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

+ **W.P.(C) 13011/2018, CM APPL. 50486-50487/2018**

SUNEER KUDSIA

..... Petitioner

Through: Mr. Rajesh Srivastava, Adv.

versus

INCOME TAX OFFICER & ANR.

..... Respondents

**Through: Mr. Ruchir Bhatia, Sr. Standing Counsel
with Mr. Suraj Vir, Adv. for ITO**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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03.12.2018

The petitioner questions re-assessment notice issued by the respondent (hereafter referred to as Revenue) under Section 148 of the Income Tax Act relatable to Assessment Year (AY) 2011-12. The petitioner had sought for and was provided the “reasons to believe” that necessitated the impugned re-assessment notice.

It is contended that the “reasons to believe”, in this case are vague and given that the petitioner had explained in no uncertain terms that the three scrips which were specifically mentioned had in fact not even been transacted for the concerned Assessment Year, the attempt to re-assess the returns yet again, is erroneous. It was further explained by the petitioner’s counsel that the respondent/Revenue has not even cared to examine the entire records - had it done so, it would

have seen that the scrips were not traded during the year but possibly later. It was therefore, urged that given the materials on record, there was no tangible reason or objective material, supporting a valid reassessment.

The Revenue which appears on advance notice has produced the relevant record. According to the original files, the investigation report dated 27.02.2018 was received by the concerned Commissionerate of Sikkim and was later transmitted to the concerned official of Delhi on 27.03.2018. The AO appears to have ascertained from the electronic records with respect to the correctness of the shared transactions concerning three entities and concluded that reassessment was warranted.

The “reasons to believe” in support of the impugned notice, reads as follows:

“In this case the information has been received through e-mail from the ACIT(Hqrs.)(Coord.)-II, New Delhi stated that Directorate of Income Tax (Investigation), Kolkata received data from PMO dated 18.05.2017 through Board and DG(Inv.), WB, Sikkim & NER for investigation of Penny Scrips which was pertaining to our jurisdiction details of which are given below:-

S. No.	Full name of Penny Scrip	Scrip Code	Scrip Name	Total Trade Value
1	Golden Bull Research & Growth Limited	538295	Kausambi	Rs.44,57,85,325.91
2	Regency Trust Limited	511585	Regency Inv.	Rs.2,04,27,43,038.43
3	Global Capital Markets Limited	530263	Global Cap M.	Rs.5,02,78,35,316.99

In this information it is also written that it is to clarify here that information of beneficiaries sent to each AO and their respective Pr. CIT in excel format contains complete PAN India list of beneficiaries of 03 penny scrips mentioned above. AOs just need to filter AO column of attached excel Sheet of beneficiaries and beneficiaries pertaining to their jurisdiction shall pop up.

2. On physical verification as well as from the ITD database it is gathered that the assessee has filed ITR for A.Y.2011-12 on 28.09.2011 declaring total income of Rs.278401/- but not declared any investment or capital gain/loss in his ITR for A.Y.2011-12. No scrutiny assessment has taken place in the case of assessee for the relevant year.

3. In the present case, the undersigned has information as well as reason to believe that the income for A.Y. 2011-12 has escaped assessment as the assessee has not declared any investment or capital gain/loss in his ITR for A.Y.2011-12 with respect to the aforesaid transactions amounting to Rs.9,62,696.12/-. On believing the reason/information received from DIT (INV) Kolkata as discussed above. I am satisfied that this is a fit case for reopening u/s 148.”

The petitioner’s reply – upon being served with the reasons supporting the re-assessment *inter alia* states as follows:

“As reported by your Honour, the assessee has entered into penny stock transactions and booked profit of Rs. 9,62,696/- for the F.Y. 2010-11. This is totally incorrect and the assessee has not entered into any such transactions during the F.Y. 2010-11. The charge is totally wrong and incorrect information has been provided to your offices by the Directorate. of Income Tax (Investigation) Kolkata. During the year, the assessee did not enter into any transaction in any of the three scrips as pointed out by your Honour. Therefore, the reopening of

the said case is totally incorrect, biased and against the law.”

The AO considered the objections and after discussing the relevant case law – including the judgments of the Supreme Court in *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [2007] 291 ITR 500 (SC) and *M/s. Phool Chand Bajrang Lal Vs. Income-Tax Officer And Anr.* [1993] 203 ITR 456 (SC) was of the opinion that in the circumstances of the case, the explanation given by the assessee did not give sufficient cause for him to discharge the notice.

This Court is of the opinion that the petitioner’s claim that the reassessment in this case was unwarranted - by relying upon two circumstances – 1) categorical denial in the reply to the “reasons to believe” with respect to the fact that the transactions of the shares in the three companies had not been undertaken during the concerned Assessment Year and 2) that the Revenue did not look into the records to ascertain whether and if so, the extent of investment that the petitioner had made. The reply of the assessee in this case, we notice – whether it is categorical or otherwise, is unsupported by any document or statement, containing the investments made or copies of the investment account or the shares and securities purchased and traded in. The assessee was afforded an opportunity to provide this but chose not to provide the materials, other than denying the transactions altogether. In these circumstances, laying the blame on the door of the AO and characterizing the re-assessment as illegal, in

the opinion of this Court is not accurate. The primary task of the AO is to probe whether any income had escaped assessment when the original returns were accepted or merely framed under Section 143(1) - as it so happened in this case. The AO cannot be expected to conduct a mini-investigation or assessment during the course of ascertaining whether the re-assessment notice needs to be gone further into. On the basis of these parameters of what he is expected to do, the Court is of the opinion that at least in this case the AO confined himself to the jurisdiction conferred. Furthermore, the aspects on which the re-assessment has been ordered were concededly not gone into since assessment was merely framed with an intimation under Section 143(1), which does not even amount to an assessment order in law as held by *Deputy Commissioner Of Income-Tax And Another Versus Zuari Estate Development And Investment Company Ltd* [2015] 373 ITR 661 (SC).

For the foregoing reasons, the Court is of the opinion that the petition is unmerited and is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 03, 2018/akv