

14. The second limb of the challenge was based on what Mr. Jolly submitted would clearly amount to a change of opinion. This submission was addressed in the backdrop of certain related proceedings which formed the subject matter of ITA No. 204/2020 and where the principal question was whether an undertaking or the incurring of an obligation by the petitioner would amount to an international transaction and thus falling within the scope of Section 92B of the Act.

15. While we do not propose to unnecessarily burden this judgment with complete details pertaining to that limb of the litigation, suffice it

to note that the solitary issue which arose in those proceedings was whether the undertaking as furnished by the petitioner would amount to a corporate guarantee or a mere obligation and which could be viewed as an international transaction. A Special Bench of the **Income Tax Appellate Tribunal**[7] which had come to be constituted to examine that issue ultimately came to conclude that the petitioner could not be said to have extended a corporate guarantee to support the activities undertaken by NNPLC.

16. Upon answering the aforesaid question, the matter came to be placed before the Bench of the Tribunal which had ultimately remitted the matter for the consideration of the AO to decide whether the incurring of an obligation, or to put it in other words, the undertaking as proffered by the petitioner would amount to an international transaction.

17. We have in terms of our order passed today in ITA No. 204/2020 set aside that order of the Tribunal to the extent that it had failed to lend sufficient clarity while delineating the scope of remit and which, we had found, had to be confined to examining whether the furnishing of an undertaking amounted to an international transaction.

18. Reverting then to the challenge which stands raised in this writ petition, we fail to appreciate how the said litigation or the facet which formed the subject matter of proceedings before the Special Bench of the Tribunal or for that matter ITA No. 204/2020 could have had any

[7] Tribunal

bearing on the formation of opinion by the AO that NNPLC was merely a front and that the deposit of INR 405.90 crores in its books was actually the unaccounted income of the assessee taxable under Section 68.

19. We note that while rendering its verdict on the original challenge which had been laid by the writ petitioners, the Supreme Court itself had come to unequivocally record that there existed sufficient material before the AO justifying the invocation of Section 148 of the Act. This, it had so held, notwithstanding the disclosures which were made by the petitioner, and which as the Supreme Court had found, qualified the test of full and true disclosure.

20. The Supreme Court had while affirming the formation of opinion had essentially held that the material which came to be disclosed in the subsequent years as well as the material placed on the record by minority shareholders constituted a sufficient basis for the formation of a prima facie opinion that income liable to tax may have escaped assessment. The remit made and the liberty granted was solely in light of the respondents having failed to place the petitioner on notice of their intent to invoke the Second Proviso to Section 147 and which pertained to the existence of a foreign asset and in such a situation, a power to reassess continuing to inhere notwithstanding a full and true disclosure having been made.

21. Those findings rendered by the Supreme Court clearly bind the parties including the writ petitioner here. The decision to reopen is itself based on the liberty which was granted by the Supreme Court and only placed the respondents under the obligation of informing the

petitioner of their intent to invoke and reply upon the Second Proviso.

22. However, we are undoubtedly confronted by a clear and categorical finding rendered in the first round of litigation and where the Supreme Court had in unequivocal terms held that the material on the basis of which the AO formed an opinion to reopen was sufficient. We are thus of the firm opinion that sufficient material existed before the AO and which would have justified the power to reassess being exercised.

23. That leaves us only to deal with Mr. Jolly's submission that the entire action is based on a wholly incorrect reading of the DRP's order. It was his submission that the said order has been misconstrued and misinterpreted and thus the impugned action liable to be set aside on this score.

24. We find ourselves unable to sustain this submission bearing in mind the undisputed fact that this was not a contention raised, urged or canvassed either before this Court or for that matter before the Supreme Court. In fact the Supreme Court had answered question (i) in the affirmative upon noticing the reliance which was placed by the AO on the order of the DRP. The petitioner does not appear to have even argued that the conclusion drawn by the AO basis the order of the DRP was incorrect or arbitrary. It now essentially requires us to review and revisit the findings rendered in this context in the first round of litigation. We consequently find no justification to tread down this path.

25. In view of all of the above, we find no merit in the challenge

which stands raised to the reassessment action.

26. The writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 29, 2025/nd