

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1091 OF 2022

Punia Capital Pvt. Ltd.
212, Gemstar Commercial Complex
Ramchandra Lane Extension, Kaanchpada,
Malad (West), Mumbai-400 064. ... Petitioner

Versus

1. The Assistant Commissioner of
Income Tax, Circle-13(2)(2),
R.No.571, Aaykar Bhavan, M.K. Road,
Mumbai-400 020.

2. The Principal Commissioner of
Income Tax-5,
Aayakar Bhavan, M.K. Road,
Mumbai-400 020.

3. National Faceless Assessment Centre
New Delhi

4. Union of India
Aaykar Bhavan, M.K. Road,
Mumbai-400 020. ... Respondents

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Mr. Mandar M. Vaidya for the Petitioner.

Mr. Akhileshwar Sharma a/w Mr. Vikas T. Khanchandani for the
Respondents.

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**CORAM : DHIRAJ SINGH THAKUR &
ABHAY AHUJA, JJ.**

PRONOUNCED ON : 15 FEBRUARY 2023

: J U D G M E N T :**(Per DHIRAJ SINGH THAKUR, J.)**

. The Petitioner challenges the validity of the notice issued under Section 148 of the Income-tax Act, 1961 (“Act”), as also the proceedings for reopening of assessment under Section 147 of the Act.

2 Briefly stated the material facts are as under :

The Petitioner filed a return of income under Section 139 of the of the Act for the assessment year 2015-16. The case was selected for scrutiny under Computer Assisted Scrutiny Selection (‘CASS’). The assessing officer issued a notice under Section 142(1) of the Act calling for various details mentioned therein. The Petitioner states that pursuant to the said notice, it submitted its financial statements for the year ending 31 March 2015. The assessment proceedings were completed under Section 143(3) on 31 August 2017 accepting the loss at Rs.(-) 4,23,213/- declared in the return of income.

3 A notice under Section 148 of the Act dated 31 March 2021 was issued by the assessing officer seeking to reopen the Petitioner's assessment for assessment year 2015-16 on the ground that the assessing officer had reason to believe that income for that year had escaped assessment within the meaning of Section 147 of the Act. The notice under Section 148, therefore, required the Petitioner to file a return in the prescribed form for the said assessment year within 30 days from the date of service of the said notice. The notice was purported to have been issued after obtaining necessary satisfaction of Principal Commissioner of Income Tax-5, Mumbai.

4 The Petitioner further states that return of income was filed in response to the notice under Section 148 on 13 April 2021 declaring income at Rs.(-) 4,23,213/- and further also made a request for a copy of the reasons recorded for reopening the assessment. This right was exercised keeping in view the directions of the Supreme Court in the case of **GKN Drivershafts (India) Ltd. Vs. ITO**¹, wherein it was held that on receipt of a notice under Section 148, the proper course for the assessee was to file a return if he so desired and to seek the reasons for issuing the notice. The assessing officer was then held bound to furnish

1 (2003) 259 ITR 19

reasons, to which the the Noticee was entitled to file objections to the notice. Thereafter, assessing officer was held to be under an obligation to dispose of the same by passing a speaking order.

5 Respondent No.1, accordingly, supplied the reasons recorded for reopening the assessment vide communication dated 23 June 2021, which read as under :

1.

2 **Brief details of information collected/received by the AO** : In this case, credible information is received on INSIGHTS PORTAL under the high risk CRIU/VRU cases. On perusal of the information from the insights portal, it is stated that the assessee has transacted funds with the Account No.914020039098036 of M/s Outstripe Suppliers Pvt. Ltd. which has been conclusively proven to be a shell company by the investigation wing. The assessee has taken accommodation entries amounting to Rs.2,15,00,000/- during the A.Y.

3. **Analysis of information collected/received** : It has been conclusively proven from the investigation report of the investigation wing that the assessee is the beneficiary of accommodation entries by layering of funds through various shell companies. The details of the accommodation entries take by the assessee are categorized as under :

**Sr. No. Particulars of Bank A/c
Value**

1. Account No.914020039098036
Rs.2,15,00,000/-
of M/s Outstripe Suppliers Pvt. Ltd.
4.
5.
6. **Basis of forming reasons to believe and details of escapement of income** : As discussed above, the assessee is a beneficiary of accommodation entries which the assessee has used to evade taxation. In view of this, I have reasons to believe that income more than Rs.2,15,00,000/-, chargeable to tax escaped assessment within the meaning of Section 147 of the Act, due to the failure on the part of the assessee not to disclose fully and truly all the material facts in its ROI.
7. **Applicability of the provision of Section 147/151 to the facts of the case** : In this case, the assessee has filed return of income, however, no scrutiny assessment has been made for A.Y. 2015-16. The only requirement to initiate proceedings u/s 147 is reasons to believe which has been recorded above.

6 Objections were filed by the assessee to the reopening of the assessment proceedings, in which, it was stated that the reasons for initiating reassessment proceedings were based upon an incorrect factual matrix inasmuch it was not a case where the loan had been taken by the Petitioner, but a case, where the loan had been

advanced to M/s Outstripe Suppliers Pvt. Ltd. on which, the Petitioner was also receiving interest, which details had been provided during the initial assessment proceedings. The objections were considered and rejected by virtue of Order dated 14 December 2021.

7 The Petitioner challenges the reopening of the assessment primarily on the grounds :

That the reasons recorded for reopening of assessment reflected non-application of mind inasmuch while in para-1 of the reasons recorded, the assessing officer stated that case was selected under CASS and completed under Section 143(3) on 31 August 2017 accepting the returned income, wherein in para-7 of the said reasons, the assessing officer has stated that no scrutiny assessment has been made for assessment year 2015-16.

And that the Principal Commissioner of Income Tax-5, Mumbai also mechanically appears to have accorded sanction to the issuance of the notice under Section 148 without noticing the contradiction highlighted hereinabove and without verifying as to whether the case was actually fit for grant of such sanction for

reopening of the assessment proceedings.

8 In the reply filed by the Respondent, it is admitted that it was only due to inadvertence that in para-7 of the reasons recorded that a stand was taken that no scrutiny assessment had been made. The Respondent in their reply affidavit further tried to support their action in reopening the assessment on the ground that the assessee made a transaction with M/s Outstripe Suppliers Pvt. Ltd., which had been proved to be merely a paper company and had been struck off from the rolls by the Registrar of Companies. It is further stated that information regarding accommodation entry was a new information, which was not a part of scrutiny at the time of original assessment proceedings under Section 143(3) of the Act.

9 Section 147 of the Act as it stood prior to its substitution with effect from 01.04.2021 by Finance Act, 2021 envisaged that if the assessing officer has reason to believe in any assessment year, he may subject to provisions of Section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings. The first proviso of Section 147 further envisages that if an assessment under sub-section (3) of

Section 143 has been made for the relevant assessment year, no action shall be taken under that section after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee *inter alia* to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

10 In **Hindustan Lever Ltd Vs. R.B. Wadkar, Assistant Commissioner of Income-tax**² this Court held :

“....The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self- explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment.”

2 2004 ITR 332 Vol.268

11 In **Hindustan Lever Ltd.** (*supra*), the Court set aside the notice impugned issued under Section 148 only on this ground. In the said judgment, the Court had noticed that the Assessing Officer nowhere stated that there was failure on the part of the assessee to disclose fully and truly the material facts necessary for the assessment of that assessment year, without touching upon any of the other grounds.

12 From a reading of the reasons recorded although it has been mentioned that income chargeable to tax had escaped assessment on account of failure on the part of the assessee to disclose fully and truly material facts, yet juxtaposed with the later part of the reasons, which states that no scrutiny assessment had been made and that the only requirement was to initiate proceedings under Section 147 on the basis of 'reason to believe' goes to prove that the assessing officer had reopened the assessment only on the basis of 'reason to believe' and not failure to disclose material facts fully and truly, on which too the assessing officer ought to have been satisfied as matter pertained to reopening beyond the period of four years.

13 In our opinion, the manner in which the assessing officer proceeded reflects total non-application of mind, which neither

satisfies the jurisdictional condition, which was required to be followed in terms of Section 147 nor does it in the least satisfy the conditions prescribed in the case of **Hindustan Lever Ltd.** (*supra*), as the assessing officer had failed to highlight in the reasons recorded as to which was that material fact, which was not disclosed by the assessee in its return.

14 For the reasons mentioned above, in our opinion, notice under Section 148 of the Act dated 31 March 2021 as also the Order dated 14 December 2021 are held to be unsustainable and are accordingly quashed. No Order as to costs.

(ABHAY AHUJA, J.)

(DHIRAJ SINGH THAKUR, J.)

RAJESH
VASANT
CHITTEWAN

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