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

% *Decision delivered on: 22.08.2023*

+ **W.P.(C) 12547/2018**

M/S VALLEY IRON & STEEL CO. LTD

..... Petitioner

Through: Mr Abhimanyu Jhamba, Mr Shivam Prashar and Ms Thonpenao Thangal, Advs.

versus

ASSTT. COMMISSIONER OF INCOME TAX CENTRAL CIRCLE  
5, NEW DELHI

..... Respondent

Through: Mr Puneet Rai, Sr Standing Counsel with Mr Ashvini Kumar and Ms Madhavi Shukla, Standing Counsels.

**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) 2011-12.
2. The petitioner seeks to assail the notice dated 31.03.2018, issued under Section 148 of the Income Tax Act, 1961 [in short, "Act"].
3. The principal grievance of the petitioner is that the impugned notice was issued on almost the last day when the period of six (6) years from the end of the AY in issue, was to expire, without the Assessing Officer (AO) having available with him the requisite material which would have made him believe that there were reasons to believe that the income chargeable to tax had escaped assessment.



4. To adjudicate the issue raised in the case, the following broad facts are required to be noticed:

4.1 The petitioner had filed its Return of Income (ROI) for the aforementioned AY i.e., AY 2011-12 on 30.09.2011. In the ROI, the petitioner had declared its taxable income as “nil”, *albeit*, after claiming a deduction under Section 80IC of the Act.

4.2 The AO issued notices to the petitioner under Section 143(2) of the Act on 16.08.2012 and 29.08.2013.

4.3 The record shows that the petitioner was also served with notice under Section 142(1), with a detailed questionnaire dated 19.11.2013 comprising 49 queries.

4.4 Admittedly, the petitioner, *inter alia*, filed two responses of even date, i.e., 12.03.2014. It is relevant to note that these responses were filed concerning the notice dated 19.11.2013 issued to the petitioner under Section 142(1) of the Act.

4.5 One of the queries that was raised [i.e., Q.No.13] concerned an unsecured loan raised by the petitioner. The petitioner was asked to furnish details concerning the unsecured loan.

4.6 The petitioner, while admitting the fact that it had taken a loan from RKG, furnished the following documents to demonstrate that the transaction was genuine:

- (i) Confirmation received from RKG.
- (ii) Bank statement of the petitioner and also that of the lender, i.e., the RKG.
- (iii) Extract of the ledger account maintained in the petitioner’s books of account.



(iv) The petitioner's balance sheet.

4.7. The AO, having examined the documents that were placed on record in response to the query raised *vis-à-vis* the unsecured loan obtained by the petitioner from RKG, passed an assessment order dated 28.03.2014.

4.8 While passing the assessment order, the AO, however, disallowed the deduction claimed by the petitioner under Section 80IC of the Act, amounting to Rs.21,34,54,576/-.

4.9 The petitioner was served with the Section 148 notice, as alluded to above, on the last day when the 6 years period was reaching its end i.e., on 31.03.2018.

5. Having been served with the notice, the petitioner communicated its objections to the commencement of the reassessment proceedings via letter dated 06.04.2018

6. Furthermore, the petitioner, in the said communication, also averred that the return originally filed should have been treated as the return filed in response to the notice issued under Section 148 of the Act.

6.1 In addition to it, the petitioner *via* this very communication, also called upon the AO to furnish reasons for reopening the completed scrutiny assessment.

7. The AO, having regard to the request received from the petitioner, furnished the reasons recorded by him for reopening the assessment on 18.05.2018.

8. Having received the reasons recorded by the AO, the petitioner, once again, filed its objections on 29.10.2018. These objections were disposed of by the AO *via an* order dated 02.11.2018.

9. Being dissatisfied with the result, the petitioner approached this court



by way of the instant writ action.

10. The writ petition was listed before the coordinate bench on 26.11.2018. The court, while issuing notice, passed an interim order restraining the respondent/revenue from completing the assessment proceedings during the pendency of the writ petition.

11. Since then, the respondent/revenue has filed a counter-affidavit in the matter.

12. Learned counsel for the petitioner submits that a perusal of the record would show that the commencement of the reassessment proceedings is completely flawed for the following reasons:

(i) Firstly, it is a case of change of opinion. The commencement of the reassessment proceedings was triggered because of the unsecured loans received by the petitioner from RKG. It is this very aspect that was examined during scrutiny assessment, and thereafter, the assessment order dated 28.03.2014 was passed.

(ii) Secondly, a perusal of the reasons to believe furnished by the AO will show that it is based, clearly, on the information received from DDIT (Inv), Unit-5(4), Delhi. The AO, in the reasons to believe has alluded to the fact that search and survey action in the past has been conducted *qua* one Mr Surendra Kumar Jain, who has been identified as an entry operator, and that the said person had failed to explain the genuineness of the transactions undertaken with the petitioner, in the inquiry proceedings. Furthermore, the reasons to believe also advert to the fact that follow-up inquiries were made and information was gathered from the ITBA Portal and the ITD Portal. These reasons would not suffice, as there is nothing stated as to the information received obtained during the search and survey action carried



out *qua* Mr Surendra Kumar Jain, and how the formation of the view, by the AO, that income chargeable to tax had escaped assessment was based on the said information.

12.1 In sum, the learned counsel for the petitioner says that there was, in fact, no material available to the AO concerning the petitioner and, therefore, the commencement of reassessment proceedings was bad in law.

13. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the respondent/revenue, on the other hand, sought to defend the cause of the respondent/revenue by drawing our attention, in particular, to paragraph 4 of the counter-affidavit.

13.1. Based on the assertions made therein, Mr Rai says that the Income Tax Department has received an investigation report dated 31.03.2016, which was prepared by the Serious Fraud Investigation Office (SFIO), in the matter of NKS Holdings Pvt. Ltd. and group companies.

13.2 It is stated that the aforementioned report indicated that the Reserve Bank of India (RBI) had conducted an inspection *qua* some entities controlled by Mr Surendra Kumar Jain, which brought to light the fact that those companies were acting as Non-Banking Financial Companies, without a valid certificate of registration.

13.3 In particular, Mr Rai drew our attention to the fact that the said report specifically mentioned *RKG*, a company which was controlled by the Jain Brothers.

13.3 Furthermore, Mr Rai also drew our attention to the fact that the receipt of the information seems to suggest that there was a circularity in the movement of funds. In this regard, Mr Rai said that the circular movement of funds was analysed *vis-à-vis* eleven(11) companies and it was found that



out of these, three (3) companies were used as conduits for circulating the funds amongst eleven (11) bank accounts.

14. Based on the aforesaid assertions, Mr Rai says that the Jain Brothers, which included Mr Surendra Kumar Jain, the person mentioned in the AO's communication and the reasons to believe, was in the business of according accommodation entries in the form of unsecured loans, against which commission was charged by him.

15. We have heard the learned counsels for the parties and perused the records.

16. According to us, the foundation of any reassessment proceeding is the "reasons to believe" that the AO frames before embarking upon that route. Therefore, for the sake of convenience, the reasons to believe, as recorded by the AO, are set forth hereafter :

*"M/s Valley Iron & Steel Co. Limited having PAN AAACV4632N has filed its return of Income for A. Y. 2011-12 on 30.09.2011 vide acknowledgement no. 303764241300911 The processing of the return has been completed u/s 143(1) on 27.02.2013. The case of M/s Valley Iron & Steel Co. Limited has been centralised to this circle. For the A.Y. 2011-12, order u/s 143(3) of the Income-tax Act, 1961 was passed on 28.03.2014 at an income of Rs. 21,34,54,576/-.*

2. *A information has been received from DDIT(lnv), Unit-5(4), Delhi that an approximate amount of Rs. 2,00,00,000/- is received by M/s Valley Iron & Steel Co. Limited in form of accommodation entry in F.Y. 2010-11 from bank A/c No. 014706400000530 of M/s RKG Finvest Pvt. Ltd, held with Dhanlaxmi Bank Ltd., Barakhamba Road, New Delhi.*

3. *It was also informed by Investigation wing, Delhi that Sh. Surendra Kumar Jain, Director of M/s RKG Finvest Pvt. Ltd. failed to explain the genuineness of transactions undertaken with M/s Valley Iron & Steel Co. ltd. during the enquiry proceedings. In past, search survey action as per Income-tax Act 1961 was conducted by the investigation wing wherein Sh. Surendra Kumar Jain was identified as entry operator.*

4. *On receiving the information from Investigation Wing, follow up enquires were made. Information has been gathered from ITBA portal & ITD*



portal. Assessment order of the assessee for AY 2011-12 also perused. It is found in the assessment order that addition of Rs.21,34,54,576/- on account of disallowance of claim u/s 80 IC was made only.

5. In view of Ire above facts, I have reason to believe that the income of the assessee related to accommodation entry of Rs. 2,00,00,000/- received from M/s RKG Finvest Pvt. Ltd has escaped assessment within the meaning of section 147 of the Income-tax Act for A. Y. 2011-12.

6. In order to bring the income escaping assessment under the tax net, issue of notice u/s 148 of Income-tax Act, 1961.”

17. A careful perusal of the aforesaid extract would show that the reasons to believe are not aligned with what is stated by the respondent/revenue in their counter-affidavit.

17.1. In the reasons to believe, there is no reference to the report of SFIO; what is referred to is that some information has been received from DDIT (Inv), Unit-5(4), Delhi.

17.2 There is also no reference to the fact that Mr Surendra Kumar Jain had rotated funds through eleven (11) bank accounts. The counter-affidavit, as noted above, referred to aspects which did not find mention in the document in which reasons to believe stood embedded.

18. Clearly, if there was information available, the same was not independently analysed by the AO. The information should have been processed to indicate, at the very least, a *prima facie* as to how the loan transaction, which the petitioner claims to have entered into with RKG, was an accommodation entry.

19. The AO, has merely labelled the transaction as an accommodation entry, without demonstrating as to how the material on record furnished reasons for him to form a belief that the income chargeable to tax had escaped assessment. What is absent in the reasons to believe framed by the



AO is the live link between the material available with him and the formation of the belief that income chargeable to tax had escaped assessment.

20. On the other hand, the record shows that a specific query was raised with regard to the unsecured loan of Rs.2 crores that the petitioner received from RKG. The record also shows that the petitioner placed on record the relevant material to show that the loan taken was genuine.

20.1 As noted above, the petitioner furnished to the AO the confirmation received from RKG, the bank statements, the extract of the ledger account as also its balance sheet for the Financial Year (FY) in issue.

21. It is was only after these documents had been examined by the AO that an assessment order dated 28.03.2014 was passed under Section 143(3) of the Act. As indicated hereinabove, while framing the assessment order, the AO, in fact, disallowed a substantial sum which was claimed by the assessee as deduction under Section 80IC of the Act.

22. The amount claimed by the petitioner was Rs.21,34,54,576/-.

23. Thus, it was not as if the AO did not address his mind to various facets of the ROI. Clearly, the route chosen by the respondent/revenue was not the correct course of action. During scrutiny assessment, as noticed above, a specific query was raised vis-à-vis unsecured loan which was answered; whereupon it was closed, presumably on ground that it was indeed a genuine transaction as claimed by the petitioner. A relook, without analysing the information received from the investigation wing and connecting the dots, lends credence to the submission that this is case of change of opinion.

24. According to us, the reasons to believe as recorded by the AO failed to establish that it was a fit case to initiate reassessment proceedings against



the petitioner. It is important to bear in mind that it is the material which the AO has in his possession when he forms the belief and not what he gathers thereafter, that is relevant to test the tenability of the reassessment proceedings. Therefore, we are inclined to quash the impugned notice dated 31.03.2018 issued under Section 148 of the Act.

24.1 It is ordered accordingly.

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

26. The interim order dated 26.11.2018 shall stand vacated.

27. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**AUGUST 22, 2023**

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