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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (T) No. 158 of 2019

M/s NRVS Steels Limited (Formally Known As Seleno Steel Ltd.) Gourisshankar Mandir Road, Nayaganj, Raigarh, Chhattisgarh-496001, Through Its Director Vijay Agrawal, S/o Shri Nandkishore Agrawal, Aged 51 Years, R/o 18 Friends Colony, Raigarh, Chhattisgarh.

---Petitioner(s)

Versus

1. The Assistant Commissioner of Income Tax, Central Circle-2 Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.
2. The Principal Commissioner of Income Tax-1 Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.
3. The Joint Commissioner of Income Tax Central, Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.
4. Union of India Through Its Secretary, Ministry of Finance, North Block, New Delhi.

---Respondents

Writ Petition (T) No. 160 of 2019

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3. The Joint Commissioner of Income Tax Central, Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.
4. Union of India, Ministry of Finance, North Block, New Delhi through its Secretary.

---Respondents

Writ Petition (T) No. 161 of 2019

M/s N R Ispat and Power Pvt Ltd R/o E - 1 First Floor, Krishna Shopping Mall, Chaitanya Nagar, Raigarh C.G. 496001 Through Its Director Sanjay Agrawal, S/o Shri Nandkishore Agrawal, Aged 49 Years R/o 06, Friends Colony, Raigarh Chhattisgarh.

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4. Union of India, Ministry of Finance, North Block, New Delhi through its Secretary.

---Respondents

Writ Petition (T) No. 162 of 2019

M/s N R Ispat and Power Pvt Ltd R/o E - 1 First Floor, Krishna Shopping Mall, Chaitanya Nagar, Raigarh C.G. 496001 Through Its Director Sanjay Agrawal, S/o Shri Nandkishore Agrawal, Aged 49 Years R/o 06, Friends Colony, Raigarh Chhattisgarh.

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3. The Joint Commissioner of Income Tax Central, Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.
4. Union of India, Ministry of Finance, North Block, New Delhi through its Secretary.

---Respondents

Writ Petition (T) No. 163 of 2019

M/s NRVS Steels Limited (Formally Known As Seleno Steel Ltd.) Gourisshankar Mandir Road, Nayaganj, Raigarh, Chhattisgarh-496001, Through Its Director Vijay Agrawal, S/o Shri Nandkishore Agrawal, Aged 51 Years, R/o 18 Friends Colony, Raigarh, Chhattisgarh.

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3. The Joint Commissioner of Income Tax Central, Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.
4. Union of India, Ministry of Finance, North Block, New Delhi through its Secretary.

---Respondents

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Writ Petition (T) No. 164 of 2019

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4. Union of India, Ministry of Finance, North Block, New Delhi through its Secretary.

---Respondents

For Petitioners	:	Shri Sumit Nema, Sr. Advocate along with Shri Anand Dadariya and Shri Ashish Surana, Advocates.
For Income Tax	:	Shri Amit Choudhary, Smt. Naushina Ali and Shri Ajay Kumrani, Advocates.
For Union of India	:	Shri Krishna Gopal Yadav on behalf of Shri B. Gopa Kumar, Assistant Solicitor General.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

20.12.2019

1. Since common facts and issues are involved in all these writ petitions except for different assessment years in each case, they are being disposed of by this common order.

2. Challenge in these writ petitions is to the notice dated 19.11.2019 (Annexure P/1) issued under Section 153-A of the Income Tax Act, 1961 (in short, the Act) as also the rejection of the objections dated 26.11.2019 and 27.11.2019 filed by the petitioners.

3. The relevant facts necessary for adjudication of these cases are that, the petitioner-assessee company were subjected to search and seizure operation under Section 132 of the Act on 24.10.2017 at their premises as well as the residential premises of the Directors and other entities of the groups. Pursuant to the said search and seizure operation, a notice under Section 153-A of the Act was issued to the petitioners establishment. The petitioners filed their return. Subsequently, the department not satisfied with the return that the petitioners have submitted, issued a fresh notice under Section 153-A of the Act dated 19.11.2019 directing the petitioners to file a fresh return within seven days. The petitioners immediately filed their return to the impugned notice challenging it on the ground of it being illegal, bad in law and without jurisdiction. It is this objection which has been rejected by the department vide its orders dated 26.11.2019 and 27.11.2019 in respect of separate assessment years which are under challenge in these batch of writ petitions.

4. The main contention of the petitioners assailing the notice and the rejection order is on the ground that the initiation of proceeding under Section 153-A of the Act itself is bad in law as it does not meet the requirement as envisaged in the provisions of Section 153-A of the Act. According to the petitioners, there is nothing which the respondent department has seized in the course of search and seizure operation which reveals an income represented in the form of assets which has escaped assessment. It was the firm contention of the petitioners that unless the documents reveal income represented in the form of assets, the proceedings drawn under Section 153-A of the Act is not sustainable.

5. The reason for issuance of notice under Section 153-A of the Act is primarily on the receipt of certain share capital from various Kolkata based companies. This, according to the petitioners, is not infact an investment which could be brought within the ambit of income. Rather, it is a liability, and therefore, notice under Section 153-A of the Act is without any authority of law and is also in contravention to the provisions of the Act.

6. Further, the contention of the petitioners is that, even the provisions of the Companies Act i.e. Section 211 of the Companies Act, wherein contents of the balance sheet and profit and loss has been defined and which clearly prescribes the share capital as a liability which further strengthens the case of the petitioners and is also thus without fulfilling the basic requirement as is required under the IVth proviso to Section 153-A of the Act. Thus, the same is without jurisdiction and is illegal.

7. It is also illegal for the reason that term asset, as is used under Clause-a of the IVth proviso to Section 153-A of the Act, also does not include share capital as an asset as would be evident from the Explanation-2 provided therein.

8. According to the petitioners, even the Finance Act, 2017 had clearly envisaged that for the purpose of invoking the provisions of Section 153-A of the Act, there has to be an undisclosed investment in any asset detected from tangible evidences collected during the search or seizure operation which would enable issuance of notice under the said Section for the assessment year or years beyond the 6^{th} assessment year up to the 10^{th} assessment year.

9. The petitioners relied upon certain judgments of Supreme Court as also of the MP High Court to stress on the aspect of the High Court having the power to exercise its judicial review at the stage of issuance of notice.

10. Per contra, the counsel appearing for the department submits that the petitions deserve to be rejected only on the ground of it being filed at the stage of issuance of notice thereby making all the writ petitions premature. According to counsel for the department, there are more than couple of decisions of this very High Court itself which has clearly held that it is not for the High Court at the stage of issuance of notice to exercise its power of judicial review when the petitioners can raise all these grounds during the course of assessment proceedings and can also challenge the subsequent orders of assessment by way of an Appeal. Thus, prayed for rejection of all the writ petitions in limine itself.

11. According to counsel for the department, the investigation on the basis of issuance of notice is already going on and whatever the petitioners are contending are all matters which could be looked upon in the course of investigation and therefore, there is hardly any scope of interference available for this court in exercise of its power under Article 226 of the Constitution of India. The further contention on merits by the counsel for the department was that the order passed by the Assessing Officer rejecting the objections filed by the petitioners is by itself self explanatory and clearly demonstrates that notice under Section 153-A of the Act is purely in accordance with provisions of law i.e. the Income Tax Act, 1961 and is not, in any manner, contrary or in contravention to the provisions of the Act.

12. According to the department, during the course of search or seizure operation, various tangible documentary evidence showing receipt of share capital and premium from the year, 2007-08 to 2013-14 totaling to more than 10 Crores from various Kolkata based Shell Companies were found. According to the department, on further verification of the Shell company it was found that one such Shell company was found to have been acquired by the Directors of the Assessee company itself and on further verification, the said Director of one of the Shell company was not able to give plausible explanation. Nor has he given any sort of record or documents to justify the transaction of the infusion of share capital and premium received from the Shell companies. Thus, the counsel for the department prayed for rejection of all the writ petitions even on merits.

13. Having heard the contentions put forth on either side what has to be first visualized is that a search and seizure operation was conducted at the premises of the petitioners establishment on 24th October, 2017. During the course of search and seizure, certain information, documents and material evidences were collected which according to the Department is an income which has escaped assessment and which has prompted initiation of a proceeding under Section 153A of the Income Tax Act.

14. The primary contention of the petitioners is that since the precondition as is required for invocation of the 4th proviso to Section 153A of the Income Tax Act is not met by the Department, the proceeding drawn is totally illegal and bad in law. The second contention of the petitioners is that the documents which have been impounded during search and seizure proceedings and have already been disclosed in the return pertain to issuance of share capital and premium do not fall within the ambit of "asset" so as to attract the 4th Proviso to Section 153A of the Income Tax Act.

15. Without going into the details of the documents received it would be relevant to take note of the order of the Assessing Officer rejecting the objections of the petitioners. A plain reading of the said order of the Assessing Officer dated 27.11.2019 (Annexure P-3) would reveal that during the course of search and seizure they found that between financial year 2007-08 to financial year 2013-14, the petitioners company had received share capital/premium from various shell companies based at Kolkatta.

16. If we look into the notice and the contents of the notice issued to the respondents and further, from the order of rejection of the objection filed by the petitioners, it clearly reflects that during the course of the search and seizure proceedings, the Department found certain tangible materials, which would show that the petitioners-company had received certain share capitals and premium from various Kolkata based Shell Companies and for the said penny stock or penny script, no plausible explanation could be given by the petitioners-company or its responsible officers. Further, one of the Directors of the petitioners-company himself was a Director of one of these Shell Companies and the said person also could not give any justifiable explanation in respect of the said share capital and premium. This in the opinion of the Assessing Officer was an income, which has escaped assessment leading to the issuance of the notice under Section 153.

17. It is necessary at this juncture to point out that recently the Hon'ble Supreme Court in the case of "**Principal Commissioner, Income Tax (Central)-1 v. NRA Iron & Steel Pvt. Ltd.**" came down heavily upon such transactions being made through cloak of share capital/premium and the Hon'ble Supreme Court specifically held that the such transactions must be subjected to careful scrutiny. The Hon'ble Supreme Court in paragraphs No. 13 & 14 held as under:

> “13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company – Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.
>
> The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assesse Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.
>
> The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.
>
> 14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.”

18. In view of the aforesaid judgment of the Hon'ble Supreme Court and also taking into consideration the reasons recorded, while rejecting the objection of the petitioners, this Court is of the opinion that no strong case has been made out by the petitioners calling for an interference with the impugned order. The order of the authority concerned does not seem to be without reasons, nor is it baseless.

19. For the aforesaid reasons, all the writ petitions fail and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

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