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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision:12.09.2023

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W.P.(C) 11670/2019

KOA INVESTMENT LIMITED

..... Petitioner

Through: Mr Anand Kiran Chaudhuri with Mr Kumar
Abhishek, Advs.

versus

THE INCOME TAX OFFICER, WARD14(4)

..... Respondent

Through: Mr Shlok Chandra, Sr Standing Counsel
with Ms Priya Sarkar and Ms Madhavi
Shukla, Standing Counsel, and Ms Vanshika
Taneja, Adv.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)**

1. This writ petition concerns Assessment Year (AY) 2012-13.
2. *Via* this writ petition, challenge is laid to the notice dated 27.03.2019, issued under Section 148 of the Income Tax Act, 1961 [in short, "Act"].
 - 2.1 Besides this, the petitioner/assessee has also assailed the order dated 17.10.2019, issued by the Assessing Officer (AO) whereby, its objections to the commencement of reassessment proceeding against it were rejected.
3. For the purpose of adjudication of the instant writ action, the following broad facts are required to be noticed:
 - 3.1 The petitioner/assessee was subjected to scrutiny assessment and accordingly, the order dated 11.02.2015 was passed under Section 142(1) of



the Act. Prior to the scrutiny, the petitioner/assessee, *inter alia*, was called upon to furnish information as to various aspects, including the amount shown in the balance sheet for the year in issue under the heading 'non-current investments'.

3.2 This aspect emerges upon perusal of the notices dated 06.01.2014 and 11.02.2015, and the respective responses furnished by the petitioner/assessee on 16.12.2014 and 10.03.2015.

3.3 Despite scrutiny having taken place with regard to the amounts reflected under the head of non-current investments, the petitioner/assessee was served with the impugned notice, i.e., notice dated 27.03.2019, under Section 148 of the Act.

3.4 Pertinently, the petitioner/assessee was not served alongwith the notice, the document evidencing approval for triggering the reassessment proceeding against it.

3.5 The record shows that the petitioner/assessee sought copies of documents, which, according to it, would have captured the reasons to believe recorded by the AO and the approval obtained under Section 151 of the Act, prior to the commencement of the reassessment proceeding.

3.6 The record further discloses that although the AO furnished a copy of the document in which reasons to believe were recorded, the document evidencing the approval granted for commencing the reassessment proceeding was not provided. Evidently, the document whereby the reasons to believe were recorded by the AO was provided to the petitioner/assessee on 12.09.2019.

4. Upon receiving a copy of the said document, the petitioner/assessee exercised its right to file the objections. These objections were filed on



05.10.2019. In the objections, the petitioner/assessee attempted to explain the charge leveled against it, which was that although under the heading loans and advances, in the balance sheet for the year ending on 31.03.2012, the amount shown was Rs.74,50,000/-, it had invested Rs.1,80,00,000/- in an entity going by the name, Divine Communications System Pvt. Ltd. [in short, "Divine"].

4.1. In other words, the charge against the petitioner/assessee was that there was no explanation for the difference in the two amounts referred to above i.e., Rs.1,05,50,000/-. It is this amount, which according to the AO, had escaped assessment.

5. The explanation that the petitioner/assessee provided in the objections filed was that it had invested in 0% Optionally Fully Convertible Debenture (OFCD) issued by Divine.

5.1 The petitioner/assessee had thus asserted that Rs.1.80 crores, which was invested in OFCD was shown under the head 'non-current investment' and not 'loans and advances'. Furthermore, the petitioner/assessee explained that under the heading 'non-current investments', the amount shown in the balance sheet ending in 31.03.2012 was Rs.8,55,00,000/-. In other words, the stand of the petitioner/assessee was that Rs.1,05,50,000/-, the differential amount was included in the total amount shown under the heading 'non-current investment'.

5.2. The petitioner/assessee also adverted to the fact that this very aspect, i.e., the sum shown under 'non-current investment', was enquired into by the AO prior to framing of the assessment order dated 27.03.2015, passed under Section 143(3) of the Act.

6. The AO, however, when dealing with the explanation given by the



petitioner/assessee, rejected the objections filed by the petitioner/assessee, *via* order dated 17.10.2019.

7. It is against this backdrop that the petitioner/assessee has approached the court with the instant writ action.

8. Mr Anand Kiran Chaudhuri, counsel who appears on behalf of the petitioner/assessee, says that the reassessment proceeding triggered *qua* the petitioner/assessee is flawed for the following reasons:

(i) At the scrutiny stage i.e., when the original assessment order was passed, the issue which formed the basis of triggering the reassessment proceeding was thoroughly examined and only thereafter the assessment order dated 27.03.2015 was framed. In other words, there was neither a failure to disclose fully and truly all material nor was this a case where information was embedded in the documents furnished, which did not come to the notice of the AO.

(ii) Although the AO was obliged to furnish a copy of the approval, he had failed to do so, which was a serious infraction of law.

7. Mr Shlok Chandra, learned senior standing counsel, who appears on behalf of the respondent/revenue, on the other hand, drew our attention to Note 8 of the balance sheet for Financial Year (FY) 2011-12, which referred to the fact that investment in OFCDs to the extent of Rs.6,75,00,000/- was made by the petitioner in the shares of an entity going by the name, Digivive Content Services Pvt. Ltd. [in short, "Digivive"].

8. Based on this, Mr Chandra contended that the entire story weaved by the petitioner/assessee is misleading and therefore, there was every reason for the AO to trigger the reassessment proceeding.

8.1 It is Mr Chandra's submission that the petitioner/assessee would have



the opportunity to explain the transaction flagged by the AO during the reassessment proceeding.

8.2 In sum, it is Mr Chandra's submission that at this juncture, the court ought not to interfere with the reassessment proceedings.

9. We have heard counsels for the parties and perused the record carefully. What has emerged from the record and is not disputed is the following:

- (i) The petitioner/assessee, during the relevant period, has made an investment in the OFCDs issued by Divine.
- (ii) The amount invested in the OFCDs issued by Divine was Rs.1.80 crores.
- (iii) The amount shown under the head short term loans and advances in the balance sheet for FY 2011-12 [AY 2012-13] is Rs.74,50,000/-.
- (iv) The AO having noticed the difference between the amount invested by the petitioner/assessee in Divine and the amount shown under the heading 'loans and advances', triggered the reassessment proceeding against the petitioner/assessee. The difference between the two amounts was Rs.1,05,50,000/-.
- (v) The information with regard to the investment made in OFCDs was furnished by the AO of Divine.
- (vi) Under the heading 'non-current investments', the total amount shown in the balance sheet ending on 31.03.2012 is Rs.8,55,00,000/-
- (vii) In the Note appended to the balance sheet, this amount which is shown as an investment in OFCDs discloses that the investment is made in Digivive.
- (viii) The notices dated 06.01.2014 and 11.02.2015, *inter alia*, were issued



to the petitioner/assessee with regard to various matters including ‘non-current investments’. In reply to notices, the petitioner/assessee has provided a complete break-up of the investments made in Divine. This is reflected in replies dated 16.12.2014 and 10.03.2015. Therefore, while Mr Chaudhuri projects that there was a typographical error in Note 8 appended to the balance sheet ending on 31.03.2012, the other material before the AO clearly showed that the petitioner/assessee had made a clean breast that the amount was invested in Divine. The AO, at that stage, had an opportunity to inquire further into the matter. The AO for whatever reasons chose not to embark upon that journey.

(ix) What is also relevant is that insofar as Divine is concerned, an order under Section 143(3) was passed on 26.02.2015. This aspect is specifically averred in the writ petition filed by the petitioner/assessee. The counter-affidavit of the respondent/revenue does not challenge or dispute the assertion made in this behalf by the petitioner/assessee.

(x) What is disconcerting is that in the order rejecting objections dated 17.10.2019, there is no discussion about the explanation given by the petitioner/assessee with regard to the charge levelled against it. As a matter of fact, the discrepancies which is pointed out by Mr Chandra in the Note 8 appended to the balance sheet does not find mention either in the reasons to believe or in the order dated 17.10.2019.

10. Thus, for the foregoing reasons, we are of the view that this was not a case in which the AO could have triggered the reassessment proceeding against the petitioner/assessee.

11. The AO has failed to demonstrate that the explanation given by the petitioner/assessee was deficient and therefore, the reassessment proceeding



ought to continue *qua* the petitioner/assessee.

12. Accordingly, we are inclined to set aside the impugned notice dated 27.03.2019 issued under Section 148 of the Act and the order dated 17.10.2019, whereby, the petitioner/assessee's objections were rejected.

12.1 It is ordered accordingly.

13. The writ petition is disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 12, 2023

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