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

\+ **W.P.(C) 7601/2017**

R.P. FOAM HOME PVT. LTD ..... Petitioner
Through: Mr. S. Krishnan with Mr. K.C. Jain and Mr. K. Prasanna, Advocates.

versus

INCOME TAX OFFICER, WARD 20(3) ..... Respondent
Through: Mr. Zoheb Hossain, Senior standing counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R
% **29.08.2017**

CM APPL 31349/2017 (for exemption)

1. Allowed subject to all just exceptions.

WP (C) 7601/2017 & CM APPL 31348/2017 (for stay)

2. Notice. Mr. Zoheb Hossain, learned Senior standing counsel accepts notice on behalf the Respondent.

3. With the consent of learned counsel for the parties, the writ petition is taken up for final hearing.

4. R.P. Foam Home Private Limited has filed this petition under Article 226 of the Constitution of India seeking the quashing of a notice dated 31st

March 2017 issued by the Income Tax Officer, Ward 20 (3), New Delhi (hereinafter referred to as the Assessing Officer – AO) under Section 148 of the Income Tax Act, 1961 ('the Act') seeking to reopen the assessment for the Assessment Year ('AY') 2010-11 on the ground that income escaped assessment. The order dated 26th July 2017 passed by the AO rejecting the Petitioner's objections to the reopening of the assessment is also challenged in this petition.

5. The Petitioner filed its return of income for AY 2010-11 declaring an income of Rs. 19,57,290. The return was processed under Section 143 (1) of the Act.

6. On 17th February 2016, 28th March 2016 and 16th June 2016 the Deputy Director of Income Tax (Investigation)['(DDIT (Investigation')], Faridabad and Gurgaon recorded the statement of one Kishori Sharan Goyal pursuant to the search operation that took place in the case of Spaze Group. The information with the DDIT (Investigation) was that Spaze Group had received accommodation entries from various concerns controlled and managed by Kishori Sharan Goyal who was a Delhi based entry operator. It appears that Kishori Sharan Goyal in his statement disclosed that M/s. JMD International, whose proprietor is Mr. Anand Singh, was used for providing bogus accommodation entries. Mr. Anand Singh was given Rs. 6,000 per month for each proprietary concern which provided such entry. The DDIT (Investigation) purportedly called for the bank account statements of the said 'non-genuine' concerns including M/s. JMD International. On analysing the bank account of the said M/s. JMD International, the DDIT (Investigation)

noticed that the Petitioner herein, R.P. Foam Home Private Limited, had transacted with M/s. JMD International by receiving amounts on four occasions, i.e., Rs. 32 lakhs on 29th March 2010, two instalments of Rs. 43 lakhs each on 30th March 2010 and Rs. 20 lakhs on 31st March 2010 aggregating to Rs. 1.38 crores.

7. After receiving the above information from the DDIT (Investigation), by letter dated 28th March 2017, the AO of the Assessee recorded the reasons for initiating proceedings under Section 147 of the Act. The AO did not himself have the copies of the statements made by Kishori Sharan Goyal or the bank account statement of M/s. JMD International. In the reasons the AO reproduced what was contained in the letter of the DDIT (Inv.). The relevant portion of the said reasons recorded, and a copy which was provided to the Petitioner, reads as under:

> "In this case, return has been filed showing income of Rs. 19,57,290 ` which was processed under Section 143 (1) of the IT Act. On verification from ITD system, no scrutiny assessment under Section 143 (3) was completed in this case.
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> In this case, information has been received from DDIT (Inv)-III, Gurgaon vide his office letter No. DDIT (Inv)-III/Gur/2016-17/1236 dated 28th March 2017 that a search action was carried out in the case of M/s. Spaze Group, Gurgaon was carried out by them on 17th February 2016 and the main allegation against the Assessee group was that it had taken non-genuine purchase accommodation entries from various concerns, controlled and managed by Delhi based entry operator – Shri Kishori Sharan Goel.
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> The Director of M/s. Spaze Towers (P) Ltd. had also admitted to fact of taking accommodation purchase entries through paper entries. The statement of Shri Kishori Sharan Goyal was recorded on 17th February 2016 to 18th February 2016 under Section 131 (1A) of the IT Act in

which he specifically admitted that the entry M/s. JMD International whose proprietor is Shri Anand Singh which has been used for providing bogus accommodation entries and for doing so, Shri Anand Singh was given Rs. 6000 per month for each proprietary concern. It was also seen from the report that bank account statement of these non-genuine concerns were called for and analysed. It was observed that the Assessee company M/s. R.P. Foam Home (P) Ltd had also transacted with one of these non-genuine concerns, namely M/s. JMD International, through whom M/s. R.P. Foam Home (P) Ltd had taken the following entries vide JMD International's Bank account No. 910020000560939 maintained such Axis Bank.

Sl.No.	Name & address of concern used for providing accommodation entries	Amount	Date of transaction
1.	JMD International	32,00,000	29/03/2010
2.	JMD International	43,00,000	30/03/2010
3..	JMD International	43,00,000	30/03/2010
4.	JMD International	20,00,000	31/03/2010
	Total	1,38,00,000	

In view of above facts, it is clear that M/s. R.P. Foam Home (P) Ltd had taken non-genuine accommodation entries from one of the dummy companies namely JMD International through its bank account amounting to Rs. 1,38,00,000 during FY 2009-10 relevant to AY 2010-11 which requires scrutiny.

In view of above facts, I have reason to believe that income to the tune of Rs. 1,38,00,000 has escaped assessment for AY 2010-11. Hence, if approved, sanction may be accorded in terms of provisions of Section 151 (2) for issue of notice under Section 148 for AY 2010-11 in the case of the Assessee company."

8. The Petitioner then filed objections to the reopening of the assessment on 1st June 2017. It was pointed out that apart from the fact that the reasons

themselves were ambivalent, failing to even identify the nature of the transactions, the Petitioner was engaged in the manufacture of foam on a large scale, and had an office of excise department at its own factory gate and therefore, there was no question of its having made any bogus sales. The Petitioner enclosed with its objections copies of the invoices issued by it to M/s. JMD International containing details such as truck number, time of removal etc. and also showing payment of excise duty plus education cess and sales tax on each bill. It was pointed out that the amounts as stated in the reasons were also incorrect. The details of business transacted with M/s. JMD International in subsequent years were also provided. This showed that the sum received was an advance against goods sold, and not an accommodation entry.

9. The Petitioner's objections were rejected by the AO by impugned order dated 26th July 2017. Thereafter the present writ petition was filed challenging both the notice dated 31st March 2017 issued to the Petitioner under Section 148 of the Act as well as the order dated 26th July 2017 passed by the AO rejecting objections of the Petitioner.

10. The Court finds that the order dated 26th July 2017 rejecting the Petitioner's objections has not in fact dealt with the objections at all. It merely reiterates that the DDIT (Investigation) had intimated that the Petitioner had taken non-genuine accommodation entries from one of the dummy companies including M/s. JMD International. It then sets out Section 147 of the Act. The order proceeds to assert that the AO has in the reasons recorded, formed his opinion in writing and that "this belief has

been made after due diligence and considering the fresh material, evidences and facts available on the record." There is no basis for this bald assertion considering that the only material available with the AO was the letter sent by the DDIT (Inv). The order then sets out the summary of certain decisions and then simply concludes that "keeping in view of above, the objections filed are not acceptable and stand disposed of."

11. In the considered view of the Court, the impugned order stands vitiated in law for non-application of mind to the objections raised by the Petitioner. It does not discuss any of the objections. It does not deal with the documents enclosed along with the objections. The impugned order fails to address the principal objection that the so-called entries found in the bank account of M/s. JMD International were in fact entries signifying the payment made to the Assessee for the sales made by it to M/s. JMD International. The genuineness of these transactions should easily have been verified by the AO even at this stage.

12. In the circumstances, the order dated 26th July 2017 passed by the AO disposing of the Petitioner's objections is set aside. The AO is directed to again consider the objections of the Assessee raised by its letter dated 1st June 2017 and the documents enclosed therewith and pass a reasoned order afresh on merits.

13. It will be open to the AO to give the Assessee an opportunity of being heard before passing such order. Till such time as the AO passes a fresh order on the objections of the Assessee, the reassessment proceedings shall remain stayed.

14. The fresh order on the objections of the Assessee will be passed by the AO in the manner indicated hereinbefore within a period of six weeks from today and communicated to the Petitioner not later than one week thereafter.

15. The petition and the pending application are disposed of in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 29, 2017
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