



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

+ **W.P.(C) No.6707/2011**

% *Reserved on: 29th February, 2012*
Date of Decision: 23rd April, 2012

MONEY GROWTH INVESTMENT AND
CONSULTANTS PVT. LTD.

.....Petitioner

Through: Mr. Salil Aggarwal with Mr.
Prakash Kumar and Mr. Prakash
Chand Yadav, Advs.

versus

INCOME TAX OFFICER

...Respondents

Through: Mr. Kamal Sawhney, Sr. Standing
Counsel with Mr. Amit
Shrivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | |
| 2. To be referred to the Reporters or not ? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

R.V. EASWAR, J.:

The petitioner in this writ petition is a Private Limited Company incorporated on 16.03.2004 under the Companies Act, 1956 as a Non-banking Finance Company. In respect of the assessment year 2004-05, the petitioner filed a return of income under Section 139(1) of the Income Tax



Act, 1961 (hereinafter referred to as the 'Act') which was accepted under Section 143(1) of the Act. On 16.03.2011, the Assessing Officer, who is the respondent in these proceedings, issued a notice under Section 148 of the Act which was served on the petitioner on 18.03.2011, seeking to re-open the assessment on the ground that income chargeable to tax has escaped assessment. A copy of the reasons recorded under Section 148(2) of the Act was supplied to the petitioner along with the notice. The petitioner wrote to the Assessing Officer on 31.03.2011 that the return of income filed earlier may be treated as the return filed in response to the notice under Section 148. The petitioner also requested the Assessing Officer to supply the report of the Investigation Wing and any other material in the possession of the Assessing Officer on the basis of which the reasons were recorded. The Assessing Officer thereafter issued a notice under Section 143(2) of the Act on 03.08.2011 along with letter dated 03.08.2011 directing the petitioner to furnish various details and the information. The Assessing Officer also furnished a copy of the statement recorded from one Mukesh Gupta on 16.01.2004 under Section 131 of the Act, as requested by the petitioner.

2. On receipt of the above, the petitioner filed objections to the validity of the re-opening of the assessment. In the objections the petitioner stated that all the companies from whom share capital was received were registered with the Ministry of Corporate Affairs, Income Tax Department and also Nationalised Banks and were maintaining accounts with those



Banks which confirmed their identity. It was also submitted that the assessee issued shares to these companies against monies received from them through account payee cheques. It was therefore pleaded that the amounts received from the companies cannot be treated as unexplained cash credits under Section 68 of the Act and that the conclusion of the Assessing Officer that income chargeable to tax had escaped assessment was not correct. Objections were taken on the basis of the statement of Mukesh Gupta and it was pointed out that the name of the petitioner company did not figure in the statement. It was submitted that Mukesh Gupta has not also stated that the shareholder companies were his dummy concerns. A request was made that Mukesh Gupta may be produced for cross-examination.

3. The aforesaid objections were disposed of by the Assessing Officer by order dated 29.08.2011. In this order, the Assessing Officer stated that Mukesh Gupta gave the names of concerns operated by him for the purpose of giving accommodation entries and that it is not possible to give the names of hundreds or thousands of beneficiaries. He further observed that transactions which the assessee had with company by name Fair 'N' Square Export P. Ltd. found place in the statement recorded from Mukesh Gupta and that the petitioner company had received a sum of ₹ 5,00,000/- from the above named company. The Assessing Officer thus held that the re-opening was based on information received from the Investigation Wing of the Income Tax Department and, therefore, the objections raised by the



assessee were not valid. He accordingly directed the petitioner to furnish the details and information called for by letter dated 03.08.2011 and posted the case for hearing on 12.09.2011. A notice under Section 142(1) was also enclosed to the order rejecting the objections.

4. The present writ petition has been filed against the order passed by the Assessing Officer on 29.08.2011 rejecting the objections filed by the assessee and the notice issued under Section 148 of the Act on 16.03.2011 re-opening the assessment. It is prayed that a writ of certiorari or any other writ, order or direction be issued to quash the notice as well as the letter disposing of the objections.

5. The contention of the counsel for the petitioner is that since the assessment was being re-opened after a period of 4 years from the end of the relevant assessment year, it was the duty of the Assessing Officer to show that the petitioner company did not furnish fully and truly all material particulars relating to its assessment, at the time of original assessment. It is argued that the reasons recorded have no nexus with the conclusion that the income chargeable to tax had escaped assessment by reason of the failure of the petitioner company to furnish all material particulars relating to its assessment fully and truly. It is pointed out that the petitioner's name has not been mentioned by Mukesh Gupta in the statement given by him before the Investigation Wing and, therefore, the assessee cannot be linked to the business of Mukesh Gupta, which was that of providing



accommodation entries. It was thus contended that the re-opening of the assessment was without jurisdiction.

6. The learned Standing Counsel has produced before us the original records relating to the re-opening of the assessment. He has drawn our attention to the statement recorded from Mukesh Gupta on 16.01.2004 by the Additional Director of Income Tax (INV) Unit-I, New Delhi in which Mukesh Gupta has mentioned the name of Fair 'N' Square Export P. Ltd. as a company in which he was a Director. In particular he has drawn our attention to the answer of Mukesh Gupta to question No.7 in which he has stated that these companies (in which he was Director) do not carry on any real business but they only make adjustment from these companies and that there is no employee in those companies. He also stated that he will not be able to produce any books of accounts of these companies because they were not being maintained. In the earlier part of the statement, as pointed out by the learned Standing Counsel, Mukesh Gupta has given the modus operandi of giving accommodation entries. This statement was before the Assessing Officer when he recorded the reasons for re-opening the assessment. It is thus submitted by the learned Standing Counsel that there was prima facie material to show that the assessee did not furnish full and true particulars at the time of original assessment regarding the receipt of share capital.

7. On a careful consideration of the matter we are satisfied that the assessment was properly re-opened. The petitioner company received



share capital of ₹ 67,40,000/- during the previous year relevant to the assessment year 2004-05. The share capital was received from several companies and the names of these companies are as under: -

- (i) Fair 'N' Export P. Ltd.
- (ii) V. P. S. Values & Tubes P. Ltd.
- (iii) Rajkar Electricals
- (iv) Rabik Exports Ltd.
- (v) Sehgal Fluid Line Equipment
- (vi) Bharti Properties Pvt. Ltd.
- (vii) Bolni Exxim (India) Ltd.
- (viii) Star Garments Pvt. Ltd.

8. The return filed by the petitioner was not scrutinized but was accepted under Section 143(1) of the Act. The reasons recorded for re-opening the assessment show that they were recorded on the basis of material gathered by the Investigation Wing of the Income Tax Department and forwarded to the Assessing Officer. This factual position is also borne out by the record produced before us. The statement of Mukesh Gupta given on 16.01.2004 before the Investigation Wing refers to the fact that he was a Director in six companies. Out of these six companies M. V. Marketing Pvt. Ltd., Fair 'N' Square Exports P. Ltd. and Rabik Exports Ltd. are companies from which the petitioner received share capital during the year under consideration. Mukesh Gupta has also stated in response to question No.7 that these companies do not carry on any real business but



carry on only adjustment transactions and that those companies did not have any employee and were not maintaining any books of accounts. Earlier, he has narrated the modus operandi followed by him in carrying on the business of giving accommodation entries for a commission. The statement also refers to the bank accounts particulars. He has admitted in the statement that he took 25 paise commission for giving the accommodation entries. The statement of Mukesh Gupta and the material gathered by the Investigation Wing in relation to the parties who gave accommodation entries were before the Assessing Officer when he recorded reasons for re-opening the assessment and this is clear from the first paragraph of the reasons recorded, in which the Assessing Officer has made a reference to the CD (Compact Disc) containing the material gathered and forwarded by the DIT (Investigation)-I under cover of DO letter dated 02.03.2006 forwarded through proper channel by the Additional CIT, Range-5 by letter dated 13.03.2006. The statement of Mukesh Gupta has been given to the petitioner.

9. The above facts show that the reasons recorded by the Assessing Officer were not a pretence. The reasons were germane to the prima facie belief reached by the Assessing Officer that income chargeable to tax has escaped assessment by reason of the failure of the petitioner to furnish full and true particulars at the time of original assessment. It may be true that the assessee received the share capital through account payee cheques. It may also be true that the receipt of share application monies was otherwise



supported by the necessary documents. There may not be also any dispute about the identity of the companies which subscribed to the share capital of the assessee. However, the material that was present before the Assessing Officer, on the basis of which he recorded reasons and re-opened the assessment, throw considerable doubt on the veracity, correctness, completeness and truth of the particulars furnished by the assessee at the time of the original assessment. This is particularly so, having regard to the statement of Mukesh Gupta in which he admitted to having carried on the business of providing accommodation entries through companies in which he was a Director. The assessee has received share capital from some of these companies, whose names we have already referred to. It is well settled that at the time of issuing notice under Section 148, the Assessing Officer is only required to reach a tentative or prima facie belief regarding escapement of income and that requirement is satisfied in the present case.

10. The argument advanced on behalf of assessee that the name of the assessee is not specifically mentioned in the statement of Mukesh Gupta and, therefore, the material gathered by the Investigation Wing and which was available to the Assessing Officer when he recorded reasons for re-opening the assessment did not have any nexus with the formation of his belief that income chargeable to tax had escaped assessment cannot be accepted. The required nexus is furnished by the reference to the names of at least three companies in which Mukesh Gupta was a Director, through



which, inter alia, he was admittedly carrying on the business of providing accommodation entries for commission. These companies had subscribed for the shares issued by the assessee. Thus not only was the required nexus provided, but there was also material before the Assessing Officer to show that the petitioner company had not furnished all particulars necessary for its assessment fully and truly. We accordingly reject the argument.

11. The learned counsel for the petitioner company referred to a number of authorities but it is not necessary to refer to them in view of the factual position shown by the record produced before us, which speaks for itself.

12. In view of the foregoing, we hold that the notice issued by the Assessing Officer under Section 148 of the Act was valid and well within jurisdiction. He had reason to believe that income chargeable to tax had escaped assessment because of the failure of the petitioner company to furnish fully and truly all material particulars necessary for its assessment. We find no merit in the writ petition which is hereby dismissed. All interim orders are vacated. There will be no order as to costs.

(R.V. EASWAR)
JUDGE

(SANJIV KHANNA)
JUDGE

APRIL 23, 2012/hs