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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 167 OF 2015

M/s. Rushab Enterprises ..Petitioner.
V/s.
Asstt. Commissioner of Income
Tax 24(3), Mumbai & Ors. ..Respondents.

Mr. Percy Pardiwalla, Senior Advocate with Mr. Mihir C. Naniwadekar for the appellant.
Mrs. Shehnaz V. Bharucha for the Respondents.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 15TH APRIL, 2015

P.C. :-

1. Rule, returnable forthwith. By consent of the parties taken up for final hearing.

2. By this writ petition, the Petitioner challenges the impugned notice dated 26th March, 2014 issued under Section 148 of the Income Tax Act, 1961 ('the Act') and the impugned order 19th December, 2014 rejecting the Petitioner's objection to the reasons forming the basis for issuing the impugned notice. The Petitioner is a partnership firm and the original assessment was completed under Section 143(3) of the Act.

During the scrutiny of the assessment, the Petitioner was on 3rd November, 2008 required to answer certain questions at Serial Nos. 8, 12 and 14 of the questionnaire pertaining to details regarding loans and advances both secured and unsecured and information regarding interest. The Petitioner filed a detailed reply to the questionnaire and thereafter, the Petitioner was called upon to provide details pertaining to four parties viz. Daksh Diamonds, Jewel Diam, Laxmi Trading Com. And Rose Impex. According to the Assessing Officer, these questionnaire were duly answered but after a period of four years from the end of the relevant assessment year, the Assessing Officer issued a notice under Section 148 of the Act seeking to reopen the assessment. The Petitioner replied on 22nd April, 2014 and sought reasons for the proposed reopening.

3. The reasons were then supplied to the Petitioner on 21th May, 2014. The Petitioner submitted its objections to the reopening on 7th November, 2014. The Petitioner inter alia contended that the notice in question was issued beyond the period of four years from the end of the relevant assessment years. The assessment had already been completed under

Section 143(3) of the Act and there was no basis or tangible material to justify reopening. The Petitioner also pointed out that there was no failure to disclose fully and truly all materials and the proposed reopening was only on account of change of opinion. The Petitioner contended that there was no reason to believe that any income had escaped assessment.

4. After receiving the objections dated 7th November, 2014, the Assistant Commissioner of Income Tax vide letter dated 19th December, 2014 rejected the objections and found that the reopening of assessment for the assessment year 2007-08 was in accordance with law. This order dated 19th December, 2014 has led to the filing of this petition.

5. An affidavit of Mr. V.K.Mangla, Assistant Commissioner of Income Tax, 24(3), Mumbai dated 25th February, 2015 has been filed in reply on behalf of Respondents. In the said affidavit the deponent has denied that the notice is bad in law and reiterated that the assessee has not disclosed the material facts fully and truly that are necessary for the assessment and taken unaccounted cash

into its books. There is a bald statement made that there is tangible material to reopen the assessment. We do not find anything in the said affidavit that establishes that there is reason to believe that the income has escaped assessment.

6. We have heard Mr. Pardiwalla, learned senior counsel appearing on behalf of the Petitioner and Mrs. Bharucha appearing on behalf of the Respondent. Mr. Pardiwalla contended that the four cases which were picked up by the Assessing Officer all pertain to bonafide loans taken during the course of business. The Petitioner had in fact taken loans from 45 parties and had supplied the particulars of these 45 parties to the Assessing Officer on or about 14th March, 2009. Mr.Pardiwalla pointed out that in Exhibit-B these particulars were provided and the annexure at page 30 of the petition was a list of loan confirmations which had been provided to the Assessing Officer for the period ending 31st March, 2007. We have perused the said letter and annexure and find that the assessee had provided the names and particulars of parties who have advanced loans along with the confirmation of the amounts issued by the petitioner to these members which was duly confirmed by the individual

members. Despite this, Mr, Pardiwalla urged that the Assessing Officer proceeded to hold that scrutiny of the four parties Daksh Diamonds, Jewel Diam, Laxmi Trading Com. and Rose Impex reveals that sums amounting to Rs.6,86,00,000/- were questionable and not bonafide loans. According to the communication issued to the Petitioner by the Deputy Commissioner of Income Tax on 21st May, 2014 these items were claimed as unsecured loans but were actually unaccounted cash received through bogus loans and, therefore, the Deputy Commissioner concluded that there is reason to believe that income has escaped assessment in the hands of the assessee for the assessment year 2007-08 and, therefore, reopening of the assessment was necessary. The Deputy Commissioner also called upon the Petitioner to provide information in respect of the aforesaid four parties.

7. Vide letter dated 7th November, 2011 these particulars were provided to the Deputy Commissioner. The petitioner inter alia pointed out that the aforesaid four parties had advanced loans through account payee cheques which were encashed in the Petitioner's bank account used for business transactions. Interest is also paid on these loans and

at the time of payment of interest, tax was deducted at source and TDS returns were also filed. The Revenue has contended that they were accommodation entries only on the basis of mere surmises and guesswork which amounted to a change of opinion. The Petitioner further contended that all necessary information had already been provided at the time of filing returns and therefore, there was no occasion for revenue to contend that it has failed to disclose all particulars.

8. On behalf of the revenue, Mrs. Bharucha submitted that all the four parties concerned had facilitated accommodation entries. They were not genuine and bonafide loans advanced to the Petitioner. She has supported the order of the Assessing Officer. The Commissioner of Income Tax while rejecting the objections on 19th December, 2012 once again reiterated that the Petitioner has routed unaccounted cash through bogus loans and has been found in the books of account of the Petitioner. According to her, the revenue has received information from the Director General of Income Tax (Inv) that the assessee has taken unsecured loans from the above parties by way of unaccounted cash/accommodation entries. We are unable to agree since the Petitioner has clearly

stated that all the payments were made by account payee cheques which were encashed in the bank account of the Petitioner in the regular course of business. We find that the Petitioner has also paid interest on this loans after deduction of tax at source and TDS returns are also accordingly filed. There is no dispute in regard to the above. We find nothing to support the said contentions of the revenue. The revenue's contention in the affidavit in reply has no merit. On the other hand, the loans appear to be taken in the regular course of business and were found amongst the 45 members in respect of which all particulars have already been furnished by the assessee to the Assessing Officer. The fact remains that the Assessing Officer had power to reopen the assessment provided there was some tangible material on the basis of which he has reason to believe that income chargeable to tax had escaped assessment.

9. We find no such reasons for the Assessing Officer or the revenue to come to a conclusion that income had escaped assessment. All the communication and evidence provided by the Petitioner to the revenue authorities disclosed that the loans were bonafide, taken in the regular course of business

through account payee cheques. In the circumstances, the proposed reopening in our view lacks justification and the impugned notice deserves to be quashed had set aside. So also the impugned order dated 19th December, 2014 passed by the Commissioner of Income Tax (Appeals) rejecting the objections deserves to be quashed and set aside. Hence, we pass the following order.

10. The impugned notice dated 26th March, 2014 and the impugned order dated 19th December, 2014 are quashed and set aside. Rule is made absolute in the above terms. No order as to costs.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**