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

% *Decision delivered on: 19.12.2022*

+ **W.P.(C) 13811/2018**

VEDANTA LTD. (SUCCESSOR OF
STERLITE INDUSTRIES (INDIA) LIMITED) Petitioner

Through: Mr Sachit Jolly, Mr Rohit Garg, Ms
Disha Jham, Ms Soumya Singh and
Mr Sohun Dua, Adv.

versus

ASST. COMMISSIONER OF INCOME TAX,
CIRCLE- 26(1), NEW DELHI Respondent

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Mr Shlok Chandra,
Junior Standing Counsel and Mr
Nimit Saigal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against the notice dated 28.03.2018 passed by the respondent under Section 148 of the Income Tax Act, 1961 [in short "Act"].
2. Notice in this writ petition was issued on 20.12.2018, when an interim direction was issued, to the effect, that while reassessment proceedings could continue, no final order would be passed till the next date of hearing.
3. The record shows, that the interim direction was made absolute on 20.08.2019, during the pendency of the writ petition. Consequently, the

interlocutory application i.e., CM No.53887/2018 was disposed of.

4. Mr Sachit Jolly, who appears on behalf of the petitioner, says that two issues were raised by the assessing officer, which led to the issuance of the impugned notice. These issues are set forth in paragraphs 3.1(i) and 3.1(ii) of the impugned notice. For the sake of convenience, the same are set forth hereafter:

“3.1 I have perused and analyzed the information available with this office. The following facts emerged from the inputs which are mentioned above:-

(i) An information from the DCIT, International Taxation, Madurai has been received in the O/o DCIT, Circle-1(1), Goa on 31.03.2017 that M/s Vedanta Ltd. in A.Y. 2011-12 made payments amounting to Rs.22,45,80,000/- to the foreign entities without deducting tax and to verify the disallowance of the said amount u/s40(a)(i) of the Income tax Act, 1961. An Order u/s 201(1)/1A of the Income tax Act, 1961 was passed by the DCIT, (Intl. Txn.), Madurai on 31.03.2017 raising a demand of Rs.4,24,73,595/-.

(ii) Another information received from the DDIT(Inv.), Unit-5(4), Mumbai has been received in this office that the assessee has undergone one time settlement (OTS) with the bank shown in table:

<i>Name of the Assessee</i>	<i>Name of the Bank</i>	<i>Date</i>	<i>Amount</i>	<i>F.Y.</i>
<i>Sterlite Industries</i>	<i>Vijaya Bank</i>	<i>07.01.2011</i>	<i>4537696</i>	<i>2010-11</i>

By doing this, bank has written off interest and other liabilities by this single payment. In some of the cases, efforts were made to obtain the details of OTS from the banks. The information was passed on to the undersigned to examine from records that whether the assessee has properly explained the source of fund to the bank for one time settlement and written back the interest claimed in earlier years on higher amount of loan.”

5. Insofar as the first issue is concerned, learned counsel for the parties are *ad idem* that the judgment dated 20.08.2019 rendered by the coordinate bench of this Court in W.P.(C) No.11541/2017, titled ***Vedanta Ltd. (Successor of Sterlite Industries (India) Limited) v. Asst. Commissioner of Income Tax, Circle-26(1), New Delhi*** covers the said issue against the

respondent.

5.1 To be noted, the said judgment concerned Assessment Year (AY) 2010-2011, while the instant matter relates to AY 2011-2012.

6. In these circumstances, we have queried the learned counsel for the parties, as to whether the aforementioned judgment was carried in appeal to the Supreme Court.

6.1 Learned counsel for the parties say, that the judgment remains undisturbed.

7. This brings us to the second issue.

7.1 A perusal of the second issue, as indicated above, shows that the allegation levelled against the petitioner was, that it had entered into a One Time Settlement (OTS) with the Vijaya Bank, and in that process, an amount equivalent to Rs.45,37,696/- and interest accrued thereof, was written-off.

7.2 Interestingly, this issue was raised in the context of the order dated 07.01.2011 issued by the Debt Recovery Tribunal-I (Mumbai) [in short "Tribunal"].

8. Our attention has been drawn to the order passed by the Tribunal. A perusal of the said order shows, that Vijaya Bank was the applicant which had filed the Original Application (OA) while, amongst others, the writ petitioner in its earlier *avatar* i.e., Sterlite Industries (India) Ltd., was arrayed as defendant no.1.

8.1 A perusal of the said judgment would show, that a claim for recovery was made by Vijaya Bank in respect of the aforementioned amount i.e., Rs.45,37,696/-, against the petitioner and other defendants.

9. According to Vijaya Bank, these defendants were jointly and severally liable to pay the said amount along with “further interest” at the rate of 24.5% per annum commencing from the date of the institution of the application, till its realization. There were other reliefs also sought by the Vijaya Bank, in the OA, which were framed as alternate reliefs to the principal relief claimed in the OA.

10. For the sake of convenience, the principal prayer made in the OA is extracted hereafter:

“a) for a sum of Rs. 45,37,696/- against Defendant Nos.1 to 6 jointly and severally with further interest @ 24.5% p.a. from the date of the suit/ application till realisation.”

11. It is important to note, that the OA came to be registered in the Tribunal, after the summary suit filed by the Vijaya Bank [i.e., Suit No. 4093/1998] in the Bombay High Court was transferred to the Tribunal.

12. A perusal of the judgment would show, the case set up by the Vijaya Bank was that certain persons i.e., defendant nos. 7 to 25 (arrayed as parties in the OA) had wrongfully received amounts from it, based on forged and/or fabricated and/or fraudulently procured dividend warrants, purportedly, issued by the petitioner.

13. Evidently, and *qua* which there is no dispute, the petitioner had issued a bond to indemnify Vijaya Bank against the losses or liabilities that could arise, *inter alia*, by the reason of misuse of dividend warrants.

13.1 This was the heart of the case which Vijaya Bank set up against the petitioner/assessee.

14. The Tribunal, after giving detailed reasons, ultimately, dismissed the claim, insofar as the petitioner was concerned. This aspect of the matter emerges upon a perusal of paragraphs 145 and 146 of the said judgment.

The relevant part of the said judgment is extracted hereafter:

“145. Therefore, it is declared that :-

(A) the applicant bank is entitled to recovery certificate :-

(i) against the Def.nos.3 to 6 for a sum of Rs.45,33,696/- with further interest @ 24.5% p.a. from the date of the suit till realisation;

xxx

xxx

xxx

***146. The original application against the Def. nos.1, 2, 31 and 32 stands dismissed.**”*

[Emphasis is ours.]

15. Therefore, what emerges from a perusal of the Tribunal’s judgment dated 07.01.2011 is, that the claim by Vijaya Bank for recovery against the petitioner [i.e., defendant no.1] in respect of the indemnity bond furnished was dismissed.

15.1 There was, therefore, no loan, as alleged, taken by petitioner and thus, quite logically, no OTS could have been arrived at between the petitioner and Vijaya Bank.

16. The assessing officer, in our view, also went wrong in observing that the petitioner may have claimed interest against the loan supposedly received by it in earlier years.

17. As is noticed hereinabove, the petitioner had only furnished an indemnity bond for possible misuse of dividend warrants.

18. Dividends, as is well known, involve appropriation of profits and therefore, the petitioner could not have possibly claimed deduction against its profits.

19. Given these circumstances, we are of the view, that there was no application of mind on behalf of the assessing officer in issuing the impugned notice even as regards the second issue.

20. As noticed above, as far as the first issue is concerned, it is covered in

favour of the petitioner i.e., the assessee, by the judgment referred to above, passed by the coordinate Bench of this Court.

21. For the foregoing reasons, we are in agreement with the petitioner's stand, that the impugned notice dated 28.03.2018 issued under Section 148 of the Act, cannot be sustained.

22. It is, accordingly, quashed.

23. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 19, 2022

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[Click here to check corrigendum, if any](#)

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