(2015) 07 DEL CK 0258

Delhi High Court

Case No: Writ Petition (C) 7948/2013 & CM 16840 of 2013

HCL Technologies Limited		APPELLANT
	Vs	
Deputy Commissioner of Income Tax and Others		RESPONDENT

Date of Decision: July 16, 2015

Acts Referred:
Income Tax Act, 1961 - Section 143 (3), 144C (13), 144C(13), 147, 148

Citation: (2015) 07 DEL CK 0258

Hon'ble Judges: Badar Durrez Ahmed, J; Rajiv Shakdher, J

Bench: Division Bench

Advocate: Ajay Vohra, Senior Advocate, Kavita Jha and Shraddha, for the Appellant; Rohit Madan, Zoheb Hossain and Akash Vajpai, Advocates for the Respondent

Judgement

Badar Durrez Ahmed, J
This writ petition is directed against the notice under Section 148 of the Income Tax Act, 1961 (hereinafter

referred to as "the said Act"), which was issued on 28.03.2013 in respect of the assessment year 2006-07. The petition is also directed against the

order dated 21.11.2013, whereby the objections raised by the petitioner were disposed of by the Assessing Officer.

2. The original assessment was completed under Section 143 (3) read with Section 144C(13) of the said Act on 28.10.2010. The point in issue is

with regard to Software Licence Fee. According to the petitioner it had claimed the same as revenue expenditure, but in the assessment order, only

a part of the Software Licence Fee was allowed as revenue expenditure and an amount of Rs. 25.36 crores was capitalized and depreciation was

allowed thereon at the rate of 60%. The petitioner was aggrieved by the fact that the said expenditure was capitalized to the extent of Rs. 25.36

crores and has already filed an appeal before the Income Tax Appellate Tribunal, which is pending.

3. After four years from the end of the assessment year 2006-07, the notice under Section 148 was issued on 28.03.2013. When the petitioner

sought the reasons for invocation of the provisions of Section 147 of the said Act, the same was supplied to the petitioner. The relevant portion of

the reasons is as under:-

4. During the assessment proceedings your company has incurred expenses for Software License fee to the tune of Rs. 31.69 crores, an amount

of Rs. 6.33 crores was in the nature of software license fee paid for the software which has been used for executing various revenue generating

projects and remaining amount of Rs. 25.36 crores was paid for the software used in day to day operation of your company having no correlation

with any specific project. Accordingly the said amount of Rs. 25.36 crores was being disallowed as revenue expenses, and the same was being

treated as capital expenditure under the head "Computers". As a result depreciation @ 60% was allowed to your company.

5. Perusal of the records show that your company incurred an expenditure of Rs. 31.69 crores towards Software License fee which covers under

intangible assets and hence only 25% of the said expenditure is allowable as depreciation of intangible assets. Section 32 of the Income tax Act,

1961 w.e.f. 01.04.1998 provides that know-how, patents, copyright, trademark, licenses, franchisee or any other business or commercial rights of

similar nature are intangible assets and depreciation at the rate of 25% is allowable on these intangible assets.

6. Hence your company has wrongly claimed and allowed the depreciation on expenses incurred on Software License fee @ 60% being computer

in nature. However, as discussed above the expenses claimed as Software License fee is in nature of Intangible assets. Therefore depreciation

allowable is 25% on the above expenses instead of 60% allowed earlier.

7. On the above facts and circumstances your case was re-opened u/s 147/ 148 and the undersigned intends to allow depreciation @ 25% instead

of 60% allowed earlier.

4. The petitioner filed its objections on 15.11.2013, which were rejected by the Assessing Officer on 21.11.2013. Thereafter, the petitioner filed

the present writ petition.

5. We have heard the learned counsel for the parties. From the reasons extracted above, it is evident that they do not indicate any failure on the

part of the petitioner to disclose material particulars which are necessary for the assessment. In fact, there is no such allegation at all. We may point

out that in Haryana Acrylic Manufacturing Company Vs. The Commissioner of Income Tax IV and Another, (2008) 220 CTR 450 : (2009) 308

ITR 38 : (2008) 175 TAXMAN 262 , this court had observed as under:-

29. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and

truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely

having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated

above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts,

fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to Section 147. If this condition is not satisfied, the bar

would operate and no action under Section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does

not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year

period remains unfulfilled. In our recent decision in Wel Intertrade Private Limited (formerly Wel Intertrade Limited) and Another Vs. Income Tax

Officer, (2009) 308 ITR 22 : (2009) 178 TAXMAN 27 we had agreed with the view taken by the Punjab and Haryana High Court in the case of

Duli Chand Singhania Vs. Assistant Commissioner of Income Tax, (2004) 188 CTR 90 : (2004) 269 ITR 192 that, in the absence of an allegation

in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all

material facts necessary for his assessment, any action taken by the Assessing officer under Section 147 beyond the four year period would be

wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated 29.03.2004 under Section 148 based on the recorded

reasons as supplied to the petitioner as well as the consequent order dated 02.03.2005 are without jurisdiction as no action under Section 147

could be taken beyond the four year period in the circumstances narrated above.

6. From the above decision, it is evident that the escapement of income from assessment must necessarily be occasioned by failure on the part of

the assessee to disclose material facts, fully and truly. It is clear that this is a necessary condition for overcoming the bar set up by the first proviso

to Section 147. If this condition is not satisfied, the bar would operate and no action under Section 147 could be taken.

7. In the facts of the present case, we find that the petitioner had clearly claimed Software Licence Fee of Rs. 31.69 crores as revenue

expenditure. That had been disallowed in part and an amount of Rs. 25.36 crores was capitalized and depreciation was allowed at the rate of

60%. The assessment was done under Section 143 (3) read with Section 144C (13) of the said Act. The draft assessment order had made the

aforesaid capitalization, which was disputed by the petitioner and, therefore, the matter went before the Dispute Resolution Panel, which confirmed

the draft assessment order and thereafter the final assessment order was passed on 28.10.2010. We have already indicated above that insofar as

the part disallowance as revenue expenditure is concerned, the petitioner has filed an appeal which is pending before the Income Tax Appellate

Tribunal. Insofar as we are concerned, we find that the petitioner had made a full and true disclosure of the material facts and, in any event, there is

no allegation in the purported reasons that the petitioner did not make a full and true disclosure of the material facts at the time of the original

assessment. That being the position, following the decision in Haryana Acrylic Manufacturing Co. (supra) and several other decisions of this Court

in the same vein, we find that the invocation of the re- assessment proceedings is not sustainable in law.

8. Consequently, the impugned notice dated 28.03.2013 issued under Section 148 as also the order disposing the objections dated 21.11.2013

are set aside. The writ petition is allowed. There shall be no order as to costs.