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

% *Date of decision: 15.12.2023*

+ **W.P.(C) 3622/2022**

GE CAPITAL GLOBAL ENERGY INVESTMENT BV

..... Petitioner

Through: Mr Sachit Jolly with Ms Disha Jham
and Ms Soumya Singh, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE

1(3)(1), INTERNATIONAL TAXATION & ANR..... Respondents

Through: Mr Puneet Rai, Sr. Standing Counsel.

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. We had heard the matter at some length on 02.03.2022, and accordingly etched out the broad contours of the case. Thus, for convenience, the relevant parts of the order dated 02.03.2022 are extracted hereafter:

“2. The writ petition is direction against the notice dated 31.03.2021 issued by the respondents/revenue under Section 148 of the Income Tax Act, 1961 [in short, “the Act”]. The impugned notice concerns the assessment year 2014-15.

2.1. The petitioner/assessee has assailed the aforementioned notice, inter alia, on the ground that on the face of it, the order dated 20.02.2002 whereby the petitioner's/assessee's objections for reopening the assessment are rejected, is illegal and flawed.

2.2. For this purpose, our attention has been drawn to page 28 of the case file which contains the Assessing Officer's [in short, “AO”]



reasons that propelled him to believe that petitioner's/assessee's taxable income had escaped assessment. The relevant portion of the said order is extracted hereafter:

"2. Information available in ITS-AIR details was analyzed and it was observed that the assessee, during the financial year 2013-14 relevant to A.Y. 2014-15 has made following transactions :

S.No.	Transaction Amount (Rs./-)	Remarks
1.	2,47,89,68,837	Paid Rs. 5,00,000 or more for acquiring Bonds/ Debentures

3. It is pertinent to mention that though the assessee has made large transactions even though the assessee has chosen not to file return of its income for the year under consideration. Therefore, it appears that the assessee is carrying on some activity which has resulted in generation of income.

Xxx xxx xxx

5. In the above background and after examining the available information, I have reason to believe that income of Rs.2,47,89,68,837/- as mentioned above during the FY 2013-14 (relevant to AY 2014-15) has escaped assessment within the meaning given in Section 147 of the Income-tax Act. Therefore, I am of the belief that it is a fit case for the issuance of notice u/s 148 of the Act and initiation of proceedings u/s 147 of the Act. I propose to issue notice u/s 148 of the Act for AY 2014-15 and to assess or reassess the above mentioned income and also any other income chargeable to tax which has escaped assessment and which comes to my notice subsequently in the course of proceedings under section 147 of the Act.

It would be worthwhile to submit here that in the case of *Rajesh Jhaveri Stock Brokers Pvt. Ltd. V. ACIT(2007) 291 ITR 500/161 Taxman 316 (SC)*, Hon'ble Supreme Court has held that:

"All that is required for the Revenue to assume valid jurisdiction us 148 is the existence of cogent material that would lead a person of normal prudence, acting reasonably, to an honest belief as to the escapement of income from assessment."



It is also pertinent to mention that on similar lines, in the case of CIT v. Nova Promoters & Finlease (P) Ltd (ITA NO. 342 of 2011), the Hon'ble Delhi High Court, which is the jurisdictional High Court, has held a below:

"We are aware of the legal position that at the stage of issuing the notice under Section 148, the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax at escaped assessment."

I am satisfied that the eligibility condition for initiation of proceedings u/s 147 a laid down by the Act and relevant case laws are adequately fulfilled in the present case."

[Emphasis is ours.]

3. Mr Sachit Jolly, who appears on behalf of the petitioner/assessee, says that a mere perusal of the aforementioned paragraphs would show that the impugned notice has been issued on the premise that Rs.2,47,89,68,837/- invested in bonds/debentures by the petitioner/assessee, constituted escaped income of the petitioner/assessee.

3.1 Mr Jolly's says, apart from anything else, even assuming for a moment, that everything said in the order containing reasons to believe is taken to be correct, the entire amount invested in bonds/debentures cannot form part of the petitioner's/assessee's taxable income.

4. Mr Puneet Rai, who appears on behalf of the respondents/revenue, on the other hand, says that this is a case where no return was filed by the petitioner/assessee, as required under Section 139(1) of the Act. It is also submitted by Mr Rai that opportunity, in that behalf, was granted, which was not availed of by the petitioner/assessee. For this purpose, our attention has been drawn to page 286 of the case file.

4.1 It is also Mr Rai's contention that a show-cause notice has been issued to the petitioner/assessee, which is, dated 20.02.2022, to which no reply has been filed by the petitioner/assessee, as yet, although time was sought by the petitioner/assessee to file a reply.

4.2. We have asked Mr Rai as to whether, apart from what is stated in the order containing reasons to believe for reopening the assessment qua the petitioner/assessee, there is any other material which is available with the AO. Mr Rai says that he will have to revert with instructions vis-a-vis this aspect of the matter.

5. Having heard the learned counsel for the parties and perused the record, we are of the view that the petitioner/assessee, at this juncture, has established a prima facie case. The balance of convenience is, presently, in favour of the petitioner/assessee, as, if the assessment



proceedings are allowed to continue, it may cause detriment to the petitioner's/assessee's interest.

5.1. What is required to be noticed in the matter, at this stage, is that the AO has formed a belief, according to us, erroneously, that the entire amount which the petitioner/assessee is said to have invested in bonds/debentures will form part of its taxable income. Investment in bonds/debentures, ordinarily, constitutes a loan transaction. Interest, if any, earned on such investment would possibly form a part of the investor's taxable income. However, at this juncture, there is no material to reach a conclusion either way.

6. Accordingly, issue notice.

6.1. Mr Rai accepts notice on behalf of the respondents/revenue.

6.2. Counter-affidavit will be filed, within the next four weeks.

6.3. Rejoinder thereto, if any, will be filed before the next date of hearing.

7. We may note that Mr Jolly qua the aspect as to whether or not the petitioner/assessee has earned any interest, says that the investee company i.e., Gati Infrastructure Pvt. Ltd. has indicated in its final accounts for the year ending on 31.03.2014 that no interest whatsoever has accrued in favour of the petitioner/assessee. This is an aspect which will be examined on the next date of hearing, if necessary.

8. List the matter on 26.08.2022.

9. In the meanwhile, there shall be a stay on the operation of the impugned notice dated 31.03.2021."

2. It is Mr Puneet Rai's, learned senior standing counsel's submission that although the entire amount i.e., Rs.2,47,89,68,837/- invested by the petitioner in the Compulsory Convertible Debentures [CCDs], would not amount to escaped income, the interest which would have accrued in the Financial Year(FY) ending on 31.03.2014, will, however, come within the sway of escaped income.

2.1. Mr Rai says that this is reflected in the order. In support of this line of argument, Mr Rai seeks to rely on order dated 20.02.2022 whereby the objections lodged by the petitioner were disposed of.

3. To rebut this plea, Mr Sachit Jolly, learned counsel, who appears on



behalf of the petitioner/assessee, has taken us through the subscription agreement dated 19.02.2013, the shareholders agreement dated 04.07.2013 and the auditor's report, which, according to him, read together, lead to the conclusion that interest @ 15% would accrue in favour of the petitioner/assessee on the defined dates, only if "distributable amounts" were available.

3.1 Mr Jolly says that a plain reading of the auditor's report would show that in the period in issue, the distributable amounts were not available in the investee company i.e., Gati Infrastructure Pvt. Ltd. [in short, "Gati"]

4. We have put to Mr Rai that if this is the position, notwithstanding Mr Jolly's argument that the interest component did not form part of the reasons to believe, the writ petition can be disposed of.

4.1 Mr Rai says that if Mr Jolly's statement is taken on record, the matter can be disposed of on that basis.

5. It would also be necessary to note (something that we had recorded in our order dated 02.03.2022) that investment in CCDs amounted to loan being extended to the investee company i.e., Gati and the invested amount could not have been construed as interest income. In this background, perhaps, that Mr Rai raised the arguments concerning interest.

6. Since Mr Jolly, in no uncertain terms, has indicated to the court that interest did not accrue to the petitioner in the period in issue, we are inclined to close the matter on the basis of the statement made by Mr Jolly.

7. Mr Jolly's statement is taken on record.

8. The writ petition is disposed of in the aforesaid terms. Thus, the impugned notice dated 31.03.2021 shall stand set aside.

9. Accordingly, interim order dated 02.03.2022, which was made



absolute on 26.08.2022, shall stand vacated.

10. Other issues raised in the writ petition are kept open.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 15, 2023 / tr