

Sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION(L)NO.430 OF 2016**

M/s. Bright Star Syntex Pvt. Ltd.	..Petitioner
<i>Versus</i>	
Income Tax Officer 9(2)(1) & Ors.	..Respondents

.....
 Mr. Mihir Naniwadekar i/b. Ajay Kumar for the Petitioner.
 Mr. Arvind Pinto for the Respondents.

**CORAM: M. S. SANKLECHA &
 A. K. MENON, JJ.**

DATE : 14TH MARCH, 2016

PC.:

1. This Petition under Article 226 of the Constitution of India challenges the notice dated 3rd February, 2015 issued under Section 148 of the Income Tax Act, 1961 (Act). By the impugned notice, the Assessing Officer is seeking to reopen the assessment for Assessment Year 2012-13.
2. The reasons in support of the impugned notice as communicated to the Petitioner read as under:-

“ Reasons for Reopening

<i>Name of the assessee</i>	: BRIGHTSTAR SYNTEX PRIVATE LIMITED
<i>PAN</i>	: AABCB94971
<i>A.Y.</i>	: 2012-13

Shri Praveen Jain is one of the leading entry providers operating in Mumbai, including in providing accommodations entries like bogus purchases, sales, unsecured loans, share capital etc. A search and seizure action in the case of Shri Praveen Kumar Jain group was therefore carried out on 01.10.2013. Evidence collected and the statements of various persons recorder including that of Shri Pravin Kumar Jain during search established the modus operandi and led to detection of accommodation entries of approx. 8897 crores.

The accommodation entries so taken are in the nature of sales, unsecured loans and share application money. The entry wise data of beneficiaries pertaining to this charge was obtained in the office of the undersigned.

As per the information received from DGIT-Inv.-II, Mumbai, the following transactions have been carried out by the assessee company during the A.Y. 2012-13:

Name of the Investor	Amount	Nature of Transaction
<i>Alka Diamond Ind Ltd.</i>	<i>10,00,000/-</i>	<i>Loans and Advances</i>
<i>Duke Buiness P Ltd (JPK Trading I Pvt Ltd)</i>	<i>50,00,000/-</i>	<i>Loans and Advances</i>
<i>Atharv Business Private Limited (Faststone Trad (I) P Ltd)</i>	<i>75,00,000/-</i>	<i>Loans and Advances</i>
<i>Kush Hindustan Ent Ltd</i>	<i>10,00,000/-</i>	<i>Loans and Advances</i>
<i>Nakshatra Business P Ltd (Hema Trading Co P Ltd)</i>	<i>93,50,000/-</i>	<i>Loans and Advances</i>
<i>Olive Overseas P Ltd (Realgold Trading Co P Ltd)</i>	<i>80,00,000/-</i>	<i>Loans and Advances</i>
<i>Sumukh Commercial Pvt Ltd (Capetwon Mer. P Ltd)</i>	<i>50,00,000/-</i>	<i>Loans and Advances</i>
<i>Triangular Infocom Ltd (Lexus Infotech Ltd)</i>	<i>25,00,000/-</i>	<i>Loans and Advances</i>

The above named investor parties are entities being operated by Shri Pravin Kumar Jain Group. Therefore the credits to the assessee shown above as unsecured loans have to be taxed, which have escaped assessment for AY 2012-13.”

3. The Petitioner filed its objections to the reasons recorded in support of the impugned notice and pointed out that the assessment for the subject assessment year was done by an order dated 19th December, 2014 under Section 143(3) of the Act. It was also submitted that during the proceedings, the very parties which have been adverted to in the reasons in support of the impugned notice as being entities operated by one Mr. Praveen Kumar Jain Group from whom the Petitioner had received loans and advances was a subject matter of inquiry during scrutiny assessment proceedings. The assessment order was passed only on the Assessing Officer on being satisfied with the evidence produced by the petitioner in respect of the loans taken from the eight entities referred to in the reasons recorded in support of the impugned notice. Further reliance was placed upon various decisions to contend that mere statement/confession by the person that he was involved in providing accommodation entries would not by itself establish that the loans taken by the petitioners from the 8 companies referred to in the reasons recorded in support of the impugned

notice were not genuine being mere accommodation entries.

4. By an order dated 4th February, 2016 the Assessing Officer rejected the objections filed by the petitioner to the reasons recorded in support of the impugned notice *inter alia* by placing reliance upon the decisions of the Apex Court in ***I.T.O. Vs. Lakhmani Mewal Das, 103 ITR 437*** to hold that the expression “reason to believe” cannot be read to mean that the Assessing Officer should have finally established beyond doubt that income chargeable to tax has escaped assessment. It held that the only requirement to reopen an assessment is a reasonable belief on the part of the Assessing Officer issuing the reopening notice that income chargeable to tax has escaped assessment. The Assessing Officer held that the reasons recorded do indicate reason to believe that income chargeable to tax has escaped assessment.

5. Mr. Murlidharan, learned counsel for the petitioner challenges the impugned notice on the ground that it is without jurisdiction as evident from the reasons recorded in support of the notice for the following reasons :-

- (a) The mere confession/statement by a person that he controlled companies which were providing accommodation entries is not

sufficient to give the Assessing Officer reason to be believe that income chargeable to tax had escaped assessment. In support reliance was placed upon the decisions of Apex Court in ***Chhugamal Rajpal Vs. S.P. Chaliha & Ors. 79 ITR 603***, Lakhmani Mewal Das (supra) and the decision of this Court in ***Rushab Enterprises Vs. Asstt. Commissioner of Income Tax (WP No.167 of 2015)*** decided on 15th April, 2015;

- (b) The Assessing Officer had during the Assessment proceedings leading to order dated 19th December, 2014 under Section 143(3) of the Act for the subject Assessment Year had raised issues with regard to genuineness and credit worthiness of the very same eight loan providers mentioned in the reasons in support of the impugned notice. The petitioner responded to the same by providing loan confirmation statements, which on examination were accepted. Thus, this is a case of mere change of opinion; and
- (c) Further reliance is also placed upon a document at Exhibit 'O' to the Petition where detailed reasons for doing scrutiny assessment for the A.Y. 2013-14 have been recorded. This document at Exhibit 'O' *inter alia* states that a search was carried out in the case of Shri Praveen Kumar Jain and his group on 1st December, 2013. This formed the basis for scrutiny assessment of the Returns of Income

for A.Y. 2013-14. It is therefore submitted that all these facts were within the knowledge of the Assessing Officer while passing the Assessment order dated 19th December, 2014 for the Assessment Year 2012-13. Consequently, this is another indication of a clear case of change of opinion.

6. It is settled position in law that while considering a challenge to a reopening notice on the ground that it is without jurisdiction, the Court has to keep in mind that a settled position in law is not being disturbed as evident from the orders passed earlier, without any justification. However, the Court will certainly interfere where the reason to believe that income has escaped assessment, is a clear case of change of opinion i.e. the same material was subject to consideration in regular assessment proceedings or where the reopening is being done only on suspicion and/or to carry out investigation or where the assessment is sought to be reopened after a period of more than four years from the end of the relevant assessment year and there has been no failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment. However, in all other cases of reopening of assessment, the Court will examine whether there is material available with the Assessing Officer to form a reasonable belief that income chargeable to tax has escaped assessment and for that

purpose ensure that the material is not vague and/or irrelevant. However at this stage i.e. on issue of reopening notice, the Assessing Officer is not required to have conclusive evidence that income chargeable to tax has escaped assessment but is only required to have reasonable belief of the same. The reasons recorded must on the basis of the material available establish a link between the material available and the conclusion. This should lead to *prima facie* view that income chargeable to tax has escaped assessment. At this stage, we are not required to consider the merits of the case nor the sufficiency or correctness of the material but only whether the Assessing Officer had reason to believe on the material available that income chargeable to tax has escaped assessment.

7. We find that the reasons in support of the impugned notice indicates that the Assessing Officer has received definite information that one Mr. Praveen Kumar Jain and the companies controlled by him was in the business of providing accommodation entries. On receipt of the aforesaid information, the Assessing Officer called for the necessary information in regard to the accommodation entries made in respect of the assessee in his jurisdiction. Consequent thereto, the Assessing Officer found that the information received indicated that the eight companies mentioned in the reasons belonged to Mr. Praveen Kumar Jain group and formed the basis

of his reasonable belief. At this stage the Assessing Officer has merely to establish that there is justification for him to form a reasonable belief that income chargeable to tax had escaped assessment and not conclusively prove the same. The reliance by the petitioner on the decision of the Apex Court in S. P. Chaliha (supra) rendered in a completely different fact situation can have no application. In that case the reasons recorded clearly reveal that investigation into allegation is to be done where certain persons appear to be name-lenders and the reasons in support of the impugned notice clearly states that investigation with regard to the loans is necessary. Thus, the Court held that there was no *prima facie* view reflected in the reasons as the same was subject to investigation of the transaction to find its genuineness. Similarly the decision in Lakhmani Mewal Das (supra) was a case of a notice beyond four years from the end of the relevant assessment year. In that case one of the persons had confessed to the Revenue that he was dealing in providing accommodation entries i.e. name-lending. Amongst the various reasons the Supreme Court pointed out that there was no indication in the reasons as to when the confession was made by the name-lender and also to which assessment year the confession relates. Therefore, the material before the Assessing Officer was vague or indefinite and it could not be the basis for having the reason to believe that income chargeable to tax had escaped

assessment for that year. Reliance was also placed upon the decision of this Court in *M/s. Rushab Enterprises (supra)*. We find the decision of this Court was rendered in the context of the assessment being reopened beyond a period of 4 years from the end of the relevant assessment year. In the facts of that case and on the basis of reasons recorded therein, the Court held that there was no basis for having reasonable belief that income chargeable to tax has escaped assessment. Albeit, the Court does record that an Assessing Officer does have power to reopen an assessment, provided there was tangible material to form a reasonable belief that income chargeable to tax has escaped assessment. In the present case we are of the view that the statement of Mr. Praveen Kumar Jain is relevant tangible material with the Assessing Officer to form a reasonable belief that income chargeable to tax has escaped assessment.

8. It was next contended by Mr. Murlidharan, the learned Counsel for the petitioner that during the regular assessment proceedings leading to the order dated 19th December, 2014 under Section 143(3) of the Act, the eight companies referred to in the reasons were a subject matter of examination and the petitioner had then provided evidence in the form of loan confirmation to establish its genuineness. Thus, it is submitted that this is a case of change of opinion. We find that the basis of the reopening

notice is the statement of Mr. Praveen Kumar Jain. This statement *prima facie* completely negatives the stand taken by the petitioner during the regular assessment proceedings. The exact nature of the transaction is only privy to the parties to the transaction and when one of the parties to the transaction states that what appears is not factually so, then the Assessing Officer certainly has tangible material to form a reasonable belief that income chargeable to tax has escaped assessment. In fact, as observed by the Supreme Court in ***Phoolchand Bajranglal and Anr. Vs. ITO 203 ITR 456*** - “One of the purposes of Section 147 appears to us to be to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn round and say “you accepted my lie, now your hands are tied and you can do nothing.” It would be travesty of justice to allow the assessee that latitude.”

9. Thereafter, the petitioner sought to place reliance upon the reasons recorded by the Assessing Officer for selection of petitioner's return of income for Scrutiny assessment for Assessment Year 2013-14 which is annexed at Exhibit 'O' to the Petition. This statement although undated also makes reference to the statement of Mr. Praveen Kumar Jain dated 1st October, 2013. According to the petitioner, this material was available with the Assessing Officer when the order dated 19th December, 2014 was

passed. On being questioned, Mr. Murlidharan learned counsel for the petitioner states that this issue was not taken in its objections to the reasons in support of the impugned notice as the aforesaid communication was only received after the objection had been disposed of. However, we find that the Petition itself does not specifically mention the date when this document was received by the petitioners and therefore could not be the basis of the objections. It needs no mention that a party invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution must show utmost good faith. This itself would disentitle the petitioner to rely upon Exhibit 'O' to the Petition. Moreover, this Court in *Crown Consultants (P) Ltd. Vs. Commissioner of Income Tax, 362 ITR 368* has taken a view that where an objection is not taken before the Assessing officer while responding to the reasons in support of a notice seeking reopen an assessment, then it is not open to assessee to raise such objection for the first time before this Court. The exception ofcourse being if the impugned notice is ex-facie without jurisdiction and no determination of facts are required to establish it is without jurisdiction.

10. In these facts, we see no reason to exercise our extraordinary writ jurisdiction and interdict the Revenue from proceeding further with the reassessment proceedings. Needless to state that during the reassessment

proceedings, the petitioner would have occasion to establish that the loans taken from the eight entities referred to in the reasons were genuine loans before the Assessing Officer and also before the appellate authorities under the Act.

11. Therefore in the above view, the Petition is dismissed with no order as to costs.

12. At this stage, Mr. Murlidharan learned counsel for the petitioner seeks continuation of ad-interim stay granted on 25th February, 2016 for a period of four weeks from today. Prayer granted.

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)

wadhwa