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Reserved

Income Tax Appeal No.465 of 2005

Commissioner of Income Tax ..... Appellant

Vs.

Hemkunt Timbers Ltd. ..... Respondent

Hon'ble Tarun Agarwala, J.
Hon'ble Vinod Kumar Misra, J.

(Per: Tarun Agarwala, J.)

1. This is a Department's appeal against the order of the Tribunal setting aside the assessment made under Section 148 of the Income Tax Act, 1961 (hareinafter referred to as the Act). The facts leading to the filing of the appeal is that the assessee is a company engaged in the manufacture of boxes and trading in timber. For the assessment year 1991-92, the assessee filed its return declaring a total income of Rs.1,88,483/-. Subsequently, a search and seizure operation under Section 132(1) of the Act was carried out at the premises of the assessee on 12.03.1992. At the time of

search and seizure operation the assessment proceedings had not started on the basis of the return filed by the assessee. Accordingly, when assessment proceedings were started by the Assessing Officer, the assessee was asked to explain each and every document seized during the course of search and seizure operations. The submission and reply made by the assessee was considered and thereafter the Assessing Officer passed an assessment order on 31.03.1994 making addition in the income of the assessee. The assessee thereafter preferred an appeal, which was partly allowed by the Appellate Authority on 17.02.1995, pursuant to which the appeal effects were given

2. For the assessment year 1992-93 an assessment order was made on 31.03.1995. The assessee, being aggrieved filed an appeal. The Ist Appellate Authority passed an order on 12.01.2004 and, while disposing of the appeal for the assessment year 1992-93, made certain observations for the assessment year 1991-92. The extract of the observation made by the Appellate Authority is extracted hereunder:

"*13. The appellant surrendered a sum of Rs. 1000000/- in assessment year1991-92. The A.O. in his assessment order dated 31.3.94 noted that the appellant had inflated purchases to the tune of Rs. 289698/- and further the A.O. Gave credit of Rs. 346477/- and for the balance amount, addition of Rs. 653523/- was given. The A.O.has generally discussed these bill books and has nowhere meticulously gone through these bill books and books of accounts as evident from the discussion in para 4 of the assessment order on 31.3.94. The present A.O. is directed to carefully study these bill books since the blank bill books were found from the custody of the appellant it is obvious that the credit balances atleast would be bogus. The same could be true about the purchases. How this figure of Rs. 653523/- has been arrived is not known. The A.O. should work out the exact quantum of credit balance and the bogus purchases which have been introduced in the books of account of the appellant by means of blank bill books and arrived the figure and take action u/s. 148 of I.T.Act 1961 if the limit is in excess of Rs. 100000/-."*

3. Pursuant to the observation made by the Appellate Authority, the Assessing Officer issued a notice under Section 148 of the Act on 10.04.2001 recording reasons to believe that certain income chargeable to tax had escaped assessment by

reason of the omission or failure on the part of the assessee to disclose fully and truly all materials necessary for assessment. The reasons to believe was basically based on the observations made by the Ist Appellate Authority in its order for the assessment year 1992-93.

4. Pursuant to the notice issued under Section 148 of the Act, a re-assessment order for the assessment year 1991-92 was passed by the Assessing officer on 28.03.2003. The income was increased and an addition of Rs.28,37,343/- was made on account of bogus purchases made from six parties of Nagaland.

5. The assessee, being aggrieved, filed an appeal questioning the assessment order on the ground of limitation contending that the proceedings initiated under Section 147/148 of the Act were barred by limitation in view of first proviso to Section 147 of the Act. The Ist Appellate Authority after considering the matter held that the Assessing Officer was justified in reopening the assessment order after four years from the end of the assessment year in question and also confirmed certain additions made by the Assessing Officer.

6. The assessee, being aggrieved, filed a second appeal before the Tribunal, which was allowed by the Tribunal by its order dated 05.05.2005. The Tribunal held that the proceedings initiated under Section 148 was invalid inasmuch as there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for making an assessment and, therefore, held that the notice issued under Section 148 of the Act beyond the period of four years from the end of the assessment in question was invalid. The Department, being aggrieved, has filed the present appeal under Section 260-A of the Act. The appeal was admitted on the following substantial question of law:

> *"(1) Whether on the facts and circumstances of the cased, the Hon'ble Tribunal erred in law in quashing the assessment completed u/s 143(3)/148 by observing that the issue of notice u/s 148 was beyond the period of four years from the end of relevant assessment year without appreciating that the notice u/s 148 was issued by the AO in consequence to the directions given by the Ld. CIT (A) and as per the provisions of section 150(1) of the Act. There is no bar of limitation for issue of notice u/s 148 in consequence of or to give effect to such directions of the appellate authorities?*

(2) Whether on the facts and circumstances of the case, the Hon'ble Tribunal erred in law in quashing the assessment made u/s 143(3)/148 by observing that there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment without appreciating that bogus purchases aggregating to Rs.34,90,866/- were found to have been made by the assessee from six non-existent parties of Nagaland, and therefore it could not have been held that the assessee had disclosed fully and truly all material facts relating to the said bogus purchases at the time of assessment."

7. In this backdrop we have heard Sri Krishna Agrawal, the learned counsel for the appellant and Sri S.D.Singh, the learned Senior Counsel along with Sri K.D Vyas for the Assessee.

8. The learned counsel for the appellant submitted that the Tribunal committed a manifest error in holding that the assessment proceedings were invalid on the ground that the issuance of notice was beyond the period of four years from the end of the relevant assessment year without considering the provision of Section 150(1) of the Act. It was urged that there was no bar of limitation for issuance of notice under Section 148 of the Act as a result of the direction given by the Appellate

Authority and that the provision of Section 150(1) would prevail over the period of limitation specified under Section 149 of the Act. The learned counsel for the appellant further submitted that the Tribunal committed a manifest error in holding that there was no failure on the part of the assessee to disclose fully and truly material facts necessary for making assessment and submitted that the Ist proviso to Section 147 of the Act was not applicable.

9. On the other hand, Sri S.D.Singh, the learned Senior Counsel contended that pursuant to the search and seizure operation, all the documents seized were fully explained and were considered by the Assessing Officer while making the original assessment proceedings and the same documents have formed the basis for issuance of the notice under Section 148 of the Act as well as the reasons to believe. The learned Senior Counsel contended that since the same documents were fully and truly considered, the Ist proviso to Section 147 of the Act became applicable and since the assessee had disclosed all the materials, no re-assessment proceeding could be invoked after the expiry of four years. The learned Senior Counsel further contended that in view of the bar imposed under the

Ist proviso to Section 147 of the Act, notice under Section 148 of the Act could not be issued after four years. The Learned Senior Counsel however, conceded that the notice issued under Section 148 of the Act was a valid notice issued within the period of limitation specified under Section 149 of the Act but submitted that the provision of Section 150(1) of the Act was not applicable in the facts and circumstances of the instant case.

10. Having heard the learned counsel for the parties, we find that the reasons recorded by the Assessing Officer before issuance of notice under Section 148 of the Act is as under:

> *"M/s Hemkunt Timber Ltd.*
> *C-11 Panki Industries Area*
> *Site No.1, Kanpur*
> *Status:Company*
> *Asstt. Year 91-92*
>
> *10.4.2001*
>
> *A search and seizure operation was conducted on 12.3.92 at the business and residential premises of the assessee group u/s.132 of the IT Act. Apart from other incriminating materials, certain blank bill books were also found which were seized vide Annexure PMB-14,15,16,17,18 and 19 to the panchnama at the residence. The*

return of income for the present assessment year was filed on 31.12.91 declaring total income Rs. 1,88,,483/-. After examination of the seized material the assessment was completed u/s. 143(3) on 31.3.94 on a total income of Rs. 16,14,200/. After giving appeal effect to the CIT (A) order, as also under the provisions of section 154 of the IT Act, the total income was recomputed into the loss(-) Rs. 2,49,700/-. In this connection, during the course of the hearing of the appeal filed by the assessee for A.Y. 92-93 the ld. CIT (A) vide his appeal order dated 12.1.2001 para 13, for the reasons mentioned therein directed to carefully study the blank bill books, and work out the exact quantum of the credit balances and the bogus purchases which were introduced in the books of account by means of blank bill books. It has also been directed to take action u/s. 148 if the amount is in excess of Rs. 1 lac. In pursuance of these directions the seized ledger marked as Annexure ML-2/1 (for the period F.Y.90-91) has been examined with reference to the account of the persons in whose names the blank bill books were found. It has been found that the assesss has recorded the purchases from these persons which have been held to be non-existent persons-for amount aggregating to Rs. 34,90,866 as under:

Sl. No.	*Name of the Party*	*Amount of the purchase (Rs.)*
1	*I.WABANG OZUKUM*	*725918*

2	*IMKONGLIBA AO*	*410619*
3	*V.N.ANGAMI*	*917053*
4	*B.C.KRO*	*481630*
5	*LOTHA TIMBER INDUSTRIES*	*559771*
6	*M.BENBANG LUKSHI LONG KUMER*	*395875*
	TOTAL	*3490866*

In view of the aforesaid facts and as per findings and direction of the ld. CIT (A), I have reason to believe that income chargeable to tax at Rs. 3490866/- (in the form of bogus purchases) has been under assessed and therefore escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

The requisite sanction of the Commissioner of Income-tax, Kanpur u/s.151(1) read with 149(1)(a) read with 150 of the IT Act, for issue of the notice u/s. 148 has been received vide his office F.No.148/22/CIT /Tech/KNP/2000-01/8899 dated 28.3.2001 and is placed in file. Issue notice u/s 148.

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10.4.2001"

11. The aforesaid reasons to believe primarily indicates that it was based on the observations made by the Ist Appellate Authority while passing

the order for the assessment year 1992-93. The reasons to believe for re-initiating assessment proceeding was primarily on the basis of the documents seized, which were contended to be bogus purchases and, consequently, there was a reason to believe that there was an omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. We find that the original assessment order dated 31.03.1994, considered all the seized documents, which were observed in the reasons to believe. Explanation given by the assessee, was also considered in the original assessment proceeding. The Assessing Officer, after considering the explanation, observed in the original assessment order as under:

> "*(4) (I) Since the time-barring assessment was pending the assessee could furnish the details and information for assessment purpose for A.Y.1991-92. It was also required vide this office letter dated 29.3.93 and finally on 7.3.94 giving specific papers to be explained and get them verified from the regular books of account which pertained to the assessment year 1991-92. The assessee com.has furnished details etc. and also furnished explanation from time to time in respect of seized papers detailed in letter dated 7.3.1994 which have been duly*

considered and discussed. During the course of assessment proceedings, alongwith other details the assessee was asked to give the details of purchases, partywise, exceeding in amount of Rs. 20000/-.These details are placed in file at page 50 to 56 necessary notification of purchases were made from the seized ledger marked Annexure ML-2/1 which revealed that complete record of purchase was not recorded in this ledger."

12. From a perusal of aforesaid, it is apparently clear that the assessee furnished his explanation on each and every seized documents, which was marked as annexure ML-2/1 .

13. In the reasons recorded by the Assessing Officer, the Assessing Officer has observed that the entries made in this annexure relates to purchase, which explanation was given by the assessee in the original assessment proceedings. Consequently, all the necessary explanation and information was furnished by the assessee and, therefore, there was no failure on the part of the assessee to disclose fully and truly all material facts for making assessment.

14. Section 147 of the Act provides that if the Assessing officer has reason to believe that any income chargeable to tax has escaped assessment

for any assessment, he may, subject to the provisions of sections 148 and 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. The Ist proviso puts an embargo that the reassessment proceedings after expiry of four years from the end of the relevant assessment year could only be initiated if there was failure on the part of the assessee to disclose fully or truly all material facts necessary for assessment for that assessment year The said provision makes it apparently clear that the reassessment proceedings after four years could only be initiated if the assessee failed to disclose fully or truly all material facts necessary for making the assessment.

15. In the instant case, the Tribunal has given a categorical finding that the assessee had disclosed all the material facts necessary for making the assessment and there was no failure on his part. We find that this finding of the Tribunal is perfectly correct and, as we have observed, the Assessing Officer in his original assessment proceedings had considered each and every document and the

explanation given by the assessee on the seized documents. Therefore, it was not a case where the assessee failed to disclose fully or truly all material facts necessary for making the assessment. The notice, in our view, issued under Section 148 of the Act was invalid.

16. In so far as the period of limitation is concerned, the present dispute relates to the assessment year 1992-93 and as per the then existing provision of limitation specified under Section 149 of the Act, the period of limitation was 10 years. Accordingly, the reassessment notice could be issued on or before 31.05.2001 whereas in the instant case reassessment notice under Section 148 of the Act was issued on 11.04.2001, which was within the period of limitation. Consequently, we are of the opinion that the notice issued under Section 148 of the Act was issued within the period of limitation.

17. In the light of the aforesaid, the question of invoking the provision of Section 150(1) of the Act does not arise and it is not necessary for us to dwell on this aspect of the matter. We may however, observe that Section 150 of the Act provides that the power to issue a notice under Section 148 of the

Act in consequence of or giving effect to any finding or direction of the Appellate or Revisional Authority or the Court is subject to the provisions contained in Section 150(2) of the Act. Section 150(2) of the Act provides that the direction issued under Section 150(1) of the Act cannot be given by the Appellate or Revisional Authority or by the Court if on the date on which the order in appeal or revision was passed, the reassessment proceeding had become barred by time. Under Section 150(2) of the Act the Appellate or the Revisional Authority or the Court could give direction for reassessment only in respect of that assessment year. In respect of reassessment, proceedings could be initiated on the date of passing of the order in appeal. Since we have held that the notice was issued within the period of limitation, the provision of Section 150(1) of the Act is not applicable in the instant case.

18. In the light of the aforesaid, we do not find any error in the order passed by the Tribunal. The appeal fails and is dismissed. The questions of law are answered accordingly.

Dt: 07.01.2016.

MAA/-

(Vinod Kumar Misra,J.) **(Tarun Agarwala,J.)**