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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11214/2015

JUHI DIXIT

..... Petitioner

Through: Mr. S. Krishnan, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX  
& ORS

..... Respondents

Through: Mr. Zoheb Hossain, Senior standing  
counsel.

With

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W.P.(C) 11782/2016

VIJAY LAXMI AGARWAL

..... Petitioner

Through: Mr. S. Krishnan, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME  
TAX & ORS

..... Respondents

Through: Mr. Rahul Kaushik, Senior standing  
counsel.

And

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W.P.(C) 11791/2016

RAJIV AGARWAL

..... Petitioner

Through: Mr. S. Krishnan, Advocate.

versus



ASSITANT COMMISSIONER OF INCOME TAX  
& ORS

..... Respondents

Through: Mr. Rahul Kaushik, Senior standing  
counsel.

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**30.08.2017**

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1. These are three petitions under Article 226 of the Constitution seeking the quashing of the notices issued by Respondent No. 1, Assessing Officer ('AO') under Section 148 of the Income Tax Act, 1961 ('Act') and all proceedings consequent thereto.
2. The facts of the three petitions are more or less common. Therefore, these three writ petitions are being disposed of by this common order.
3. Each of the Petitioners is a Director of M/s. Scan Holdings (P) Limited ('SHPL') which is engaged in the business of domestic and international trading in packaging material.
4. A common grievance in all three writ petitions is that the erstwhile auditor of SHPL, who is impleaded in these writ petitions as Respondent No. 2, has been addressing false and malicious communications about them for several years now and that this has led to the high-pitched assessments in the case of each of the Petitioners. It is further pointed out that disciplinary proceedings were initiated against Respondent No. 2 under the Chartered



Accountants Act, 1949. The Appellate Authority constituted thereunder confirmed the suspension of Respondent No. 2 (Naveen Chaudhary) by an order dated 20<sup>th</sup> September 2011.

5. As far as the facts in Writ Petition (Civil) No. 11791 of 2016 is concerned, the assessments of the Petitioner, Rajiv Agarwal, for the Assessment Years ('AYs') 2006-07 onwards were sought to be reopened by the AO invoking the power under Section 147 of the Act.

6. For AY 2006-07, as a result of the reopening of the assessment, an assessment order was passed under Section 147 and 143 (3) of the Act. As against the returned income in the sum of Rs. 10,90,360, the AO framed the assessment at an income Rs. 14,73,860. The addition was a result of alleged expenditure incurred on construction at the residence of the Assessee. A reference was made by the AO to the District Valuation Officer ('DVO') reserving the right to make further additions after receipt of report. The DVO later reported that there was no construction or renovation expenditure incurred. Ultimately, the Commissioner of Income Tax (Appeals) ['CIT (A)'] allowed the appeal of the Assessee for AY 2006-07 and that order attained finality.

7. As regards AY 2007-08, although the assessment was reopened under Section 147 of the Act, ultimately the AO, in the reassessment order, accepting the clarification offered by the Assessee and accepting the returned income as correct.



8. As far as AY 2008-09 is concerned, the reopening of the assessment for the said AY was challenged by the Assessee Rajiv Agarwal in this Court by filing Writ Petition (Civil) No. 9659 of 2015. A separate petition being Writ Petition (Civil) No. 9661 of 2015 was filed by his wife Smt. Vijay Laxmi Agarwal again seeking the quashing of the notice dated 31<sup>st</sup> March 2015 issued to her by the AO under Section 148 of the Act proposing to reopen the assessment for the AY 2008-09. The reason for reopening of the said assessments was the premium paid from time to time for 'key man insurance'.

9. Both the writ petitions were allowed by this Court by a common order dated 16<sup>th</sup> March 2016. The Court on merits found that there was no tangible material for the AO to have formed reasons to believe that income had escaped assessment on the said score. It was found that even while considering objections to the reopening of the assessment the AO had failed to apply his mind to any of the facts or material presented by the Assessee thus rendering the entire exercise meaningless.

10. As far as the present writ petitions are concerned, they are in relation to AY 2009-10. In the case of Rajiv Agarwal and his wife Vijay Laxmi Agarwal, the date of the notices under Section 148 of the Act is 31<sup>st</sup> March 2016. In the case of Juhi Dixit (the Petitioner in W. P. (C) No. 11214 of 2015) who is also a director of SHPL, the date of the notice under Section 148 of the Act is 27<sup>th</sup> March 2015.

11. The reasons for the reopening in each case states that a Tax Evasion



Petition ('TEP') was received. In the case of Juhi Dixit, it is stated that TEP alleged that the Assessee received rent of Rs. 90,000 per month from SHPL from 1<sup>st</sup> January 2008 to 31<sup>st</sup> March 2008. The fact was that the Assessee had not let out the said property at all. It was alleged that by showing it as let out, the Assessee claimed deduction on interest on payment of loan. As against the rent of Rs. 90,000 the Assessee claimed interest on loan of Rs. 3,05,953 and thereby showing a total loss of Rs. 2,42,953 under the head "income from house property". The further allegation in TEP was that SHPL purchased 'key man insurance policy' for the financial year ('FY') 2004-05 and paid premium amounting to Rs. 20,70,036 for AYs 2005-06, 2006-07 and 2007-08 and sold the same to the shareholder/director during FY 2007-08 for a meagre amount of Rs. 4,16,000. Accordingly, a sum of Rs. 16,54,036 was proposed to be treated as perquisite in the hands of the Assessee. Thus it was alleged that income of Rs. 16,54,036 had escaped assessment under the head salary and Rs. 1,80,000 under the head 'income from house property'.

12. In the case of Rajiv Agarwal the reasons for reopening of the assessment were communicated, despite repeated requests, only by letter dated 31<sup>st</sup> October 2016. It alleged that payments for Rs. 1,45,25,137 by way of cheques dated 13<sup>th</sup> September 2008 and 12<sup>th</sup> December 2008 were made during the FY 2008-09 to M/s. Brigade Enterprises Limited ('BEL') on behalf of Rajiv Agarwal and Vijay Laxmi Agarwal without deduction of tax and that this was deemed dividend under Section 2 (22) (e) of the Act. It also alleged that the initial advance in the sum of Rs. 5,00,000 was made to Rajiv Agarwal and Rs. 5,50,000 to Vijay Laxmi Agarwal by SHPL.



13. A reference was also made to the letter received from the Assistant Director of Income Tax (Investigation)/Unit 3(3)/2015-16/378 ['ADIT (Inv)'], New Delhi dated 23<sup>rd</sup> March 2016 that an inquiry was conducted under the Act in the case of SHPL and its directors Rajiv Agarwal and Vijay Laxmi Agarwal. The detailed findings for evasion of income in the case of SHPL were purportedly provided in the said report. *Inter alia* it was alleged that the initial advance in the sum of Rs. 5,00,000 was paid to Rajiv Agarwal in FY 2008-09 for closing a deal regarding purchase of immovable property. It alleged that certain other sums were paid by SHPL to Rajiv Agarwal and Vijay Laxmi Agarwal as Director's remuneration in advance on 15<sup>th</sup> April 2008. The amounts as advanced were paid by the Directors to the Brigade Group. Later on 15<sup>th</sup> December 2008 after the apartment was duly allotted, the amount as paid stood returned by Brigade Group to the Directors and the allotment was cancelled. This was because by an agreement dated 24<sup>th</sup> April 2008, the same property stood assigned to SHPL. On the basis of the said agreement, the Assessee had made payment of Rs. 1,45,25,137 to Brigade Group for the same property. It is further noted that the amount standing as advance was adjusted against the Directors' salaries. From the chain of events, it was quite clear that there was no intention of advancing any sums to the Directors. The advances were paid by Directors acting on behalf of the company. The property was meant to be acquired by SHPL only. It was further claimed under the head 'Findings', it was noted that the contention of the Assessee was that "there has been no violation of Section 2 (22) (e) and Section 194 of the Act". Yet it was recorded that the said facts "needed verification in scrutiny and taxed accordingly."



14. Yet another reason given was that the Directors of the company have incurred Rs. 3 crore on construction/interior of residential house at A-123, Meera Bagh, Paschim Vihar, New Delhi, and yet no amount has been declared in book. The real source of that expenditure was “the matter of investigation.” The findings in this regard was that “the exact amount of each director is still to be quantified, therefore, it is clear that unquantified income in this case but quantified income of Rs. 5,50,000 has escaped assessment because the Assessee has not disclosed fully and truly all material facts in the return of income and the same .....

15. Identical reasons for reopening of the assessment were recorded in the case of Vijaya Laxmi Agarwal and communicated by the letter dated 31<sup>st</sup> October 2016. As far as Juhi Dixit is concerned, the reasons recorded by the AO were communicated to her by letter dated 17<sup>th</sup> April 2015 have already been discussed.

16. Each of the three Petitioners filed objections. As far as Rajiv Agarwal was concerned, by his objection dated 1<sup>st</sup> June 2015 he requested that he should be furnished copies of the TEP. It was submitted that the complaint in the form of TEP cannot constitute fresh material warranting the reopening of the assessment. The reasons merely set out the complaint and then stated that the AO had formed a reasonable belief that income had escaped assessment. There was no discussion of the allegations made in the complaint. As regards the keyman insurance, it was ultimately transferred to the Assessee by the letter dated 23<sup>rd</sup> October 2007. The consideration for the



transfer was fixed at Rs. 2,08,000. The surrendered 'market value' of the policy was to be treated as the business income in name of SHPL for the said FY 2007-08. The Assessee had paid premium on the said policy in 2008, 2009 as well as 2010 before the policy matured in his hands. The transfer value amount received from the Assessee has been offered by SHPL to tax as business income.

17. As regards the other substantive issue relating to renting out of office space acquired by the Assessee Juhi Dixit to SHPL, the allegation that the Assessee had not let out the property was denied as "patently false. There was nothing untoward about it either, for "Rental income as received for every money-earning asset acquired will have encumbrances before it offers a positive income for tax." The interest amount was held allowable under Section 24 of the Act. On the issue of deduction of key man insurance it is pointed by Juhi Dixit that though reasons given were identical to those in the case of Rajiv Agarwal and Vijay Lakshmi Agarwal for AY 2007-08 reopening was set aside by this Court, as noted hereinbefore. There was no independent inquiry or application of mind by the AO to the complaint and there was no basis to conclude that there had been escapement of income.

18. The objections filed by Rajiv Agarwal and Vijay Lakshmi Agarwal to the reopening of assessment are more or less similar. These objections were filed on 16<sup>th</sup> November 2016. *Inter alia* it was pointed out that the advances were for purchase of a property in the company's name, not for their benefit, and when the builder insisted on payment to him by SHPL, transactions were ratified and the advances were adjusted against salaries within the year



itself. As working directors, each of them draw a salary, and advances on that account cannot partake the chartered of deemed dividend. Thus, there was no colour of escaped income in such a transaction. There was no basis for the AO to have formed reasons to believe that there was escapement of income.

19. Each of three objections were disposed of by the AO by separate orders - by order dated 28<sup>th</sup> November 2016 in the case of Rajiv Agarwal, by order dated 28<sup>th</sup> November 2016 in the case of Vijay Laxmi Agarwal and 30<sup>th</sup> November 2015 in the case of Juhi Dixit.

20. This Court has heard the submissions of Mr. S. Krishnan, learned counsel for the Petitioner and Mr. Zoheb Hossain, learned Senior standing counsel for the Respondent.

21. It is seen that the issue concerning deemed dividend under Section 2 (22) (e) was also adduced for the reopening of the assessment for AY 2008-09. That has been comprehensively negated by this Court and by allowing writ petitions filed by Rajiv Agarwal and Vijay Laxmi Agarwal by order dated 16<sup>th</sup> March 2016 in Writ Petition (Civil) Nos. 9659-9661 of 2015.

22. As regards the objections by Juhi Dixit, the Court finds that in the order dated 31<sup>st</sup> October 2015 disposing it the AO has failed to deal with the principal objection. It was pointed out that the AO had completely overlooked the fact that provision of key man insurance under the Act was held to be non-taxable by the High Court in the decision in *CIT v. Rajan Nanda (2012) 349 ITR 008*. Moreover, the Central Board of Direct Taxes



(‘CBDT’) itself had clarified that income arising from assignment of keyman insurance policies in the assignees’ hands would be taxable at all from AY 2012-13. Further, the TEP was never provided to the Petitioner despite several requests. Also the TEP by itself would not constitute tangible material for forming the reasons to believe. Indeed, the reasons to believe appear to be a mere reproduction of the complaint itself. The Revenue failed to show the nexus between the material, if any, and the formation of belief. Importantly, the disposal of the objections did not address any of the issues raised by the Petitioner. The Court is satisfied that as far as Juhi Dixit is concerned, the jurisdictional requirement under Section 148 (1) of the Act has not been fulfilled.

23. As far as the cases of Rajiv Agarwal and Vijay Laxmi Agarwal are concerned, the explanation offered regarding purchase of property has not been dealt with in the impugned order dated 16<sup>th</sup> March 2016. Here again, the purpose of providing a forum to the Petitioners to object to the reopening of the assessment and dealing the objections by a reasoned order, has been rendered meaningless by the AO. In all three matters, the fact of the proceedings having been initiated at the instance of Respondent No. 2 who himself is facing disciplinary proceedings, has not been addressed.

24. In the circumstances, the Court is satisfied that there was no valid justification for the AO to have issued the impugned notices to the Petitioners seeking to reopen the assessment for the AY in question. Consequently, the impugned notices issued to the Petitioners by the AO under Section 148 of the Act and all the proceedings consequent thereto,



including the orders of the AO rejecting the objections of the Petitioners, are hereby quashed.

25. The writ petitions are allowed in the above terms.

A handwritten signature in black ink, appearing to be 'S. Muralidhar', written in a cursive style.

S.MURALIDHAR, J

A handwritten signature in black ink, appearing to be 'Prathiba M. Singh', written in a cursive style.

PRATHIBA M. SINGH, J

AUGUST 30, 2017

*Rm*