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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.749 OF 2016

M/s. Jasani Realty Pvt. Ltd. ..Petitioner
Versus
Deputy Commissioner of Income Tax
Circle 2(2)(1) Mumbai. ..Respondent

....
Mr. S. C. Tiwari a/w Ms. Rutuja Pawar for the Petitioner.
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Respondent.
....

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

DATE : 23RD MARCH, 2016

P.C.:

1. This Petition challenges the Notice dated 27th March, 2015 issued under Section 148 of the Income Tax Act, 1961. The impugned notice issued by Assessing Officer seeks to reopen the assessment for A.Y. 2011-12.

2. The reasons in support of the impugned notice read as under:-

> *"In this case, assessment under Section 143(3) of the Income Tax Act was completed on 24.03.2014 assessing Total Income at Rs.22,17,85,465/- against the returned income Rs.22,14,57,470/-.*

Subsequently, information has been received from the office of ITO, Ward-1(1) (4), Baroda, regarding claim of expenses of Rs,40,00,00,000/- by the assessee in the A.Y. 2011-12. The said expense was claimed by the assessee in respect of deed relinquishment entered into with one M/s Khevana Securities and Finstock Ltd., and the same was paid by means of issue of certain shares of the assessee to M/s Khevana Securities and Finstock Ltd. @ Rs.1000/- per share. However, as per the information received, M/s Khevana Securities and Finstock Ltd. subsequently sold the said shares to one M/s Coroa Investments P. Ltd. at Rs.11/- per share only.

In view of the information as aforesaid, the authenticity of this transaction and the claim of revenue expense amounting to Rs.40,00,00,000/- are seen to be non-genuine in nature.

In view of the same, I have reason to believe that income chargeable to tax amounting to Rs.40,00,00,000/- as aforesaid has escaped assessment for A.Y. 2011-12 in term of Section 147 of the Income Tax Act, 1961, and the same is required to be brought to tax as well as any other income which may be found to have escaped assessment as per Explanation 3 to Section 147 of the I.T. Act, 1961.

Notice under Section 148 of the Income Tax Act, 1961, issued accordingly."

3. The grievance of the Petitioner to the impugned notice as articulated by its counsel Mr. Tiwari is twofold as under:-

(a) that the reasons recorded in support of the impugned notice display non application of mind by the Assessing Officer and

(b) the reasons recorded proceed on suspicion and not on reasonable belief that income chargeable to tax has escaped assessment.

4. On the reading of reasons we find that the Assessing Officer has received information subsequent to completion of assessment under Section 143(3) of the Act for the subject assessment year. On consideration of this information the Assessing Officer has come to a reasonable belief that the revenue expenses of Rs.40 lakhs were non genuine resulting in income chargeable to tax escaping assessment. Thus the recorded reasons do indicate the Assessing Officer due application of mind to the information received from him to form a reasonable belief that income chargeable to tax has escaped assessment. Moreover, we do not find that reasons recorded proceed on mere suspicion. It is a settled position in law that the reasons recorded at the time of issuing the impugned notice are only reasons to believe that the income chargeable to tax has escaped assessment and not an irrefutable conclusion that it is so. The material which has been received by the Assessing Officer as

mentioned in the reasons recorded in the context of the claim made by the Petitioner would indicate that a reasonable person is likely to have a reasonable belief that the income chargeable to tax has escaped assessment. At the stage of a challenge to a reopening notice issued under Section 148 of the Act, this Court is not concerned with the sufficiency of the reasons nor the correctness of the reasons ***(Raymond Woollen Mills V/s. ITO 256 ITR 34)***. However, we find that reasons do indicate a basis for the Assessing Officer to come to a reasonable belief on the basis of the information received that income chargeable to tax has escaped assessment. Thus we see no reason to exercise extra ordinary writ jurisdiction in the present facts.

5. Needless to state that it would be open to the Petitioner to challenge the reasons recorded in support before the Authority under the Act. All contentions left open.

6. In the above view, the Petition is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa