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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23.07.2017

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W.P.(C) 2158/2016

SHIV SAI INFRASTRUCTURE PVT.LTD. Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX, & ANR.

..... Respondents

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W.P.(C) 2383/2016

SHIV SAI INFRASTRUCTURE PVT.LTD. Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX, & ANR.

..... Respondents

Present: Dr. Rakesh Gupta, Mr. Somil Agarwal, Ms. Monika Ghai, Mr. Rohit Kumar Gupta, Advs. for petitioner.

Mr. Sanjay Kumar with Mr. Rahul Chaudhary, Advocates for respondents.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J. (ORAL)

This petition challenges the reassessment notices issued by the Assessing Officer for the A.Y. 2008-09 and 2009-10. The reassessment notice for the A.Y. 2008-09, which outlined the “reasons to believe” in support of the decision to reassess

(which was also passed in identical terms for the subsequent year) is extracted below:

“Reasons for reopening the case of M/s Shiv Sai Infrastructure Pvt. Ltd. (PAN-AAJC85095B) For A.Y. 2008-09, u/s 147/148 of the Income Tax Act, 1961.”

Information/documents alongwith relevant details have been received from the office of Director of Income Tax (Investigation), New Delhi vide their letter F.No.DIT(Inv.)-II/U/s 148/2012-13/196 dated 13.3.2013 and through Addl. CIT, Range-8, New Delhi vide their letter F.No. Addl.CIT/Range-8/2012-13/1020 dated 22.03.2013 that the above assessee, M/s Shiv Sai Infrastructure Pvt. Ltd. has received and is a beneficiary of accommodation entries provided by certain entry operators. The Investigating Wing of the department had carried out search and seizure operations against the various group entry operator which included Surendra Kumar Jain Group to various beneficiary companies alongwith hundreds of bogus companies of the group and many other related entry providers. These search and seizure operations unearthed the modus operandi of these entry operators. The various companies which do not have any business were being used for providing accommodation entries to various assessee who were rerouting their unaccounted cash through these accommodation entries. The assessee would pay cash to the entry providers. This cash would then be deposited in the accounts of various bogus companies and the transactions would be routed through many bank accounts to cover the trail. Then the assessee would be given cheque from one of the many accounts which would be given the colour of share application money or share capital

or share premium or loans or advance etc. In the process, the entry operator would earn certain commission. The searches by the Investigating Wing against the entry operators resulted in unearthing of large number of pass books, cheque books, computer hard disks, signed blank cheques, share transfer certificates and many other blank signed documents. This information has been provided by the Investigation Wing of the Income Tax Department to the Assessing Officer.

ii. In the case of the above assessee, the following accommodation entries have been taken:

<i>S. No.</i>	<i>Beneficiary</i>	<i>PAN</i>	<i>Amount</i>	<i>Total</i>
<i>1</i>	<i>M/s Shiv Sai Infrastructure Pvt. Ltd.</i>	<i>AAJC S5059 B</i>	<i>2,00,00,00 0</i>	<i>2,00,00,000</i>

In view of the above, I am satisfied and I have reason to believe that income of Rs.2,00,00,000/- chargeable to tax has escaped assessment for A.Y. 2008-09, within the meaning of Section 147 of the Income Tax Act, 1961.”

The assessee complains that the impugned reassessment notices are unsustainable in law because all the relevant particulars relating to the share application moneys received by it were disclosed to the Assessing Officer. In support, the assessee also urged that the original assessment was done under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). During the course of those proceedings, the elaborate questionnaires dated 12.02.2010 and 31.01.2011 were replied to on 26.02.2010, 19.07.2010 and 26.08.2010, 07.09.2010, 09.11.2010, 12.11.2010, 25.11.2010

and 30.11.2010 (for A.Y. 2008-09 and A.Y. 2009-10). It is submitted that the pointed queries with respect to the genuineness, identity and creditworthiness of the share applicants was provided including the bank statements for the relevant years.

In respect of the impugned reassessment notice, it is argued that the AO – in the original assessment scrutiny orders did not furnished any reasons why the materials furnished to him, were acceptable. It is submitted that in these circumstances, the assessee cannot complain that the reasons, which impelled the Revenue to reopen assessments for these two given years were contrary to law. Learned counsel relied upon the decision in the case of *Income Tax Officer v. Techspan India Pvt. Ltd.* (2018) 92 Taxmann.com 361 to say that where no reasons are forthcoming in an assessment order that is cryptic or perfunctory, the reassessment is justified.

The material on records show that in all the relevant circumstances in which share application moneys were received by the assessee, the circumstances were explained and all the evidence in support of its contentions was furnished to the AO. No doubt, the AO's orders do not reflect any reasoning, at the same time, this Court is very mindful of the Full Bench ruling of this Court which was upheld in *Commissioner of Income Tax v. Kelvinator of India Pvt. Ltd.* (2011) 320 ITR 561 (SC); the Court had then stated that if material is elicited from the

assessee by the AO who then chooses to provide either perfunctory reasoning in part or no reasons, that such reasons cannot be a ground for reassessment.

In the present case, this Court is of the opinion that apart from that consideration, the reassessment notice is cast in over-broad terms; it merely mentions that pursuant to the search and seizure operations of a third party, some material came to light and that yet other third parties were “Entry Operators”, providing bogus entries in the form of share application credit to the petitioners. The identities of such bogus creditors or Book Entry Operators has not been revealed even though it is known nor are the exact amounts which are reflected in the books of such Entry Operators disclosed as “reasons to believe”. In these circumstances, it is held that the impugned reassessment notices cannot be sustained; they are hereby quashed as are all further consequential proceedings.

The writ petitions are allowed in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 23, 2018/akv