IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 16.01.2013

\+ **W.P.(C) 5536/2012**

PARDESI DEVELOPERS AND INFRASTRUCTURE PVT.LTD ..... Petitioner

versus

COMMISSIONER INCOME TAX DELHI -IV AND ORS ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr O.S. Bajpai, Sr. Adv. with Mr Shashwat Bajpai, Mr V. N. Jha and Mrs Manasvini Bajpai, Advocates.

For the Respondent :Ms Suruchi Aggarwal, Sr. Standing Counsel.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE R.V. EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against a notice dated 30.08.2011 issued under section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'the said Act') by the respondent No.3. It is also prayed by the petitioner that the order dated 03.08.2012, whereby the objections of the petitioner were rejected, be also quashed. That order has also been passed by the respondent No.3.

2. The facts may be briefly stated. The petitioner has received the said notice dated 30.08.2011 under section 148 of the said Act. Thereupon, the petitioner filed a writ petition bearing W.P. (C) No.2664/2012 before this Court. The said writ petition was disposed of by an order dated 05.04.2012 passed by the Division Bench of this Court directing the petitioner to subscribe to the procedure prescribed in ***G.K.N. Driveshaft (India) Ltd. v. ITO*:** **(2003) 259 ITR 19 (SC)**. However, while disposing of the writ petition the parties were granted liberty to approach the Court if required.

3. Thereafter, the petitioner preferred its objections to the said notice and also filed its return of income. The respondent No.3 considered the objections and rejected the same by a speaking order dated 03.08.2012. The petitioner, being aggrieved by the said order dated 03.08.2012, has filed the present writ petition challenging both the notice dated 30.08.2011 and also the order dated 03.08.2012.

4. The purported reasons for issuing the notice under section 148 and for reopening the assessments under section 147 of the said Act in respect of the assessment year 2007-08 were as under: -

"Reasons for issuing notice u/s 148 of the Act in the case of M/s. Pardeshi Developers & Infrastructure Pvt. Ltd. For the A.Y. 2007-08

Assessment u/s 143(3) of the Income Tax Act, 1961 was completed in this case at an income of ₹1,25,350/- on 30.12.2009. Information received from investigation wing, New Delhi that a Search and seizure operation u/s 132 of the I.T. Act 1961, was conducted at the office premises of Sh. Tarun Goyal, CA at 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi on 15.09.2008. During the course of search operation statement of Shri Tarun Goel was recorded and it was established that Sh. Tarun Goyal has floated about 90 companies for the purpose of providing accommodation entries, which were not carrying out any genuine activity and are merely being used to provide accommodation entries, on the basis of material seized and statement recorded it was concluded that all the companies of Sh. Tarun Goyal are 'bogus'.

As per the report, the Director of the companies were none but former and present employees of Shri Tarun Goyal. Shri Tarun Goyal has been using them for merely signing all the documents, bank cheques and also for transporting and exchanging cash and cheques in order to providing accommodation entries During the the search operation, as per his statement, Shri Tarun Goyal has accepted that he provides accommodation entries and his various companies are used for this purpose. The above information was neither available with the department nor did the assessee disclosed the same at the time of the assessment proceedings.

A detailed list of the beneficiaries of accommodation entries has been prepared by the concerned ADIT (Inv.) for the Asstt. Years 2004-05 to 2009-10. As per the list, M/s Pardeshi Developers & Infrastructure Pvt. Ltd. Presently being assessed with Ward 14(1), New Delhi has taken the following accommodation entries during the period relevant to assessment year 2007-08.

Name of the Beneficiary	Name of Accommodation entry provider companies	Amount
M/s Pardeshi Developers & Infrastructure Pvt. Ltd.	M/s Bhavani Portfolio Pvt. Ltd.	50,00,000/-
	M/s Deep Sea Drilling Pvt. Ltd.	25,00,000/-
	M/s Taurus Iron & Steel Co. Pvt. Ltd.	25,00,000/-
	M/s Tejasvi Investments Pvt. Ltd.	10,00,000/-
	M/s Thar Steels Pvt. Ltd.	25,00,000/-
	TOTAL	**1,35,00,000/-**

In view of the above, I am satisfied that the assessee has introduced his own money in the grab (sic) of share application money/share capital/ unsecured loan/ gift/ expenses/ purchase of shares through the above mentioned companies during the period under consideration, the details of which are mentioned above. Therefore, the assessee has deliberately furnished wrong facts at the time of filing of return and subsequently during the course of assessment proceedings completed u/s 143(3) on 30.12.2009, and by way of that concealed true particulars of its income.

In view of the above, I have reasons to believe that an amount of ₹1,35,00,000/- has escaped from the assessment for the A.Y. 2007-08 which was chargeable to tax. I am also satisfied that on account of failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income

> chargeable to tax to the tune of ₹1,35,00,000/- has escaped assessment with the meaning of Section 147 of the I.T. Act 1961.
>
> Since assessment u/s 143(3) of the IT Act has been completed in this case for the assessment year 2007-08 on 30.12.2009, the reasons recorded above for the purpose of reopening assessment is put up (sic) kind satisfaction of Addl. Commissioner of Income Tax Range-14, New Delhi in terms of the proviso to sec 151(1) of the Income Tax Act, 1961."

5. From the above it can be seen that the main allegation against the petitioner is that it was the part of a racket providing bogus accommodation entries which was allegedly master-minded by one Mr. Tarun Goyal. It is alleged that the petitioner was a beneficiary of the accommodation entries and that the said entries had been provided by M/s Bhavani Portfolio Pvt.Ltd., M/s Deep Sea Drilling Pvt. Ltd., M/s Taurus Iron & Steel Co. Pvt. Ltd., M/s Tejasvi Investments Pvt. Ltd. and M/s Thar Steels Pvt. Ltd. The said accommodation entries were allegedly to the extent of ₹1,35,00,000/-. The said provider companies were said to be bogus companies of Mr Tarun Goyal. The aforesaid purported reasons indicate that the information that the entries were accommodation entries and were provided by bogus companies of Shri Tarun Goyal were not available with the assessing officer at the time the assessment was done

under section 143(3) of the said Act. The exact words used in the purported reasons are as under: -

> "The above information was neither available with the department nor did the assessee disclosed the same at the time of the assessment proceedings"

At this juncture, it would be necessary to point out that in the course of assessment proceedings under section 143(3) of the said Act, a questionnaire had been issued by the assessing officer to the petitioner on 18.02.2009. In the said questionnaire, serial No.7 read as under: -

> "7. Please furnish the details of the share capital introduced/ share application money received/ unsecured loan received during the year with confirmation from the person from whom the amount has been received showing its income tax particulars i.e. PAN and their I.T. Particulars."

6. It is apparent that, without having received any specific information with regard to the alleged bogus companies of Tarun Goyal, as a general exercise, the assessing officer had issued the said questionnaire and had required petitioner/ assessee to furnish details of share capital introduced and share money received. There was no response by the petitioner of this questionnaire till December, 2009.

7. We shall deal with that subsequently, but, for the present, it is necessary to note that on 24.08.2009 a letter was circulated by the Addl. Commissioner of Income Tax (Respondent No.2) to all the assessing officers of Range-14, which includes the assessing officer of the present petitioner. Alongwith the said letter of 28.04.2009, a copy of a letter dated 31.03.2009 issued by the Addl. Director of Income Tax (Investigation) Unit, CR Building, New Delhi was also circulated. That letter was on the subject of list of beneficiaries of accommodation entries provided by Shri Tarun Goyal. The said letter dated 31.03.2009 reads as under: -

"Office of the
Additional Director of Income-tax (Investigation)-Unit-IV,
ARA Centre, E-2, Jhandewalan Extension, New Delhi – 110055
Ph: 23515123, Fax: 23629014

CONFIDENTIAL

F. No.Addl. DIT (Inv.)/Unit-IV/Beneficiaries/2008-09/393

Dated-31/03/2009

To,
The Commissioner of Income-tax,
Delhi-V, C.R. Building,
New Delhi.

Sir,

Sub: List of beneficiaries of accommodation entries provided by Sh. Tarun Goyal, C.A., 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi-reg-

A search u/s 132 of the Income-tax Act, 1961 was conducted at the office premises of Shri Tarun Goyal, Chartered Accountant at 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi by the Investigation Wing on 15.09.2008.

Sh. Tarun Goyal created a number of private limited companies and firms for providing accommodation entries. The directors of these companies were his employees who worked in his office as peons, receptionists etc. All the documents were got signed from these employees. A number of Bank Accounts in various banks were opened in the names of these companies and his employees, in which huge cash deposits were made later cheques were issued to various beneficiaries, disguising the whole transaction as genuine.

1. During the course of search it was established that Sh. Tarun Goyal has floated about 90 companies for the purpose of providing accommodation entries.

2. All the companies floated by Sh. Tarun Goyal are not carrying out any genuine activity and are merely being used to provide accommodation entries. Hence all the companies of Sh. Tarun Goyal are 'bogus'.

A. ALL THE COMPANIES RUN BY SH. TARUN GOYAL ARE 'BOGUS' COMPANIES

The network of companies run by Shri Tarun Goyal is only doing the business of providing accommodation entries to various beneficiaries and are not doing any real business, hence these companies are 'BOGUS'.

b. All the directors are either his employees or close relatives. Shri Tarun Goyal could never produce the directors nor furnish their residential address.

c. The statement of the employees of Shri Tarun Goyal is on record, whereby they have clearly stated that they signed on the papers produced before them by Shri Tarun Goyal. They do not know about the basic details of the companies like shareholding patterns, nature of business of these companies etc.

d. The statement of the auditors of Shri Tarun Goyal is on record. They have stated to have never met the directors of the companies and audited the accounts only on the directions of Shri Tarun Goyal. As per the statement of auditors, the employees of Sh. Tarun Goyal were directors of the companies run by them; also they could not ascertain the so called share capital subscribed by Sh. Tarun Goyal as documentary proof of the same was lacking.

e. During the course of search, all the passbooks, cheque books, PAN Cards etc. were always in possession of Shri Tarun Goyal. On his directions all the employees signed all the documents.

f. All the bank account opening forms appear to be in the handwriting of Shri Tarun Goyal, it is possible that Sh. Tarun Goyal controlled and managed these companies as also operated all the bank accounts.

g. All the books of accounts of all the companies have retrieved from the computers/ laptop of Shri Tarun Goyal.

h. Shri Tarun Goyal has given letters for the release of bank accounts of companies put under restraint after search. No such application was received from the so called directors of the companies.

i. Shri Tarun Goyal appears in all the scrutiny assessments as well as appeals of his companies himself before various income-tax authorities. From verification carried out in respective wards/circles where the above mentioned companies are assessed, it is evident that Sh. Tarun Goyal is appearing in all the income tax proceedings on behalf of all the companies. He is also not charging any fees for appearing in these cases.

Order to determine the extent of deviant activities of Sh. Tarun Goyal letters were also written to various government agencies. From these letters it was revealed that besides, aiding and abetting the evasion of taxes, he has been indulging in violation of various other provisions of the law of the land. Letters to various government agencies have also been written to various government agencies like Registrar of companies, Service tax Department, Economic Offences Wing (Delhi Police), Enforcement Directorate etc. for further investigations and follow-up on. This case has also been taken up by REIC for a multi-agency probe.

A detailed list of the beneficiaries of accommodation entries has been prepared by the concerned ADIT (Inv.) for the assessment years 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10. From the PAN data it has been found that the jurisdiction of these companies which have taken accommodation entries lies in your charge.

The information may kindly be transmitted to respective AOs so that further investigations may be carried out by them and necessary action may be initiated against these beneficiaries.

The case of various companies of Sh. Tarun Goyal have been centralized with DCIT, Central Circle-4.

With regards,

Yours faithfully,

(Dr. Narender Kumar)
Addl. DIT (Inv.), Unit-IV,
New Delhi

Enclosed:
1. List of the beneficiaries of accommodation entries
2. Copies of Important Statements recorded on oath"

8. As can be seen from the above letter, a list of beneficiaries of all the accommodation entries as also copies of the statements recorded on oath were also included. The list of beneficiaries were in respect of assessment years 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09. In the present case we are concerned with assessment year 2007-08. In the list of beneficiaries mentioned for the assessment year 2007-08 we find that serial No.19 shows the petitioner as a beneficiary. The said serial No.19 is extracted below: -

"**Assessment Year 2007-08**

S.No.	Beneficiaries	Name of entry provider	Amount	Total
19	Pardesi Dev & Infrastructure Pvt. Ltd. Plot No.-01, 3rd Floor, Garg Trade Centre, Sector-11, Rohini, Delhi.	Bhavani Portfolio Pvt. Ltd.	5,000,000	
	Pardesi Dev &	Deep Sea	2,500,000	

	Infrastructure Pvt. Ltd.	Drilling Pvt. Ltd.		
	Pardesi Dev & Infrastructure Pvt. Ltd.	Taurus Iron & Steel Co. Pvt. Ltd.	2,500,000	
	Pardesi Dev & Infrastructure Pvt. Ltd.	Tejasvi Investments Pvt. Ltd.	1,000,000	
	Pardesi Dev & Infrastructure Pvt. Ltd.	Thar Steels Pvt. Ltd.	2,500,000	13,500,000

9. We may also point out at this stage that in the counter affidavit at page 4 in paragraph 7(c) it is admitted by the respondents that the said information was circulated to all the assessing officers on 30.04.2009. With the said counter affidavit, a copy of the letter dated 28.04.2009 along with the list of beneficiaries was also annexed as Annexure-II (Colly.). Thus, it is an admitted position that the said information had been circulated to all the assessing officers on 30.04.2009 which included the assessing officer of the petitioner. In other words, the assessing officer of the petitioner had received the said information with regard to the alleged accommodation-entry providing companies namely M/s Bhavani Portfolio Pvt.Ltd., M/s Deep Sea Drilling Pvt. Ltd., M/s Taurus Iron & Steel Co. Pvt. Ltd., M/s Tejasvi Investments Pvt. Ltd. and M/s

Thar Steels Pvt. Ltd. Thereafter, on 09.11.2009 the petitioner furnished a reply to the earlier questionnaire which had been issued on 18.02.2009. In that reply, the petitioner gave details of share capital raised by the petitioner. Those details included the sums received from the aforesaid alleged accommodation entry providers. Alongwith the said reply dated 09.11.2009, confirmations from the said parties were also furnished.

10. A similar reply was again furnished on 27.11.2009. Despite the furnishing of these details, the assessing officer, in order to further verify and confirm the said facts, issued notices under section 133(6) of the said Act to the said companies directly, on 27-30.11.2009. All the aforesaid five parties responded to those notices and reaffirmed their respective confirmations, which they had earlier provided to the assessing officer.

11. It is only subsequent thereto that the assessment was framed on 30.12.2009.

12. In the backdrop of these facts, we find it difficult to believe the plea taken in the purported reasons that the said information was "neither available with the department nor did the assessee disclose the same at the time of assessment proceedings". From the aforesaid facts it is clear that the information was available with the department and it had been

circulated to all the assessing officers. There is nothing to show that the assessing officer did not receive the said information. And, there is nothing to show that the assessing officer had not applied his mind to the information received by him. On the contrary, it is apparently because he was mindful of the said information that he issued notices under section 133(6) of the said Act directly to the parties to confirm the factum of application of shares and the source of funds of such shares. Therefore, the very foundation of the notice under section 148 of the said Act is not established even *ex facie*. Consequently, it cannot be said that the assessing officer had the requisite belief under section 147 of the said Act and, as a consequence, the impugned notice dated 30.08.2011 and the order dated 03.08.2012 are liable to be quashed. It is ordered accordingly. All proceedings pursuant thereto also stand quashed.

The writ petition is allowed as aforesaid. There shall be no order as to costs.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 16, 2013
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