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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 23.10.2018

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W.P.(C) 10958/2017 & CM APPL. 44815/2017

M/S KOLAHAI INFOTECH PVT. LTD. Petitioner

Through: Mr. Salil Kapoor, Ms. Soumya Singh, Ms. Ananya Kapoor, Ms. Pallavi Saigal & Mr. Sanat Kapoor, Advocates.

versus

INCOME TAX OFFICER Respondent

Through: Mr. Asheesh Jain, Sr. Standing Counsel, Income Tax Department.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S.RAVINDRA BHAT, J. (ORAL)

1. The petitioner is aggrieved by the re-assessment notice issued under Sections 142, 147 and 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The respondent Revenue, on being asked to furnish the "reasons to believe", upon which the impugned re-assessment notice was furnished, did so. Pertinently, the reasons to believe supplied to the petitioner, stated that according to information received by the Revenue the on the basis of a survey conducted under Section 133 (A) of the Act in the case of related company (Maruti Clean Coal & Power Ltd.) on 26.09.2016, and the statement of one Rajesh Gulati, ex-Director, it held 2147944 shares as on 01.04.2009, valued at ₹7,22,00,000/-. The re-assessment reasons also recorded that in the subsequent financial year F.Y. 2010-11, the petitioner

acquired further shareholdings from other entities. The Revenue then set out the corporate holding pattern of the petitioner and its related company and later stated that :-

*“Keeping- in –view the above facts and materials available on record and also in order to lift the corporate veil, consequential re-opening of the case of Kolahai Infotech Pvt. Ltd. may be done at your end in order to ascertain the genuineness of transactions and source of investment made by your assessee in **Marauti Clean Coal & Power Ltd.** during the relevant A.Y. 2010-11.*

4. The return of income of the assessee company has been downloaded from the ITD system and the same was examined in the light of information received from ACIT Circle 1(1) Raipur. I have carefully examined the above referred to information as received from ACIT Circle 1(1) Raipur along with the return of the assessee for A.Y. 2010-11. It is evident from the return that assessee had received share application money of ₹7,42,20,000/- and issued, subscribed and paid up of ₹1,00,000/- during the year under consideration and on perusal of the P&L account of the assessee for AY 2010-11 the assess has shown Nil income from Sales/Gross receipts of business, similarly closing and opening stocks is also shown as Nil.

5. Considering the above referred credible information, ITR of the company, subsequent to the information, I have reason to believe that an amount of ₹7,42,20,000/- has escaped assessment in case the of M/s Kolahai Infotech Pvt. Ltd. the meaning of Section 147/148 of Income-tax Act, 1961.”

2. The petitioner contends that the statement of Mr. Rajesh Gulati, which is mentioned in the reasons to believe, clearly shows that the share holding, which excited the curiosity of the Revenue and led it to re-open the concluded assessment - the assessment for A.Y. 2010-11 was the shareholding related to F.Y. 2008-09. In other words, this emphasizes that the petitioner company had the shares valued at ₹7,22,00,000/- in the previous year. In these circumstances, the re-opening of assessment for the

subsequent year, was based on entirely erroneous conclusions.

3. The Revenue contends that the re-assessment was based upon the information received from the Commissioner of Income Tax, Raipur which in turn has based upon survey initiated in the case of Maruti Clean Coal & Power Ltd. The petitioner's shareholding pattern in that company emerges from that survey. It was submitted that the Revenue's case made out in the re-assessment notice was that the corporate veil, created by the string of companies with interlocking holding, needed to be unveiled and in these circumstances, the AO did not process the complete information and rather had to rely upon the broad nature of the facts revealed to him. It is submitted that since the basis for the re-assessment notice was tangible material outside of the record received by the Revenue, this Court ought not to intervene in any manner whatsoever.

4. Besides the petitioner, its subsidiary company Maruti Clean Coal & Power Ltd. also received a similar re-assessment notice. The petitioner has produced a copy of both re-assessment notice as well as objections filed. Interestingly, the pattern of holdings of various group companies shown in the re-assessment notice is different. In the case of the petitioner, the intermediate holding company ACB (India) Power Ltd. has not been shown as an intermediate holding company, whereas in the case of Maruti Clean Coal, that company has been shown. Apart from this detail, the Court notices that the information relating to the shareholding investment of Rs. 7.22 crores, for F.Y.2009-10, has been clearly revealed in the reasons to believe.

5. In these circumstances, the Revenue has hardly explained how and in under what circumstances, it can proceed to re-open the assessment for the subsequent year, F.Y. 2009-10 (A.Y. 2010-11). This Court is further of the

opinion that there is no material to support the Revenue's premise that any infusion of capital which was made on 01.04.2009, which could, if at all, be found to be the only basis to form a valid reason as stated in the notice. In the absence of such information, what emerges is that the investment of ₹7.22 crores in the equity capital of the petitioner were related quite logically or naturally, to the previous year i.e. AY 2009-10 (FY 2008-09).

6. In these circumstances, the re-opening of the assessment, cannot be sustained even though the Revenue may be otherwise right in contending that it was based upon tangible information. Clearly, the inaccuracy or rather a mistake in this case, affected the validity of the notice.

7. As a result of the above discussion, the impugned re-assessment notice cannot be sustained, it is quashed as are all consequential proceedings.

8. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

OCTOBER 23, 2018

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