

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

+ **W.P.(C) 13878/2009**

*Date of Decision: 13<sup>th</sup> February, 2012.*

VATIKA LIMITED (FORMERLY VATIKA SPACE  
MANAGEMENT PVT. LTD.) AND ANOTHER. .... Petitioner  
Through: Mr. Prakash Kumar, Adv.

versus

INCOME TAX OFFICER WARD 17(2),  
NEW DELHI ..... Respondents  
Through: Mr. Kamal Sawhney, Sr.  
Standing Counsel

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

**R. V. EASWAR, J: (ORAL)**

1. By this writ petition filed by M/s. Vatika Limited (Formerly known as Vatika Space Management Pvt. Ltd.), it is prayed that a writ of certiorari be issued to quash the proceedings initiated pursuant to the notice issued under Section 148 of the Income Tax Act, 1961 ('the Act', for short). A prayer is also made for the issue of a writ in the nature of mandamus or an order prohibiting the respondent, who is the Income Tax Officer, Ward 17(2), New Delhi, from framing the re-assessment order

under Section 147 of the Act.

2. The petitioner-company is engaged in the business of maintenance of properties. It filed a return of income on 30.11.2002 declaring a loss of Rs.74,90,450/-. The return was accompanied by the Tax Audit Report and audited financial statements. In the return of income, the petitioner claimed depreciation of Rs.74,85,196/- on fixed assets. The Assessing Officer issued a questionnaire on 05.10.2004 under Section 143(2) of the Act and called upon the petitioner to furnish the details of the new assets acquired during the relevant accounting year amounting to Rs.5,98,81,568/- along with copy of the bills and also to furnish the details of working of depreciation of Rs.74,85,196/- as claimed in the return. He also required the petitioner to furnish the details about the items with bill number, bill date, cost, date on which the asset was put to use and the depreciation claimed thereon. In the questionnaire the petitioner was also required by the respondent to explain why depreciation claim should not be disallowed since no business activity was carried on by the petitioner during the year.
3. In response to the questionnaire referred to above, the petitioner submitted a reply dated 23.11.2004. It was stated therein that the company entered into the business of maintenance of a Commercial Complex in Gurgaon and acquired plant and machinery at a cost of Rs.6.5 crores with a view to start the business. It was also submitted as under: -

*“The company entered into the business of maintenance of the commercial complex named First Place having three complexes as Tower ‘A’, ‘B’ & ‘C’ situated at Sushant Lok, Gurgaon. With a view to start its business, the assessee company acquired plant & machinery for a cost of Rs.6,50,00,000/- out of which sinking fund lying deposited with M/s. Vatika Greenfield (P) Ltd. amounting to Rs.51,18,432/- was reduced and thus total cost of such assets to the assessee was Rs.5,98,81,568/- on which the company has claimed depreciation for the period amounting to Rs.7793/- in the books of accounts. The only other expenditure claimed by the company during the year under consideration is audit fee.*

*Although no income has been declared by the assessee company during the year under consideration, still the assessee submits that it had set up its business and for that it had also acquired fixed assets & office space and therefore, the expenses claimed by the assessee company are allowable as revenue expenditure for the year under consideration.”*

With regard to the specific query raised by the respondent about the claim of depreciation, the petitioner submitted the following reply: -

*“With respect to your query on the working of depreciation of Rs.74,85,196/-, it is submitted that the company acquired plant & machinery of the value of Rs.5,98,81,568/- during the period as detailed in para (1) here in above and the business of the assessee company was set up, the assessee company is entitled to deduction of 50% of the amount of depreciation calculated @ 25% of the*

*value of plant and machinery acquired during the year under consideration. It is also relevant to note here that the plant & machinery acquired by the company was put to use immediately on its acquisition by the company from M/s. Vatika Greenfield Pvt. Ltd. In order to justify that the building First India Place was fully operational in the year under consideration, copy of Balance sheet of M/s. Vatika Greenfield (P) Ltd. for the Ass. Year 2002-03 is being enclosed herewith marked as **Annexure-6.***

*With regard to your assumption that no business activity has been carried out by the assessee during the year and your proposal as to why depreciation claimed be not disallowed, it is submitted that such proposal is entirely on a wrong footing. The assessee company is engaged in the business of management of building and had started the business of managing the said building immediately on acquisition of plant & machinery. Although the assessee company has not received any income during the year, it cannot be assumed that the assessee had not started its business; the business of the company was set up as soon as the company was ready to start its business. It had acquired plant & machinery and had also entered into an agreement with M/s. Vatika Greenfield Pvt. Ltd. as one of its clients. It had made sufficient arrangements for inflow of income from 1.4.2002 and the company had started giving services to the holders of the space in the building known as First India Place at Gurgaon.*

*In these circumstances, it is wrong to allege that the company had not started its business activities during the year under consideration and therefore, the company is entitled to its claim of depreciation in accordance with law. The assets purchased were*

*immediately put to use by the company. It is therefore, prayed that the claim of depreciation as claimed by the assessee company in its return of income may please be allowed in accordance with law.”*

4. Another notice under Section 143(2) of the Act was issued to the petitioner on 07.02.2005 in response to which the petitioner appeared before the respondent on 14.02.2005. Thereafter, the assessment was completed under Section 143(3) of the Act by order dated 24.02.2005. In the order the Assessing Officer stated that the assessee furnished the details and books of accounts, which were verified on test check basis and the assessment was ultimately completed on the loss return filed by the petitioner.
5. Thereafter, it would appear that the respondent had called upon the petitioner to reply to a query pertaining to its assessment for the assessment year 2002-03 on the basis of an audit objection to the effect that the claim of depreciation had been wrongly allowed in the assessment made under Section 143(3) despite the fact that the assessee did not carry any business in the relevant year. The petitioner accordingly wrote a letter to the respondent, which is marked as Annexure-8 to the writ petition. In this letter the petitioner drew the attention of the Assessing Officer to its reply submitted to the queries raised under Section 143(2) of the Act by notice dated 05.10.2004. The attention of the respondent was also drawn to the Note No.II(3) to the financial statements

in which it was stated that the petitioner company planned to undertake the business of providing and maintaining certain basic common services for a building developed by one of its group companies and for the said purpose has acquired, during the year, all the assets from it in relation thereto. It was explained that there was no admission in the note that the petitioner had not started its business activity.

6. On 20.03.2009 the respondent issued notice under Section 148 of the Act on the ground that the income chargeable to tax had escaped assessment and called upon the petitioner to file a return of income. In response to the notice the petitioner filed a return of income under protest and requested the respondent to furnish a copy of the reasons recorded under Section 148(2) of the Act. The respondent was supplied with the copy of the reasons recorded on 18.03.2009 and they are as follows: -

**“Annexure “A”**

*Name & address of the assessee* : *M/s. Vatika Space Management P. Ltd.*

*Assessment Year* : *2002-03*

*Status* : *Company*

**Reasons to issue notice u/s 148 of the I.T. Act. 1961: -**

*Return was filed by the assessee on 31.10.2012 declaring loss of Rs.74,90,450/-. Assessment was made at the returned loss of Rs.74,90,450/- by the then AO under section 143(3) of the Act vide order*

*dated 24.02.2005.*

*It has been noticed that the assessee had claimed deduction of Rs.74,85,196/- on account of depreciation. It is further observed that there was no business activity during the relevant year. As per 'notes of accounts' the company planned to undertake the business and for the purpose had acquired all the assets during the year from its group company which were not put to use by the assessee. Thus, as the business was yet to commence and there was no business activity during the relevant year, the depreciation amounting to Rs.74,85,196/- was wrongly claimed by the assessee. Since the assessee had claimed excess depreciation amounting to Rs.74,85,196/- which was not allowable, income to the extent of Rs.74,85,196/- has escaped assessment.*

*In view of above, I have reason to believe that, on account of failure on the part of the assessee to disclose the particulars of his income truly and correctly, an amount of Rs.74,85,196/- chargeable to tax has escaped assessment for the A.Y. 2002-03. To bring to tax this escaped income of Rs.74,85,196/- alongwith any other income which may come to notice subsequently, proceedings u/s 147 of I.T. Act, 1961 are hereby proposed to be initiated against the assessee for the A.Y. 2002-03, after obtaining the necessary approval from the Ld. Commissioner of Income Tax, Delhi-VI, New Delhi, for issuance of notice u/s 148.*

*Dated 18.03.2009*

*Sd/-  
(N. K. Bansal)  
Asstt. Commissioner of Income-Tax  
Circle-17(1), New Delhi."*

7. On receipt of the reasons recorded by the respondent, the petitioner filed objections to the same by letter dated 06.11.2009 as per the procedure prescribed by the Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. Income Tax Officer & Ors.*, (2003) 259 ITR 19. It was pointed out therein that there was no failure on the part of the petitioner to furnish full and true particulars necessary for the completion of its assessment and, therefore, the re-assessment notice issued under Section 148 of the Act was without jurisdiction.
8. The aforesaid objections were disposed of by the respondent by order dated 03.12.2009, which is the impugned order. A perusal thereof shows that the respondent has stated therein that depreciation on assets taken over on the basis of an agreement was wrongly allowed in the assessment made under Section 143(3) of the Act, that the inference was drawn on the basis of information and belief that income chargeable to tax had escaped assessment and that belief is not a judicial decision but an administrative decision which is not open to challenge and that so long as the Assessing Officer honestly comes to the conclusion that income chargeable to tax had escaped assessment, he is duty bound, as administrator of law, to bring to tax such income. In this view of the matter, he rejected the objections of the petitioner and called upon it to furnish the details as per questionnaire issued separately under Section 143(2) of the Act.



9. The contention of the learned counsel for the petitioner is that the notice under Section 148 of the Act having been issued after a period of 4 years from the end of the relevant assessment year, it can be upheld only if there is any failure or omission on the part of the petitioner to furnish fully and truly all material facts necessary for its assessment. It is submitted that the petitioner had furnished all the facts in response to the query raised by the respondent in the course of the original assessment proceedings regarding claim of depreciation of Rs.74,85,196/- and that the assessment was completed on that basis under Section 143(3) and that therefore the notice is without jurisdiction. We see merit in the contention. As the reasons recorded for re-opening the assessment show, the ground on which the assessment was re-opened was that the business was yet to commence and, therefore, the depreciation was wrongly claimed by the assessee and allowed in the original assessment. In our opinion, there was no failure on the part of the petitioner to furnish full and true particulars relating to the claim of the depreciation. In its letter dated 23.11.2004 filed in response to the query raised under Section 143 (2), in the course of the original assessment proceedings, the petitioner had furnished the relevant and primary facts and submitted that it had acquired plant and machinery at a cost of Rs.6.5 crores with a view to start its business and that though no income from the said business had been declared in the return for the year under consideration, still the claim of depreciation on fixed assets was allowable as the

business had already been set up. In para 6 of the letter, which we have quoted above, the petitioner has explained the claim of depreciation on plant and machinery. It has been stated that the plant and machinery was put to use immediately on its acquisition and in order to show that the building by the name First India Place was fully operational in the year under consideration. The petitioner had also submitted the copy of the balance sheet of M/s. Vatika Greenfield Pvt. Ltd. with which it had entered into an agreement. It was further stated that the business of the petitioner was set up as soon as it was ready to start the business and the moment it had acquired the plant and machinery from M/s. Vatika Greenfield Pvt. Ltd. and had entered into an agreement with that company, it had made sufficient arrangement for earning the income from 01.04.2002 and had even started giving services to the holders of space in the building known as First India Place at Gurgaon. After drawing the attention of the respondent to all these facts, the petitioner submitted that it had started its business and, therefore, the claim of depreciation was allowable. The respondent had completed the assessment under Section 143(3) of the Act after scrutiny. Now it cannot be alleged that the petitioner had not furnished full and true particulars relating to the claim of depreciation at the time of original assessment. All the primary facts relating to the claim had been disclosed by the petitioner and it was for the respondent to draw the appropriate inferences regarding the allowability of the claim of

depreciation. It is not part of the duty of the petitioner to inform the Assessing Officer as to what inferences should be drawn from the primary facts disclosed. It is not alleged or stated in the reasons that there was any further or new information or ground to believe that the averment made in the letters written by the petitioner-assessee were false or incorrect.

10. For the above reasons, we hold that the petitioner had disclosed full and true particulars relating to the claim of depreciation at the time of original assessment. The notice under Section 148 of the Act has been issued beyond the period of 4 years from the end of relevant assessment year. The primary jurisdictional condition for issue of such a notice has not been satisfied. We, therefore, issue a writ of certiorari quashing the notice under Section 148 of the Act. As a consequence all further proceedings are also quashed. There shall be no order as to costs.

**R.V.EASWAR  
(JUDGE)**

**SANJIV KHANNA  
(JUDGE)**

**FEBRUARY 13, 2012**

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