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

% *Decision delivered on: 21.12.2023*

+ **W.P.(C) 13883/2018**

M/S SAHU EXPORTS

..... Petitioner

Through: Mr Somil Agarwal with Mr Dushyant
Agrawal, Advocates.

versus

ASST.COMMISSIONER OF INCOME TAX,
& ANR.

..... Respondents

Through: Mr Prashant Meharchandani, Sr.
Standing Counsel with Mr Akshat
Singh, Standing Counsel.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

% **21.12.2023**

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

RAJIV SHAKDHER, J. (ORAL):

Prefatory Facts:

1. *Via* the instant writ petition, the petitioner seeks to assail the notice dated 29.03.2018 [hereinafter referred to as “impugned notice”] issued under Section 148 of the Income Tax Act, 1961 [in short, “the Act”].

1.1 The impugned notice concerns Assessment Year (AY) 2011-12 and was issued by respondent no.1.



1.2 Besides this, the petitioner also seeks to challenge the order dated 24.10.2018 passed by respondent no.1 whereby objections lodged by the petitioner with regard to the reasons to believe framed by respondent no.1 were rejected.

2. To adjudicate the instant writ petition, the following broad facts are required to be noticed.

3. The petitioner filed its Return of Income (ROI) for the aforementioned AY on 27.09.2011. Via the said ROI, the petitioner declared its income as Rs.6,79,73,130/-.

4. The petitioner was thereafter subjected to a scrutiny-assessment. Accordingly, notices along with questionnaires were served on the petitioner to which replies were submitted. Amongst other aspects *qua* which responses were sought by the Assessing Officer (AO) was the issue which arises in the present writ petition i.e., the receipt of the unsecured loan amounting to Rs.2,00,00,000/- by the petitioner from an entity named Transnational Growth Fund Limited [hereinafter referred to as "TGFL"].

5. The record shows that the petitioner furnished the necessary information along with the responses lodged by it. The aforementioned aspect emerges upon examination of the questionnaire issued to the petitioner along with notice dated 27.07.2013. This notice was issued to the petitioner under Section 143(2) of the Act. The query concerning unsecured loans, to which we have made reference above, is extracted hereafter:

"Please furnish complete statement of unsecured loans along with confirmations and supporting."



6. As indicated above, the petitioner submitted a response to the said questionnaire along with a reply dated 13.08.2013. Insofar as the aspect of unsecured loan was concerned, the following assertions were made:

*“10. Details of Unsecured loans are mentioned in Schedule C of the Balance Sheet. Statement of account/ confirmations has been enclosed as **Annexure E.**”*

7. As would be evident from the assertion made by the petitioner in its reply dated 13.08.2013, the balance sheet, the statement of account and confirmations were enclosed with the reply.

8. The record also discloses [and something which is not disputed by the respondents/revenue], that the petitioner thereafter submitted further responses *via* letters/communications dated 29.10.2013 and 12.11.2013. Once again, as regards unsecured loans, the petitioner made the following assertions in the communication dated 29.10.2013:

*“1. Unsecured Loans-
Ledger accounts of unsecured loans are attached for your perusal.
The reconciliation of Interest paid on loan with its ledgers enclosed.
Also attached is TDS Ledger for the same:.
Confirmations of unsecured loans are also enclosed. Please refer
ANNEXURE A.”*

9. As is evident the petitioner furnished the ledger accounts concerning unsecured loans, the reconciliation of interest paid on the loan with the figures appearing in the ledger and also copies of the TDS ledger maintained by the petitioner. Confirmation of unsecured loans was also furnished to the AO. These documents were collectively marked as Annexure ‘A’ and



placed before the AO.

10. Significantly, when the assessment proceedings were on, the Office of the Director of Income Tax (INV.)-II served on the Commissioner of Income Tax-III, New Delhi, the communication dated 12.03.2013. Broadly, this communication alluded to the fact that a search had been conducted against the Surendra Kumar Jain group. The suggestion, as per this communication was that Surendra Kumar Jain was an entry provider and given this position, the DDIT (Inv.) exhorted the respondents/revenue to issue notices under Section 148 of the Act in the cases concerning AYs spanning between AY 2006-07 to AY 2011-12. The communication stressed that notices under 148 of the Act had to be issued to bring undisclosed income, *qua* which purported accommodation entries have been received, to tax. Amongst several entities referred to in the communication there was also a reference to an entity named Sahu Exports Pvt. Ltd.

11. It is required to be emphasised that the petitioner is a partnership firm which goes by the name M/s Sahu Exports. The undisclosed income attributed to Sahu Exports Pvt. Ltd. was Rs.2,00,00,000/-.

12. Interestingly, on 09.12.2013 the AO having jurisdiction over Sahu Exports Pvt. Ltd. informed that the purported accommodation entry said to have been given by Surendra Kumar Jain group *via* TGFL concerned the petitioner/assessee i.e., M/s Sahu Exports and not Sahu Exports Pvt. Ltd.

13. It is against this backdrop that assessment order dated 26.02.2014 was framed by the AO for the AY in issue i.e., 2011-12. As regards unsecured loans, the AO made an addition of Rs.14,14,288/-. The discussion as regards the same is contained in paragraph 6.5 of the assessment order.



14. Concededly, the respondents/revenue with regard to the same were served with two communications *albeit* after the assessment order had been framed. These communications are dated 16.05.2017 and 16.03.2018. Although no action was taken on the communication dated 16.05.2017, the events which followed thereafter showed that the AO decided to trigger the reassessment process. Accordingly, the impugned notice dated 29.03.2018 was issued to the petitioner under Section 148 of the Act.

15. We must state at this juncture that the communications dated 12.03.2013, 09.12.2013, 16.05.2017 and 12.03.2018, to which we have made a reference above, were placed before us at the stage of arguments after pleadings were complete. It appears that the respondents/revenue were compelled to place the said communications before us as there was a reference to the communication dated 16.03.2018 in the reasons to believe framed by the AO and in the counter-affidavit filed in the matter, albeit without the communication being placed on record. It is when this aspect was flagged in the rejoinder that the aforementioned letters were placed before us.

16. Suffice it to say that the petitioner filed its objections on 09.10.2018. These objections, as indicated above, were disposed of on 24.10.2018.

17. The writ petition is suggestive of the fact that after objections had been disposed of, a questionnaire dated 26.10.2018 was served on the petitioner to which replies were filed.

18. According to the petitioner, the replies dated 15.11.2018 and 16.11.2018 were filed *qua* the said questionnaire. The questionnaire dated 26.10.2018 and the replies dated 15.11.2018 and 16.11.2018 are not on record.



19. It appears that according to the petitioner the said questionnaire and replies were not material to the issue at hand and hence were not placed on record.

20. It is in this background that the petitioner approached this court *via* the instant writ action. Notice in the writ petition was issued by the coordinate bench on 21.12.2018. While issuing notice, the coordinate bench after making the following observations restrained the respondents/revenue from passing a final order in the reassessment proceedings during the pendency of the writ petition.

20.1 For convenience, the relevant part of the said order is extracted hereafter:

“Issue notice.

*The applicant/petitioner’s grievance is that the ground on which the re-assessment for AY 2011-12 has been resorted to by the impugned notice was inquired into thoroughly in the course of the scrutiny assessment and dealt with under Section 143(3). In this regard, the materials and evidence furnished to the Assessing Officer (AO) in the course of that scrutiny assessment have been produced. The rationale for re-assessment – from the notice received under Section 147/148 by the assessee – is the alleged unexplained credit of ` 2 crores from Transactional Growth Fund Ltd. Prima facie, the materials on record in the form of copies of the bank statements etc. which were furnished during the course of assessment reveal that these were gone into. Clearly, the materials are not tangible and prima facie cannot be a valid ground for reopening the concluded assessment. **In the circumstances, the respondent/Revenue is restrained from passing final orders in the re-assessment proceedings during the pendency of this petition.***

List on 11.03.2019.

Order dasti under signatures of the Court Master.”

[Emphasis is ours]



21. As indicated above, thereafter counter-affidavit and rejoinder were filed and arguments in the matter were heard, once pleadings were completed.

Submissions of Counsel:

22. Submissions on behalf of the petitioner were advanced by Mr Somil Agarwal, whereas Mr Prashant Meharchandani put forth arguments on behalf of the respondents/revenue.

23. Broadly, the submissions made by Mr Agarwal veered around the following aspects:

(i) The material available with the AO and the reasons to believe framed in the matter did not disclose that there was a live nexus between the material and the conclusion reached by him that income which was otherwise amenable to tax had escaped assessment.

(ii) The AO had acted on borrowed satisfaction inasmuch as he had not carried out an independent assessment of the material that was made available to him by the DDIT (Inv.).

(iii) A reason to suspect is qualitatively different from reason to believe.

(iv) It was only after the petitioner had fairly and truly disclosed the material facts concerning the availment of the unsecured loan that the assessment order under Section 143(3) of the Act was framed. The reassessment proceedings were triggered after four years, without the AO alluding to the petitioner having failed to disclose truly and fairly all material facts.

(v) The material on which the respondents/revenue now seek to place reliance for defending the impugned action taken by the AO was available even before assessment order dated 26.02.2014 was framed.



24. On the other hand, Mr Meharchandani submitted that no interference is called for by the court. The AO while framing the original assessment order dated 26.02.2014 had only disallowed the interest on the unsecured loans but had not expressed any opinion as to whether the amount said to have been received as loan was, in effect, an accommodation entry. No query concerning the loan was put to the petitioner.

24.1 In other words, according to Mr Meharchandani, although the aspect concerning information was available, since it was not examined by the AO it was open to commence reassessment proceedings against the petitioner.

Analysis and Reasons:

25. We have heard learned counsel for the parties and perused the record. Perusal of the record shows that the following facts are not in dispute:

(i) Firstly, prior to the original assessment order dated 26.02.2014 being framed, inputs through communications dated 12.03.2013 and 09.12.2013 had been made available to the respondents/revenue. *Via* these communications, the DDIT (Inv.) had indicated to the respondents/revenue that the purported accommodation entries had been received by the petitioner, i.e., M/s Sahu Exports from Surendra Kumar Jain *via* TGFL.

(ii) Secondly, even though yet another communication dated 16.05.2017 was received by the respondents/revenue concerning the same issue, no action was taken by the AO to trigger reassessment proceedings. It was only when communication dated 16.03.2018 was received by the respondents/revenue that the impugned notice dated 29.03.2018 under Section 148 of the Act was issued.

(iii) Thirdly, when during the assessment proceedings queries were raised, *inter alia*, with regard to the subject unsecured loan which the petitioner



claimed it had received from TGFL, and *qua* which responses were submitted along with relevant material, the AO after examining the material available to it, disallowed interest amounting to Rs.14,14,288/-.

26. We may add one more aspect that along with communications dated 12.03.2013, 09.12.2013, 16.05.2017, 23.05.2017 and 16.03.2018, a photocopy of the single sheet hand written document has been filed, which adverts, amongst other aspects, to an entry which is suggestive of fact that “Sahu Exports” received Rs.2,00,00,000/- from TGFL *via* the RTGS route. This entry also seems to indicate that the funds were remitted to Axis Bank, although the word bank does not appear in the sheet submitted to us. There is no reference to this particular sheet in the correspondence to which we have made a reference above.

27. We are thus unable to gather as to whether or not the sheet containing the entry was part of the material furnished by the DDIT (Inv.). On the face of it, what is written on that single sheet of paper is something which even the petitioner does not dispute i.e., that it received Rs.2,00,00,000/- from TGFL through the banking channel. It is the stand of the petitioner that it received unsecured loans from TGFL *qua* which queries were raised by the AO and responses were submitted along with relevant material.

28. Given the aforesaid position, what we have to examine is whether there was enough actionable material available with the AO to trigger reassessment proceedings against the petitioner. If the correspondence placed before us by the respondents/revenue is taken into account i.e., the letters dated 12.03.2013 and 09.12.2013, one would have to assume that despite the AO having in his possession certain inputs, he did not deem it fit to enquire further into the matter as they perhaps in his wisdom did not



constitute an actionable material.

29. In the ordinary course the AO would have issued notices to TGFL and Surendra Kumar Jain for obtaining their responses *vis-à-vis* the inputs made available to him. If such a step had been taken then necessarily the responses, if any, given by Surendra Kumar Jain or any other authorised representative of TGFL would have to be put to the petitioner and/or its authorised representative.

30. Clearly, nothing of the sort was done by the AO. At this stage, there is complete opacity with regard to the material furnished to the AO.

31. As indicated above, there is no clarity as to whether the single sheet of paper, which only records the transaction in issue, was furnished to the AO. If it was, the AO perhaps came to conclusion that it was not sufficient to allege that the petitioner, in particular, had taken accommodation entry from Surendra Kumar Jain.

32. Mr Meharchandani's argument that because the AO did not express an opinion upon examination of the material/inputs and hence the notice for initiating reassessment proceedings could be issued, does not impress us. The reason we say so is that this submission proceeds on an assumption that the relevant material was put before the AO, despite which he did not examine the material and/or did not express an opinion.

33. In this case, if nothing else, the respondents/revenue are to blame. If the actionable material was available, why was that not taken into account for nearly four years?

34. Furthermore, as indicated above, the issue was examined and thereafter closed by the AO after disallowing interest amounting to Rs.14,14,288/-.



35. A perusal of the reasons to believe framed by the AO is suggestive of the fact that he had not applied his own mind to the material, if any, placed before him. He appears to have simply gone by the information contained in the letter dated 16.03.2018.

36. As a matter of fact, the AO for some strange reason did not refer to the letter dated 12.03.2013 which was enclosed with the said communication.

37. Curiously, the reasons to believe did not refer to the most crucial documents i.e., the letters dated 12.03.2013 and 09.12.2013 which allege that the accommodation entry was received by the petitioner.

38. We are of the view that the reassessment proceedings were triggered without the AO applying his own mind and articulating his reasons as to why he believed that the material available with him was indicative of the fact that the income which was otherwise chargeable to tax had escaped assessment. As correctly submitted, in law reasons to suspect are markedly different in quality and texture from reasons to believe. As demonstrated above, this was not a case of no enquiry. Enquiry was made by the AO concerning the subject loan which culminated in disallowance of interest while framing the order under Section 143(3) of the Act. Impugned notice under Section 148 of the Act was issued based on borrowed satisfaction; bereft of independent application of mind.

39. Thus, for the foregoing reasons, we are of the opinion that the impugned notice and order cannot be sustained.

39.1 It is ordered accordingly.

39.2 The impugned notice dated 29.03.2018 and the order dated 24.10.2018 are set aside.



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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 21, 2023 / tr