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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 5113/2023, CM APPLs.20012/2023 (stay) & 58047/2023 (Addl. documents)

GULSHAN HOMZ PRIVATE LIMITED Petitioner
Through: Mr. Nikhil Gupta, Mr. Vipin Upadhyay, Mr. Rachit Abhishek & Mr. Prince Nagpal, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Santosh Kumar Pandey, Adv. for R-1.
Mr. Gaurav Gupta, SSC with Mr. Shivendra Singh & Mr. Puneett Singhal, JSCs, Ms. Mahima Garg, Ms. Deepika Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER
13.02.2024

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1. This writ petition has been preferred questioning the validity of the order made under Section 148A(d) of the Income Tax Act, 1961 [“Act”] and notice under Section 148 of the Act both dated 16 March 2023 for Assessment Year [“AY”] 2019-2020 respectively.

2. Having heard learned counsels at some length, we had on 29 January 2024 passed the following order:

“1. The petitioner assails the initiation of proceedings under Section 148 of the Income Tax Act, 1961 [“Act”] and also questions the order passed under Section 148A(d) of the Act.



2. From the order passed under Section 148A(d), we find that the re-assessment proceedings have come to be initiated against the petitioner company based on an allegation of a fictitious loan amounting to Rs. 50 lakhs stated to have been granted by one M/s ICE Globe Promoters Pvt. Ltd. [**“ICE Globe”**]. The proceedings themselves appear to originate from a search and seizure action conducted against the Samtel Group on 18 January 2018 and certain statements of individuals recorded in the course thereof.

3. We note that while dealing with the explanation tendered by the writ petitioner, the Assessing Authority has relied upon certain extracts of a Beneficiary Report. The relevant extracts of that report as carried in the impugned order are reproduced hereinbelow:

“-On perusal of financials of these it is clear that they are **mere paper companies** and not engaged in any business activities showing minimal income in their return of income.

- On perusal of financial details of above mentioned non-descript entities, it is seen that there is huge amount of share premium in the books of accounts which is received prior to AY 2012-13. These companies also show huge investment and loans & advances. **There is no clear pattern whether they are engaged in any business activities. These shell entities have mostly shown interest income as business turnover**, which is passive income, and most of the time took refund from TDS deducted on interest income. **This clearly shows that they are not engaged in any real business activity.**

- It is clearly seen that these entities have **either made investment in unlisted companies or given loans and try to justify the source of such lending by them from huge share premium in their balance sheet**. It is a clear sign that their books are not genuine, and these entities **are mere paper companies, not engaged in any business activities**. On further analysis, it is seen that the names of these companies have changed frequently, frequent change of addresses, frequent change of directors, most of these entities have common directors, non-filer directors, common address, common mobile number, common IP address in ITR etc”

- On perusal of shareholding of these shell entities, it is further established that they are being controlled by entry operator. It is observed that shares of shell



companies including tradex group of companies, are allotted to each other thereby, creating the **crossholding in companies** like CEA, Lenient, Saivi, Tish etc. with each other. The equity shares were allocated having nominal amount per share of Rs 10/- and having huge premium. This process artificially expanded the balance sheets of the shell companies using minimal investment. This clearly indicate that these shell companies are being managed and controlled by entry operator to provide accommodation entries.

- Circular Shareholding These entities are engaged in circular shareholding within nondescript entities. For instance, shareholders of CEA Consultants Pvt. Ltd are other nondescript entities like Determined Tradex Pvt. Ltd, Aptitude Tradex Pvt. Ltd, Iganity Tradex Pvt. Ltd etc. It is pertinent to mention here that it is established beyond doubt that Tradex group of companies are mere paper entities managed and controlled by entry operators to provide accommodation entries to beneficiaries."

4. Presently, and in the absence of instructions, Mr. Gupta, learned counsel representing the respondents, is unable to apprise us as to whether the extract of the Beneficiary Report also pertains to ICE Globe. We also take note of the undisputed position as appearing from the record of the loan transaction having been duly disclosed in the Income Tax Return which was filed for the concerned Assessment Year and appears at pdf page 130 of our digital record.

5. List again on 13.02.2024."

3. As is evident from the recital of facts appearing in that order, the principal allegation as levelled against the petitioner was of having received a loan from M/s Ice Globe Promoters Pvt. Ltd.

4. On instructions, Mr. Gupta, learned counsel for the respondent has placed for our consideration the Beneficiary Report extracts of which appear in our earlier order. From the aforesaid Report and more particularly paragraph 9.3 thereof, it becomes apparent that the enquiry which was initiated in respect of Tradex Group of Companies has shown that M/s Ice Globe Promoters Pvt. Ltd. was the shareholder in Lenient Consultants Pvt. Ltd., a constituent of the aforementioned group.



The record further alleges that the group companies are “*mere paper entities*” managed and controlled by entry operators to provide accommodation entries. It is the aforesaid Report which forms the basis for initiation of action under Section 148 of the Act.

5. Bearing in mind the threshold of jurisdictional facts which must be shown to exist for formation of opinion to commence reassessment, we do not find this to be a fit case where the proceedings would warrant interference at this stage.

6. The writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.
FEBRUARY 13, 2024/p