IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11811 OF 2018

M/s Jalaram Enterprises Private Limited … Petitioner

V/s.

Income Tax Officer … Respondent

Ms.Ritika Agarwal for the Petitioner.
Mr.Suresh Kumar for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : MARCH 01, 2019.

P.C.:-

1. Petitioner has challenged a notice of reopening of assessment for the assessment year 2012-13 issued by the respondent- Assessing Officer on 29th March, 2018.

2. Brief facts are as under:-

Petitioner is a private limited company. For the assessment year 2013-14, petitioner had filed the return of income which was taken in scrutiny by the Assessing Officer. He passed order under Section 143(3) of the Income Tax Act, 1961("the Act" for short) on 11th March, 2015. To reopen such assessment, he had recorded reasons which read as under:

> "1. The assessee company has filed the return of income for A.Y.2012-13 on 23.09.2012 declaring total income of Rs.62,070/. The tax payable u/s 115JB of the Act on Book Profit of Rs.5,81,809/- was Rs.1,07,635/- which are more than the tax under normal provisions of the Act. The said return of income was processed u/s. 143(1) of the IT Act, 1961. Thereafter, the assessment was made u/s 143(3) of the Act vide order dated 11.03.2015 determining the total income at Rs. 14,46,150/-, which has been revised to Rs.9,01,682/- vide order dated 26.04.2017 giving effect to the appellate order of CIT(A) dated 28.02.2017.
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> 2. As per the information received from the DDIT(Inv) Unit 7(4), Mumbai vide letter No. DDIT (INV)/Unit-7(4)/Information/2016-17 dated 30.09.2016, the assessee M/s. Jalaram Enterprises Private Limited (PAN: AABCJ6334N) is one of the beneficiaries of bogus entities which are controlled and operated by Mr.Vipul Vidhur Bhatt. A Search & Seizure action u/s 132 of the Act was carried out in the case of Mr.Vipul Vidhur Bhatt and his other related entities on 05.02.2016 and his statement was recorded on 09.02.2016 u/s 132(4) of the Act. In the statement Mr. Vipul Vidhur Bhatt has accepted that he is an entry operator and all the entities are bogus companies, which are used by him for providing accommodation entries to various beneficiaries for commission and also accepted that he is a Director in these companies and all other directors are dummy directors.
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> 3. As per the information received, during the financial year relevant to the assessment year under

consideration, M/s. Jalaram Enterprises Pvt.Ltd. has taken accommodation entries of Rs.40 lakhs from M/s Dolex Commercial Pvt. Ltd. and Rs.15 lakhs from M/s Shyam Alcohol and Chemicals Ltd. which are controlled and operated by Mr. Vipul Vidhur Bhatt. The extent of such accommodation entries taken may be much more. This is because, the assessee may have taken accommodation entries from other such bogus concerns, which needs to enquired. Thus, the assessee has entered in to suspicious and príma-facie bogus financial transactions, which has been done to suppress its profit.

4. Therefore, after taking approval, vide notice u/s 133(6) of the I.T. Act, the Assessee-Company was asked to file Computation of Income, computation u/s 115JB (if applicable), Form 3CEB (if any), full set of the IT return, Tax Audit Report, reconciliation of 26AS/CIB/AIR/OLTAS Service Tax/STT/Sales-tax Return with Audited books, Audited Profit and Loss account and Balance Sheet along with all its annexure for the financial year relevant to the assessment year, latest by 27.03.2018 at 11.00 a.m.

5. In response to notice u/s. 133(6), the assessee submitted its reply through e mail on 27.03.2018 at 1.36 p.m.. The same has been perused

6. Further, this office has also examined the evidence and fact of the case independently and it is found that, there is failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment for the year under consideration. Therefore, I have the reason to believe that the income chargeable to tax under the provisions has escaped assessment to

> the extent of Rs.55,00,000/-.
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> 7. Therefore, there is sufficient material on record, on the basis of which, I have reason to believe that assessee has not made full and true disclosure, resulting in escapement of income chargeable to tax to the extent of 55,00,000/. for A.Y.2012-13 within the meaning of section 147 of the I T Act. Hence, it is a fit case for initiation of proceedings u/s. 147 of the I.T. Act, 1961 by issuing notice u/s. 148 of the Income Tax Act, 1961."

3. Upon being supplied the reasons, the petitioner raised objections before the Assessing Officer under a communication dated 27th August, 2018. Such objections were rejected by the Assessing Officer by an order dated 6th September, 2018, upon which this petition has been filed.

4. According to the Assessing Officer the Petitioner was beneficiary of bogus accommodation entries to the extent of Rs.55 lakhs. This comprise of a sum of Rs.40 lakhs received by the assessee from one M/s Dolex Commercial Private Limited and further sum of Rs.15 lakhs from M/s Shyam Alcohol and Chemicals Limited, both the Assessing Officer believed were the entities controlled by one Mr.Vipul Vidhur Bhatt, who had during

search and seizure operations given a statement that he was an entry operator and he operated through various bogus entities.

5. The case of the petitioner in brief in this petition is that such sums were not received by the petitioner from said entities during the current year. The petitioner would point out that the receipts of Rs.40 lakhs and Rs.15 lakhs from such entities were during the period relevant to the year 2010-11. On this short ground, counsel for the petitioner had attacked the impugned notice.

6. We had examined the documents on record with this limited question in mind. The reasons recorded by the Assessing Officer refer to a notice issued by him under Section 133(6) of the Act, before recording the reasons and issuing notice of reopening. The petitioner has produced written reply to such notice under Section 133(6) of the Act, in which the petitioner had pointed out as under:-

> "4. In your captioned notice, you have also raised issue of alleged accommodation entries of 40 lakh from M/s Dolex Commercial Pvt. Ltd.a nd Rs.15 lakh

> from M/s Shyam Alcohol & Chemicals Ltd. We have to state as under:-
> It is submitted that the above parties had lent us the amounts as early as in FY 2009-10. The said loans wee verified during assessment proceedings of the company for the AY 2010-11 by ld. ACIT -CC-2 Mumbai. In response to direct inquiry made by the ld. ACIT then the captioned companies had filed complete details like confirmation, bank statements and the return copies to prove the genuineness, creditworthiness and existence of parties. A copy of the submission made by the said lenders before the ld. ACIT in assessment proceedings for AY 2010-11 alongwith the copies of bank statement and the return copy is enclosed herewith and is marked as Annexure-"A" and "B" respectively."

7. As if this much was not enough, in the objections raised by the petitioner to the notice of reopening of assessment, following further ground was raised:

> "5. That vide submission dated 26/03/2018 filed in response to your notice dated 23/03/2018 u/s 133(6) for the impugned assessment year, the assessee has already submitted that the above named parties had lent the amount as early as in FY 2009-10 i.e. AY 2010-11. The said loans were verified during the assessment proceedings of the assessee for AY 2010-11 by ld. ACIT, Central Circle 2, Mumbai. In response to direct inquiries made the ld. ACIT then the above named parties have filed complete details like confirmation, bank statements and return of income copies to prove the

genuineness, creditworthiness and existence of parties. Copy of said letter dated 26/03/2018 along with annexures is annexed hereto and marked as "Exhibit A".

6. That on perusal of the said letter dated 26/03/2018 and annexures hereto, it can be noted that the assessee has received amounts from above mentioned parties during AY 2010-11 which stands assessed. Thus, it is submitted that the "reasons recorded" for AY 2012-13, AY 2013-14 and AY 2014-15 are factually erroneous and thus, the reopening deserves to be quashed.

7. That it is also submitted that the above fact was already on record of your ld. predecessor in response to notice issued u/s 133(6) prior to recording reasons u/s 148 of the Act. Thus, the reasons recorded de-hors the original assessment record and subsequent inquiry u/s.133(6) of the Act is wholly without jurisdiction."

8. While disposing of the objections, the Assessing Officer did not clearly meet with this opposition of the petitioner. He instead, gave a rather general disposal to this ground. The petitioner has also produced with this petition, correspondence entered into by the petitioner with the Assessing Officer during the assessment for the assessment year 2010-11, in which the petitioner had supplied full details of the said receipts from the said two entities. Clearly therefore, the petitioner has built up a

strong case to establish that the receipts in question never related to the present assessment year. The Assessing Officer simply cannot take shelter under the ground that all these aspects can be examined under the reassessment proceedings. When the very foundation of the reassessment is missing, it would be impermissible for the Assessing Officer to carry on the reassessment based on such notice.

9. In the result, only on this ground, impugned notice is quashed. Petition is allowed and disposed of.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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