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

Reserved on : 11.02.2019
% ***Pronounced on : 27.03.2019***

\+ **W.P.(C)No.11572/2017 & CM No.47153/2017**

MAX VENTURES INVESTMENTS HOLDINGS PVT. LTD. (FORMERLY KNOWN AS DYNAVEST INDIA PVT.LTD) ..... Petitioner

Through : Sh. Ajay Vohra, Sr. Advocate with Sh. Gaurav Jain, Sh. Aniket. D. Agrawal and Ms. Deepika Agarwal, Advs.

versus

INCOME TAX OFFICER & ANR. ..... Respondents

Through : Sh. Asheesh Jain, Sr. Standing Counsel with Sh. Sanjay Kumar, Jr. Standing Counsel and Sh. Dushyant Sarna, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J.

1. This petition under Article 226 of the Constitution of India, challenges a reassessment notice under Sections 147/148 of the Income Tax Act, 1961 ("the Act" hereafter) issued to the writ petitioner.

2. The petitioner (hereafter "assessee") is a private limited company incorporated in India under the provisions of the Companies Act, 1956 is *inter alia* engaged in the business of rendering financial services. During F.Y.2009-10, the assessee received share application money of ₹87,00,00,000/- from its promoter/founder Sh. Analjit Singh towards fresh allotment of equity shares. On 25.09.2010, the assessee filed its return of income for the AY 2010-11 declaring a total income ₹37,746/. On

06.04.2011, as a part of the exercise of reorganization of the group and consolidation of shareholding, the right to receive allotment of shares against the said share application money of ₹87 crores, was transferred by Shri Analjit Singh to his family trust, i.e. Neeman Family Foundation through a gift. The assessee's return for AY 2012-13 was selected for scrutiny, because a substantial amount was received against unallotted shares. On 16th February, 2015, the AO issued a questionnaire querying the assessee why share application money of ₹87 crores received should not be added to its income.

3. The assessee's reply was that the share application money was received during the A.Y. 2012-13 and that it was holding 5% of paid up share capital of Max India Limited as promoter group entity. The allotment of equity shares by assessee to Neeman Family Foundation, would have resulted in change in ownership status of assessee from individual promoters to Trust. The said allotment of shares to trust would then have triggered the requirement of Public Offer/Announcement finder SEBI Takeover Code, 2011. The assessee also stated that trusts already sought an exemption from SEBI under the applicable provisions during the F.Y. 2014-15 for allotment of shares against pending share application money, which clarified that it would issue equity shares to Neeman Family Foundation, after obtaining necessary approvals from SEBI in accordance with statutory compliances. Therefore, the assessee stated that the addition of income under Section 68 of the Act was not justified. The assessing officer (AO) however, by an order dated 06.03.2015 added said outstanding amount of share application money to the declared income of the assessee as unexplained income in its hands, also holding that the benefit had been taken by the assessee till date and in future as shares were not allotted even after the expiry of 4 years. It was also held that the family trust did not get

any benefit having regard to the purpose it was created which showed that it is just shifting tax burden on deemed income of trust by this route. The AO further held that the assessee had not taken any step to increase the authorized share capital to meet out the requirement of issue of shares as the present authorized share capital was of ₹20 lakhs against share application money of ₹87 crores, which was pending for allotment till the year 2015. Further, the assessee filed application to get exemption from SEBI in the year 2014-15 only after questionnaire/notice was issued by the AO. The assessee appealed to the Commissioner. The CIT(A)'s order dated 09.12.2016 deleted the aforesaid addition made by the ld. AO, *inter alia*, on the ground that since the aforesaid share application money was not received in the relevant AY i.e. 2012-13, the provisions of Section 68 of the Act were not applicable in that year.

4. On 28th March, 2017, the AO issued a notice of reassessment, under Section 148 of the Income Tax. The relevant extracts of the "reasons to believe" issued to the assessee, in support of the notice are reproduced below:

> *"3.1 The assessee during the course of stay proceedings for recovery of outstanding demand raised for A.Y. 2012-13 filed certain documents as piece of evidence that share application money has been received from Sh. Analjit Singh during F.Y. 2009-10. In support of its claim the assessee filed copies of extracts of the minutes of the meeting of the Board of Directors of M/s Max Venture Investment Holdings Pvt. Ltd.*
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> *It was quite surprising that the meeting of board of director was held on 06.01.2010 and 20.04.2010 under the name of M/s Max Venture Investment Holdings Pvt Ltd. and Sh. Sanjiv Malik has signed the Board meeting. While on 06.01,2010 and 20.04.2010 neither M/s Max Venture Investment Holdings Pvt. Ltd. was in existence nor Sh. Sanjeev Malik was the director of that company. The name of company was M/s Dynavast India Pvt. Ltd. and this name was subsequently changed to Max Venture*

Investment Holdings Pvt. Ltd. Sh. Sanjiv Malik was appointed as director of the company on 28.12.2013. Which mean that the assessee has submitted the document which was created after the happening of events thus it does not support its theory of share application money provided by Sh. Analjit Singh.

3.2 It is observed that the authorized share capital of the assessee company was Rs. 20 lakh as on 31.03.2009 and issued capital was Rs 1,00,000/-. The balance capital to be issued was Rs. 19 lakh. The assessee company is receiving Rs. 87 crore as Share application money against the pending share capital of Rs. 19 lakh meaning by that assessee is getting a premium of Rs. 4568947/- on the face value of share of Rs. 10 i.e. 457 times the face value. While the financials of the assessee company does not support such high valuation.

Summary of evidences relating to the assessee
4.1 The claim of the assessee was that an amount of Rs 87 Crore was received from Sh. Analjit Singh in F.Y. 2009-10 while documentary evidences does not support the claim of the assessee for the reasons discussed below:-
i. The submission of the assessee that it has received share application money was not backed by any evidence as these facts were never intimated to the department during the course of assessment proceedings for A.Y. 2012-13. The assessee merely relied upon its submission that it has riot received any Share application money during the relevant year i.e. 2012-13.
ii. The assessee failed to submit any evidence that Sh. Analjit Singh has provided any share application money during 2009-10, 2010-11 & 2011-12. Contrary to this the evidences submitted, by the assessee to support its claim of Share application money provided by Sh. Analjit Singh does not stand the scrutiny of the law;
iii. During the course of recovery proceeding, it has been observed that the assessee has submitted documents in support of its claim that money has been provided by Sh. Analjit Singh in 2009. But these evidences cannot be relied upon for the following reasons:-

(a) The assessee submitted the copies of extract of minutes of meeting of Board of Directors of M/s Max Venture Investment

Holdings Pvt. Ltd. From examination of the copies of extracts of the minutes of the meeting, of the Board of Directors It. was observed that the meeting of board of director was held on 06.01.2010 and 20.04.2010 under the name of M/s Max. Venture Investment Holdings Pvt. Ltd. and Sh. Sanjiv Malik has signed the Board meeting. While on 06.01.2010 and 20.04.2010 neither M/s Max Venture Investment Holdings Pvt. Ltd. was in existence nor Sh. Sanjeev Malik was the director of that company. The name of company was M/s Dynavast India Pvt. Ltd. and this name was subsequently changed to Max Venture Investment Holdings Pvt. Ltd. -and Sh. Sanjiv Malik was appointed as director of the company on 28.12.2011.

(b) The above fact means that the assessee has submitted the document which was created after the happening of events. Thus it does not support its theory of share application money provided by Sh. Analjit Singh.

iv. Further, the contradictory submission of the assessee and M/s Neeman Family Foundation further strengthens the view that the credits of Rs. 87 Crore were not genuine. As per the submission filed by the assessee dated 13.7.2016 "Sh. Analjit Singh had vide gift dated 6.4.2011 conveyed the rights to allotment of shares against the aforesaid application money to Neeman Family foundation without consideration. As per assessee version Sh. Analjit Singh has given gift to M/s Neeman Family Foundation, while M/s Neeman Family Foundation vide its reply dated 9.12.2014 has submitted the copy of balance sheet as on 31.03.2012 and income and expenditure account for the year ended on 31.03.2012. As per this balance sheet Neeman Family Foundation has submitted that Donation received till 31.3.2012 was Rs. 89.16 crores. M/s Neeman Family foundation has never, stated that it has received gift. Hence M/s Neeman Family foundation in its return of income provided receipt of donation and no gift was declared by it. This clearly indicates that there is contradiction between, the submission of the assessee and documents submitted before the income tax department.

4.2 The assessee failed to prove that whether that share application money has ever been returned by the assessee or not to Sh. Analjit Singh.

Reason for formation of belief:
5.1 I have carefully perused and considered the return of income of the assessee, various information provided by the assessee and various documents submitted by the assessee before the department from time to time. It has been observed that various contradictions were observed leading to credits of Rs. 87 crores being share application money received by the assessee during financial year 2009-10. On the basis of material available with the undersigned it was clear that the transactions with respect to credits of Rs. 87 crores is not genuine and thus can be basis of reason-for formation of belief that the income has been escaped assessment.

5.2. From the documents submitted by the assessee during various proceedings for A.Y. 2012-13 and return of income for A.Y. 2010-11 it was clear that the transaction entered by the assessee relating to receipt of share application of Rs. 87 crore is under doubt. Section 68 of the Act provides that if the identity and creditworthiness of person and genuine of the transaction is not proved than the sum has to be treated as income. Prima facie on the basis of information available on records and findings of the Ld. CIT(A)-3's order dated 09.12.2016, it was clear that the income of Rs. 87 crore being receipt of share application money has escaped assessment.

5.3 All the documents relied upon while forming the belief has been annexed and the detail of which is as under:

i. Copy of extract of minute of meeting of Board dated 6.1.2010 as Annexure 1
ii. Copy of extract of minute of meeting of Board dated 06.1.2010 as annexure 2
iii. Copy of letter dated 9.12.2014 of M/s Neeman Family Foundation including balance sheet and income and expenditure account addressed to ITO w 7(4) in response to notice u/s 133(6) as annexure 3
iv. Copy of assessee's letter dated 13.7,2016 application for stay as annexure 4

Income Chargeable to tax escaping assessment
6.1 Keeping in view all above, I have reason to believe that an amount of Rs 87,00,00,000/- has escaped assessment in case the of M/s Max Ventures Investment Holdings Pvt. Ltd. for the A/Y 2010-11 within the meaning of Section 147/148 of Income-tax Act, 1961."

5. Mr. Ajay Vohra, learned senior counsel appearing for the assessee, impugned the reassessment notice and urged that when the scrutiny assessment for AY 2011-12 had examined the matter and the addition made, on the same ground, was deleted on appeal, the revenue could not resuscitate the same issue, without any new material. It was submitted that the revenue's argument that the CIT (A) had issued directions to re-examine the accounts, is an ill-founded submission, unsupported by any such observation in the Appellate Commissioner's order.

6. It is urged that in the facts of the present case, the assessee received share application money from its founder and promoter, i.e., Shri. Analjit Singh, whose identity and creditworthiness is admittedly not in doubt, including by the AO. The reasons recorded doubt the source of receipt of said share-application money from Mr. Singh on various paltry and erroneous reasons explained above, which are factually incorrect and illegal, made on mere pretence with an intent to reopen the concluded assessment; to conduct roving and fishing enquiries and treat the receipt of share application money as unexplained income under Section 68 through reassessment proceedings under section 147 of the Act which is impermissible in law.

7. It is argued that since the transfer of right to be allotted with equity shares against share application money by Mr. Singh to Neeman Family Foundation was subject to permission from SEBI under the Takeover Code regulations, the entire facts relating to aforesaid investment of ₹87 cores by

Mr. Singh in the assessee were even disclosed to SEBI. Reference in this regard is made to the application dated 26.11.2014 filed by Neeman Trust for exemption from SEBI Takeover Code Regulations, which was allowed by SEBI by order dated 04.10.2016. Accordingly, the factum of investment of ₹87 crores by Mr. Singh in the Petitioner company has been disclosed at several places and therefore the impugned re-assessment proceedings initiated raising doubt on the source of such receipt are erroneous and illegal grounds, which deserves to be quashed.

8. It is urged that that validity of the assumption of jurisdiction under Section 147 has to be tested on the basis of 'reasons to believe' formed before issuing notice under Section 148 of the Act. In other words, valid 'reasons to believe' is *sine qua non* for assuming jurisdiction under Section 147 of the Act. If the 'reasons to believe' are not valid or are mere pretense or lack due application of mind by the assessing officer, the re-assessment proceedings initiated under Section 147 of the Act would not be valid. Learned counsel relied on *Sheo Nath Singh vs. ACIT*, 82 ITR 148 (SC); *Income Tax Officer vs. Lakhmani Mewal Das*, 103 ITR 437 (SC) and *Ganga Saran & Sons (P) Ltd. vs. ITO*, 130 ITR 1. The following observations in *Laksmani Mewal Das*, are relied upon:

> *"The grounds or reasons which lead to the formation of the belief contemplated by section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income tax Officer to form the above belief that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of the grounds which induce the Income-tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income-tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be*

> *challenged by the assessee but not the sufficiency of the reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law."*

9. The revenue contests the writ petition; urging that the reassessment notice is valid and within the bounds of law. It is submitted that the reasoning of the CIT (A) and the documents furnished during miscellaneous proceedings, became a starting point for examining the assessee's returns. In this regard, it is submitted that contradictions were clearly noticed by the AO while reopening the case of assessee thereby doubting not only the identity of the share applicant but also the genuineness of the transactions. In the opening part of the reason recorded, the AO demonstrated that assessee was in receipt of share application money of ₹87 crore against the authorized share capital of ₹20,00,000/-. The assessee had issued capital of ₹1,00,000/- thereby assessee had option to issue share capital of ₹19,00,000/- only. Against this ₹19,00,000/-, it received ₹87 crores meaning thereby that it might have issued the shares at a premium of ₹4568.95/- against the face value of ₹10 each thereby issuing the share at 457 times the face value of shares. But the valuation of the assessee did not justify such a high valuation. Even its Net Asset Value at the time of receipt of share application money as per Rule 11UA of the Income Tax Rule, 1962 comes at ₹318/-per share against the receipt of share application money at a price of ₹4570/- per shares.

10. It is submitted that the assessee gave various contradictory evidences to prove the genuineness of the credits of ₹87 crores in its books during the course of assessment proceedings for A.Y 2012-13 and also during the course of stay proceedings. It is argued that no evidence to prove the source of receipt of share application money was ever produced by the assessee. The assessee has for the first time filed the "gift deed" dated 06.04.2011 as "Annexure G" to the Writ Petition before this court. This gift deed was not filed by the assessee before Ld. A.O. Further a gift is one which is out of natural love and affection and not out of any compulsion. But the gift deed dated 06.04.2011 between Sh. Analjit Singh and Neeman Family Foundation was devoid of all these ingredients of gift, as it was made for furthering the family arrangements and was thus out of compulsion. In such circumstances, doubting the genuineness of the transactions cannot be stated to be out of context. It is also an admitted fact that the assessee has not issued the shares even till date and the reason stated by the assessee is that permission would be required from the SEBI. But it is relevant to note that the share application money was received in F.Y. 2009-10 and it was only on 26.11.2014, when the assessee filed a Petition before SEBI. The assessee failed to elaborate as to why no shares were issued from F.Y. 2009-10 to 2014-15. The contradiction itself established that the transaction pertaining to credit of ₹87 crores was not genuine.

11. *Commissioner of Income Tax v. Kelvinator*, (2010) 320 ITR 561 (SC) is now the ruling precedent on what are valid considerations that would justify issuance of a reassessment notice, under Section 147/148. These are briefly, when full disclosure of material facts is not made during the original assessment (such as when essential documents are not produced or shown); etc. The Supreme Court held that the A.O. has power to re-open the assessment if there is tangible material to conclude, *prima facie* that

there has been escapement of income. However, the court cautioned that the power of reassessment is not one of review and that it does not admit of formation of a second opinion. The scope of the phrase "reason to believe" was examined by the Supreme Court previously in *M/s. Phool Chand Bajrang Lal and Anr. v. Income Tax Officer and Anr.*, (1993) 203 ITR 456 (SC). In *Phool Chand*, the court made observations which remain undisturbed in *Kelvinator:*

> *"Thus, where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings, cannot be said to be disclosure of the "true" and "full" facts in the case and the I.T.O. would have the jurisdiction to reopen the concluded assessment in such a case. It is correct that the assessing authority could have deferred the completion of the original assessment proceedings for further enquiry and investigation into the genuineness to the loan transaction but in our opinion his failure to do so and complete the original assessment proceedings would not take away his jurisdiction to act under Section 147 of the Act, on receipt of the information subsequently".*

12. Clearly therefore, when the Revenue gets hold of information or material which tends to or has the potential of undermining its findings (previously made in the assessment proceedings) and have an important bearing, invocation of the power to reassessment is warranted. Now in the present case, the Revenue presses several such circumstances: one, that the SEBI application was made in 2014 after a questionnaire was issued by the AO; two there was nothing to justify the premium of 457 per cent over the face value of the shares – even the market value of the share according to the Revenue on the date of issue of the shares was only ₹318/- per share. Three, the SEBI approval was given much later; four, when the authorized

capital of company was ₹20 lakhs (mostly paid) the necessity for issuing shares worth ₹87 crores remained unanswered.

13. In the opinion of this court, the reassessment notice in this case was clearly warranted. Though the assessee had sought to explain that the share application amounts were received and later the shareholding rights were transferred by Mr. Analjit Singh to his family trust. The identity of Shri Analjit Singh was known; however, looking at the transaction (i.e. allotment of shares vastly in excess of the authorized capital, in the absence of any SEBI approval and retention of that money by the assessee which did not show any reason for issuing the shares) the other ingredients of Section 68 (i.e. genuineness of the transaction or credit and the credit worthiness of the individual providing the money) were apparently not established. In the light of these circumstances, and on an application of the law in *Phool Chand Bajrang Lal*, the Revenue was justified in issuing the impugned notice.

14. As a result of the foregoing discussion, the writ petition has to fail; the interim order is hereby vacated; the revenue is at liberty to issue the final reassessment order, within two weeks. The writ petition is dismissed in these terms.

S. RAVINDRA BHAT
(JUDGE)

PRATEEK JALAN
(JUDGE)

MARCH 27, 2019