IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11809 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 dated 27th March, 2018 issued by the Assessing Officer to reopen the assessment of the petitioner for the assessment year 2013-14.

2. Brief facts are as under:-

Petitioner is a private limited company. For the assessment year in question, the petitioner had filed the return of income on which the Assessing Officer has passed order under Section

143(3) of the Income Tax Act, 1961 ("the Act" for short) on 9th March, 2016. To reopen such assessment, the Assessing Officer issued the impugned notice. In order to do so, he had recorded following reasons:-

> "1. The above mentioned assessee has filed the return of income for A.Y.2013-14 on 27.09.2013 declaring total income of Rs.3,88,730/-. 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 09.03.2016 determining total income at Rs.29,23,980/. The Ld. CIT(A) vide order dated 02.06.2017 has granted relief of Rs.6,35,604/, which was disallowed u/s 36(1)(iii) /24(b) of the Act.
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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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> 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.

Further, information was received from Income Tax Officer, Ward 1(1), Jaipur vide letter dated 12/22.04.2016, wherein it has come to notice during the assessment proceeding in the case of Shri.Gaurav Garg for AY 2013-14, that M/s. Jalaram Enterprises Pvt. Ltd., Mumbai, has given unsecured loans of Rs.51 lakhs to the above assessee during FY 2012-13. The genuineness of the said transaction needs to be examined.

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 prima-facie bogus financial transactions, which has been done to suppress its profit.

3. 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 by 11.00 a.m.

4. 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.

5. 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.1.06 crores.
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> 6. 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 1.06 crores for A.Y.2013-14 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 filed objections before the Assessing Officer, the same having been rejected, the present petition has been filed.

4. The reasons referred to two grounds on which the Assessing Officer had issued the impugned notice, one is that the assessee was in the opinion of the Assessing Officer beneficiary of bogus accommodation entries. The assessee had received sums of Rs.40 lakhs and Rs.15 lakhs respectively from M/s Dolex Commercial Private Limited and M/s Shyam Alcohol and Chemicals Limited, both are believed to be bogus companies operated by one

Mr.Vipul Vidhur Bhatt, who had in his statement during search admitted to be engaged in providing bogus accommodation entries. However, the case of the petitioner is that such summons were received by the petitioner during the period relevant to the assessment year 2010-11 and therefore, the action of the Assessing Officer to reopen the assessment for the assessment year 2013-14 is bad in law.

5. Under similar circumstances, while disposing of assessee's petition being Writ Petition No.11811 of 2018, we had accepted the petitioner's such ground making following observations:-

"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:-
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> 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".
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> 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.
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> 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. "

6. Facts being identical, we adopt the same course in the present petition also. This leaves us the additional ground made by the Assessing Officer in the reasons which is of the assessee having given unsecured loan of Rs.51 lakhs to one Shri Gaurav Garg during this year. In this context, the Assessing Officer has only referred to such transaction and thereafter recorded that -

"The genuineness of said transaction needs to be examined."

In clear terms, the Assessing Officer has not indicated any prima facie ground why such transaction was not genuine and would give rise to escapement of income chargeable to tax. It is well settled that for mere verification the Assessing Officer cannot reopen assessment. It is often stated that reopening of the assessment cannot be resorted to for carrying out fishing inquiries.

7. For such reasons, impugned notice is quashed. Petition allowed and disposed of accordingly.

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

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