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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7933/2015 & IA No. 16050/2015

PRADYUMAN OVERSEAS LTD & ANR. ..... Petitioners

Through : Ms. Rashmi Chopra with Mr. S V N Jha and Ms. Asiya, Advocate

versus

INCOME TAX OFFICER, WARD-20(1) & ANR...... Respondents

Through : Mr. P Roy Chaudhari, Advocate for the Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **24.08.2016**

1. The petitioners challenge the assessment notice dated 28th March, 2015 under Sections 147/148 of the Income Tax Act, 1961 [hereafter "the impugned notice"].

2. The brief facts are that the assessees/petitioners' return for the Assessment Year 2008-2009 was filed and accepted on 2nd February, 2009.

3. On 28th March, 2015, the impugned notice was issued. The notice was based upon a sworn-in statement of one Mr. Sanjeev Jindal, proprietor of M/s. Apaar Enterprises to the effect that the assessee was the real and true owner of his firm. The statement is as follows :-

> *"During the course of proceedings vide reply dated 25.02.2015 was received from Sh. Sanjeev Jindal stating that "I was providing Transport Services to M/s. Pradyuman Overseas Ltd. in which Sh. Bhaskar Kedia is Managing Director. Mr. Bhaskar Kedia lured me to give me more business if you become Authorised Signatory of M/s. Apaar Enterprises, BA-53, Mangolpuri Industrial Area, Phase-II, New Delhi-34 for operating the bank account because as per my knowledge, the above firm*

was belonging to Sh. Bhaskar Kedia and I had no knowledge about the actual ownership of the firm M/s. Apaar Enterprises. He taken my signature on bank account opening form. He told that the banker would fill up the form themselves. Therefore, I made signature appear on account opening form as an Authorised Signatory not as a proprietor."

4. The appeal is entirely based upon the impugned notice hinged upon the above statement recorded and the satisfaction accorded by the Addl. Commissioner of Income Tax with respect to the assessee's failure to disclose fully and truly all facts in its return of income and, therefore, resulting in the proposed re-assessment.

5. The assessee furnished its objection on 21st May, 2015, contending that the reasons were not only sketchy, but entirely based upon the suspect statement of Mr. Sanjeev Jindal, the credibility of which was never established.

6. It was submitted that the petitioner/assessee and the said Mr. Sanjeev Jindal had engaged in litigation. In the course of the civil proceedings, Mr. Jindal had contended that M/s. Apaar Enterprises belonged to the assessee.

7. The learned Single Judge of this Court rejected the contention and held that in fact M/s. Apaar Enterprises belonged to Mr. Jindal. That judgment was affirmed by a Division Bench of this Court in *Sanjeev Jindal Vs. M/s. Pradyuman Overseas Ltd.* [RFA (OS) No. 6/2015, decided on 30th March, 2016]. However, the Assessing Officer (AO) has rejected the objections and proceeded with the re-assessment.

8. Ms. Rashmi Chopra, learned counsel for the petitioner relies upon the judgment of this Court in *Sanjeev Jindal (supra)* and submits that since the Courts have now ruled decisively against Mr. Jindal's contention that M/s. Apaar Enterprises belongs to the assessee, the AO should have given weightage to the determination by the Civil Court of competent jurisdiction rather than proceeding on the unfounded statement of Mr. Jindal.

9. It is submitted that if such re-assessments are permitted, the AOs would be travelling beyond the bounds of permissibility in reopening of assessment by merely basing themselves on sketchy or completely spurious material.

10. Learned counsel for the respondent submitted that the statement of Mr. Jindal afforded sufficient "reasons to believe" to the Revenue to issue notice under Section 147. The nature of the material should not be conclusive; it must merely point to new circumstances which when come to light allow the AO to initiate re-assessment.

11. This Court has considered the material on record as well as the judgment passed in *Sanjeev Jindal (supra)*. That was a case where the present assessee had filed a suit for recovery on account of supplies made to Mr. Jindal.

12. Several contentions were urged by Mr. Jindal; one of them prominently was that M/s. Apaar Enterprises belonged to the present assessee (plaintiff).

13. The Court rejected those contentions conclusively, and interestingly, took into consideration the fact that M/s. Apaar Enterprises collectively had a bank account which was opened with

the aid of M/s. Bhagwati Enterprises' verification.

14. The said M/s. Bhagwati Enterprises was a concern owned and controlled by Mr. Jindal.

15. Furthermore, the address of M/s. Apaar Enterprises is the same as in the case of M/s. Bhagwati Enterprises, of which Mr. Jindal was the proprietor.

16. All these facts are evident from the findings of the learned Single Judge which were in existence when the re-assessment issue was brought to the notice of the AO. However, it gave undue weightage to the statement of Mr. Jindal which was not based upon any objective material.

17. Whilst the evidentiary valuation of "reasons to believe" undoubtedly cannot be placed on the same footing with the quality of material that are required for addition to the income, at the same time, a line has to be drawn as to what nature/kind of material would be taken into consideration. Entirely unfounded allegations without any material to support them, in our opinion, as in the present case, cannot be the sound basis for re-opening of assessment under Section 147/148.

18. Such material cannot be characterised as tangible material.

19. In view of the foregoing reasons, the writ petition is allowed, in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 24, 2016/P