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

\+ **W.P.(C) 11554/2017**

Date of decision: 1st May, 2018.

MEADOW INFRADEVELOPERS PRIVATE LIMITED….Petitioner
Through: Mr. Saubhagya Agarwal and Mr. Aditya Swarup Agarwal, Advocates.

versus

INCOME TAX OFFICER ..... Respondents
Through: Mr. Asheesh Jain, Sr. Standing Counsel for the Revenue.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Meadow Infradevelopers Private Limited by the present writ petition has prayed for setting aside and quashing re-assessment proceedings initiated vide notice dated 28th March, 2017 under Section 148 of the Income Tax Act, 1961 (Act, for short) for Assessment Year 2010-11.

2. The petitioner has also prayed for quashing of the order dated 28th November, 2017, by which objections raised by the petitioner against initiation of re-assessment proceedings for the Assessment Year 2010-11 have been dismissed.

3. Return filed by the petitioner on 5th October, 2010 for the Assessment Year 2010-11, declaring 'Nil' income was taken up for scrutiny assessment for the following reasons recorded by the Assessing Officer:-

> "In the case assesee has declared Nil income. Gross receipt has been declared at Nil. Company has shown closing stock at Nil.
>
> As per e-filed return, assessee has shown Securities (sic. Shares) Premium Account of Rs.1,56,00,000/- against Nil shown in immediate preceding year, thereby an increase of Rs.1,56,00,000/- in the year under consideration.
>
> Assessee has shown Issued, Subscribed and Paid up Capital of Rs.40,00,00/- against Rs. 1,00,000/- shown in immediate preceding year, thereby an increase of Rs.39,00,000/- in the year under consideration.
>
> If approved, case may be taken up for scrutiny for verifying the introduction of capital made by the assessee company.
>
> Approval of the CCIT Delhi-II, New Delhi is solicited as per para (j) of th guidelines issued by the CBDT vide F. No 225/127/2011/ITA-II dated 02.09.2011. "

Thereupon, notice under Section 143 (2) of the Act was issued to the petitioner on 29th September, 2011, followed by notice under Section 142 (1) dated 5th January, 2012.

4. Order sheets reveal that questionnaire dated 5th January, 2012 was issued, requiring the petitioner to file, amongst other details, detailed note on business activities, depreciation chart, names and addresses of banks along with bank account statements, details of

sales and gross receipts etc. In particular, the following details were required to be filed:-

> "13. Confirmation along with name, address and assessment particulars in respect of share application money received, if any, during the year in the following format alongwith the bank statement evidencing the transaction:-

SI No.	Name of Share Applicant	No. of shares applied	Amount

> 14. Details of unsecured loans in the following format alongwith confirmed copy of account, asstt. particulars, copy of bank statement of the parties:

SI No.	Name of the person/Party from whom received	Opening Balance	Recd. during the year	Paid during the year	Closing Balance	Mode of receipt/payment

> 15. Complete details of share premium received, if any during F.Y. 2009-10 with names and addresses of the investors, copy of bank statements, I.T. particulars and other documentary evidences to substantiate the premium received. Also furnish the basis and determination of the value of such premium on shares.

> 16. Details of shares issued, subscribed and paid during the F.Y. 2009-10 with names and addresses of the

applicants, confirmation, assessment particulars, copy of bank statement.

17. Details of exempt income with applicability of Section 14A read with Rule 8D. Also explain why provisions of section 14A should not be invoked. Furnish complete details of investments.

18. Furnish complete details of current liabilities. Confirmed copy of account of the parties and details of statutory liability with evidence of payment.

19. Details of Creditors, with complete addresses alongwith confirmed copies of account.

20. Please confirm whether stock register is maintained. File copy of inventory of opening stock and closing stock quantitative and value wise along with method of valuation of stocks."

The petitioner had thereupon furnished details before the Assessing Officer.

5. Order sheet dated 10th December, 2012 recorded by the Assessing Officer reads as under:-

"10.12.2012 Attends Sh. Sunil Jain, C.A. & files information as per letter dt. 10.12.2012. To file statement of Banks a/c, date of taking possession of farm house.

Adjourned to 17.12.2012."

The aforesaid order refers to the date of taking possession of the farm house. This farm house was allotted to the petitioner company by New Okhla Industrial Development Authority (NOIDA Authority).

6. The petitioner claims and states that they had filed copy of the original Lease Deed issued by the NOIDA Authority in favour of the petitioner. Copy of the lease deed has been enclosed as Annexure P-3 to the writ petition. The petitioner relies on letter dated 10th December, 2012, written by the Chartered Accountant of the petitioner to the Assessing Officer enclosing documents in support of the acquisition of land from NOIDA Authority. The petitioner, in this connection, has in our opinion rightly referred to the order sheet dated 10th December, 2012, which records that the petitioner had filed details and date of taking possession of the farm house. The aforesaid submission of the petitioner gets further affirmation from the earlier order sheet dated 23rd November, 2012, which records that the petitioner would furnish details of advance against the property with documentary evidence.

7. The original file produced before us by the respondents reveals that the petitioner during the course of assessment proceedings, had filed a copy of transfer memorandum dated 28th September, 2010 with Vichitra Lata. Copy of the Transfer Deed of the leasehold rights in the property executed by the petitioner in favour of the transferee was filed with the Assessing Officer. It is obvious that the Assessing Officer was aware that the petitioner had entered into a transaction and purchased a farm house from NOIDA Authority. It would be

strange to urge that the Assessing Officer had taken on record documents of transfer of the property by the petitioner to a third party, which had occurred in the period relevant to the subsequent assessment year, but not taken on record and examined documents with regard to purchase of the property by the petitioner from NOIDA Authority, which was during the period relevant to the current Assessment Year 2010-11.

8. Upon consideration of the document and explanations offered, assessment order dated 25th February, 2013 under Section 143 (3) of the Act was passed, observing that the authorized representative had attended the assessment proceedings from time to time and filed details. The case was discussed. It was also recorded that the business of the assessee company had not commenced. The returned income of 'Nil' was accepted.

9. The Assessing Officer has thereafter recorded "reasons to believe" dated 28th March, 2017, which refer to the information received from the Deputy Director of Income Tax (Inv.), Unit-3(1) on 15th March, 2017 to the effect that the petitioner had purchased a plot for development of a farm house from NOIDA Authority during the current assessment year for Rs.6,63,40,000/-, out of which Rs.1,32,68,000/- had been paid during the current year. The Assessing Officer has referred to the said information and also given details on analysis of the lease deed executed between the petitioner and the NOIDA Authority. Relevant portion of the reasons to believe for re-opening read:-

"7 Information in this case has been received from Dy. Director of Income-Tax (Inv) Unit-3(1), New Delh on 15.03.2017. The officer submitted that the assessee has purchased a plot for development of farm house from New Okhla Industrial development Authority (Noida). Total premium of the plot is Rs.6,63,40,000/- out of which Rs.1,32,68,000/- has been paid during the F.Y. 2009-10. The officer has also forwarded the copy of lease deed entered by the assessee company with NOIDA authority. The analysis of lease deed is detailed as under:-

The lease deed was signed by the director of the assessee company Sh. Pradeep Kumar Gupta

It was dated 31.3.2010.

It was for a plot measuring 20,231.59 sq. mtrs. situated at FH-11 & 22, Sec. 128, Noida.

The land was allotted to the assessee company vide allotment letter dated 5592 dated 30.10.2009 for setting up of development of farm house on agricultural land.

Total premium amount was Rs.6,63,40,000/-

In additional to that the assessee company was required to pay the lease rent in advance of Rs.16,58,500/- in advance.

The assessee had paid 20% of the total premium amount and the Noida Authority has granted installments of Rs.5,30,72,000/- along with the interest @11% per annum compounded annually. The Noida authority thus granted twenty half yearly installments starting from 29.4.2010 to 29.10.2019."

10. For the reasons stated above, we observe that the lease deed was already with the Assessing Officer when the original assessment under Section 143 (3) was completed vide assessment order dated 25th February, 2013. The lease deed was not a document, which had unearthed and was furnished by the Investigation Wing to the Assessing Officer for the first time. The analysis of lease deed obviously was something which could have been undertaken once the lease deed was submitted. Re-opening was entirely predicated and based on the factum that the petitioner had purchased the property from NOIDA Authority, a factum known and considered by the Assessing Officer in the proceedings culminating the assessment order dated 25th February, 2013.

11. For detailed reasons recorded above, we have accepted that transaction for purchase of the farm house from NOIDA Authority and copy of lease deed was furnished to the Assessing Officer in the first round of assessment. The Assessing Officer was also aware that in the subsequent assessment year the said farm house was sold to a third party. The amount of premium paid by the petitioner to the NOIDA Authority was indicated and examined by the Assessing Officer as copy of the statement of bank accounts was furnished. Pertinently, the Assessing Officer had specifically examined receipt of Rs.1,56,00,000/- as share premium. The re-opening is not to re-examine this receipt on the ground of fresh and new material.

12. Counsel for the respondents has drawn our attention to the fact that the assessee had not disclosed any fixed asset and investment in

his return of income. This may be correct as is noticed in the "reasons to believe". However, this would not be relevant as the petitioner was asked to furnish and give details with regard to purchase of farm house in the original assessment. These details and particulars were submitted as noticed above.

13. We would also record that the "reasons to believe" incorrectly record that the assessee had made undisclosed investment of Rs.5,30,72,000/- and had failed to disclose the same for the assessment year 2010-11. During the year in question, the assessee had paid premium of Rs.1,32,68,000/- to the NOIDA Authority and not the entire purchase price. Balance premium was payable in the subsequent nine equal installments spread over to four years and six months. The transaction was not between two private individuals, but by the petitioner with NOIDA Authority. NOIDA Authority is established by the State of Uttar Pradesh.

14. In the aforesaid background, we do not see that the "reasons to believe" recorded establish any live nexus that income had escaped assessment and any fresh material and evidence would show that the original assessment framed under Section 143 (3) was erroneous and wrong. For reasons stated above, failure to disclose fully and truly all material facts is not made out and established. The transaction between the petitioner-assessee and the NOIDA Authority with regard to purchase of the farm house was examined and considered. The law on re-opening does not permit the Assessing Officer to re-examine the issue already examined in regular assessment under Section 143 (3) of

the Act. Change of opinion cannot be a ground to re-open scrutiny assessment.

15. In view of the aforesaid discussion, the present writ petition is allowed and the impugned notice under Section 148 dated 28th March, 2017 is set aside and quashed. The impugned order dated 28th November, 2017 passed by the Assessing Officer dismissing objections to reopening is also set aside. There would be no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MAY 01, 2018
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