IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14479 OF 2018

My Car (Pune) Pvt. Ltd. … Petitioner

V/s.

Income-tax Officer-14(4) and ors. … Respondents

Mr.Jehangir Mistri, Senior Counsel with Mr.Sameer Dalal for the Petitioner.
Mr.Sham Walve for Respondent Nos.1 and 3.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : FEBRUARY 21, 2019.

P.C.:-

1. At the request of the parties, the petition is taken up for final disposal at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges notice dated 30th March, 2018 issued by the respondent No.1-Assessing Officer under Section 148 of the Income Tax Act, 1961 ("the Act" for short). The impugned notice seeks to reopen the assessment for Assessment Year 2011-12.

3. The undisputed facts are that the regular assessment proceedings were completed on 21st March, 2014 under Section 143(3) of the Act. Thereafter, the Assessing Officer has issued the impugned notice seeking to reopen the assessment for the assessment year 2011-12.

4. The reasons in support of the impugned notice as communicated to the petitioner read as under:

"01. The assessee filed its return of income declaring income of Rs.1,56,64,480/- on 28/09/2011. The assessee company is engaged in the business of selling of four wheeler and provide sales services. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 23.03.2014 and income assessed of Rs.1,75,61,370/-.

02. In the instant case, the information received from Assistant Director of Income tax (Inv), unit 6(3), New Delhi which are as follows:

This unit had conducted search in case of Himanshu Verma Group on 29.03.2012. This group was centralised with the Assessing Officer of Central Circle-20, Delhi (ACIT, Central Circle -20, Delhi.)

2. Shri Himanshu Verma was engaged in the activities of providing accommodation entries to various beneficiaries group. He did this by incorporation of numerous corporate and non-corporate entities where directors/partners/proprietors were his employees and closed associates.

3. Modus operandi of Sh. Himanshu Verma was observed to be mainly of three types:

i) He used to take cash from the beneficiaries, deposit the same in some of his entities/individuals' bank accounts, routing the same and finally remitting it to various companies of the beneficiary group in the form of share application money, share capital and/or unsecured loan.

ii) He used to accept cheques of one set of companies of beneficiary group to the bank accounts of some his corporate entities, rotate the same through his various group entities, finally remitting the same to some other set of beneficiary companies. Through this method, the beneficiary group companies used to inflate their balance sheets for the purpose of procuring more funds from banks/financial institutions. This method was also applied for siphoning off fund from public limited company to the Pvt. Limited companies of the same group.

iii) He used to take cheques of the beneficiary companies and used to issue them sale bills, mainly of fabrics and related articles. This cheque amount was either withdrawn immediately or after rotating the same amongst its group entities. The cash was then returned back to the beneficiary companies. This method was adopted by some concerns who wanted to inflate their purchases.

4. M/s MY CAR PUNE PRIVATE LIMITED, the assessee has taken accommodation entry from Himanshu Verma Group in F.Y. 2010-11 as follows:

Name	PAN	Name of Himanshu Verma & Group Company	
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Citylife Promoters Pvt. Ltd.	6000000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Carewell Projects & Development Pvt. Ltd.	2000000

MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Cornelius Marketing & Research Pvt. Ltd.	5500000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Gyanda Exim Pvt. Ltd.	3000000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Kripalu Promoters Pvt. Ltd.	6000000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Mayurvika Management Services Pvt. Ltd.	7500000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Mithilianchal Investment & Finance Pvt. Ltd.	2000000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Saunak Technologies Pvt. Ltd.	3600000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Shulini Realty Pvt. Ltd.	2000000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Soffpro Technologies Pvt. Ltd.	3600000
MY CAR PUNE PRIVATE LIMITED	AAECM2713M	Vedanshi Marketing & Research Pvt. Ltd.	5500000

MY CAR PUNE PRIVATE LIMITED	AAECM2713M	White Color Management Ser Pvt. Ltd.	7500000

AO's Comments:
(i) It is evident from the above said facts that the assessee had not fully & truly disclosed all the material of facts for its assessment for the year under consideration thereby necessitating reopening u/s 147 of the Income Tax Act, 1961.
(ii) It is true that the assessee has filed a copy of annual report, P & L a/c, balance sheet alongwith return of income where various information/material were disclosed. However, the requisite full and true disclosure of material facts for necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced annual report, P & L a/c, balance sheet alongwith return of income as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidences could not be discovered by the AO and could have been discovered with due diligence, according provisions of explanation 1 of section 147 of the Income Tax Act, 1961.
(iii) It is pertinent to mention here that material facts relevant for the assessment year on the issues under consideration were not filed during the course of the assessment proceeding and the same may be embedded in annual report, audited P & L a/c, Balance sheet and books of account in such manner that it would require due diligence by the AO to extract these information. For aforesaid reasons, it is not a case of change of opinion by the AO.

04. Therefore, I have reason to believe that the assessee has not fully and truly disclosed all the material of facts and the income of Rs.5,42,00,000/- has escaped the assessment by reason of the failure on the part of the assessee within the meaning of Sec.147 of the Income tax Act, 1961.

Therefore approval for issue of notice under section 148 may be given.

Pune/Dt: 30.03.2018 (Dr.Jivan Bachhav)
Deputy Commissioner of Income Tax,
Circle-14, Pune.

6	Whether Pr.C.I.T. is satisfied on the reasons recorded by the A.O. that it is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961.	As per annexure.

Pune/ Date 31.03.2018 Pr. Commissioner of Income Tax.

The annexure to the aforesaid reasons being the sanction order in terms of Section 151 (1) of the Act of the Principal Commissioner of Income Tax is also communicated to the petitioner. It reads as under:-

> "I have perused the above reason recorded by A.O. along with the information in his possession. It is noted that the assessee had heavy transaction (was providing accommodation entries to various beneficiary groups amounting to Rs.5,42,00,000/-, siphoning off fund from Public Ltd. Co. to Pvt. Ltd. Co., inflation of beneficiaries purchases) during the relevant financial year. The assessee has filed the return of income declaring total income of Rs.1,56,64,480/- but all the above activities need to be verified. Therefore, I am also satisfied that income has escaped assessment in this case. Hence, the approval u/s 151(1) of the Income tax Act is being accorded for Issue of Notice u/s 147 r.w.s. 148 of the Income tax Act.

Dated 31/03/2018 (Ashok Kumar Pandey)
Pr.Commissioner of Income tax-6,
Pune."

5. On receipt of the reasons, the petitioner filed its objections to the above reasons on 18^{th} September, 2018 with the Assessing Officer. By an order dated 31^{st} October, 2018, the Assessing Officer rejected the objections. Thus, this petition.

6. On the perusal of the reasons as recorded by the Assessing Officer and the sanction granted by the Commissioner of Income Tax, we pointed out to Mr.Walve learned counsel appearing for the revenue that the sanction appears to have been granted on a complete misreading of the reasons. The reasons for sanction is different from the reasons recorded and thus appears to be without application of mind to the reasons recorded.

7. In response Mr.Walve for the respondent submitted that the paragraph 3(ii) of the recorded reasons is in accord with the sanction granted by the Principal Commissioner of Income Tax. Thus the sanction was granted with due application of mind and

cannot be faulted.

8. We note that the para 3(ii) of reasons recorded in support of the impugned notice records the activity of one Himanshu Verma group in providing accommodation entries while the order granting sanction proceeds on the basis that it is the respondent assessee who is engaged in providing accommodation entries. In the above view, the submission of Mr. Walve does not merit acceptance. Further, order granting the sanction records that the funds of public limited company are being siphoned of to the private limited companies. This is not evident at all from the reasons recorded which makes references only to Private Limited companies being used as vehicles for providing accounting entries by the Himanshu Verma group. Thus, on the face of it, the sanction granted is bad in law. It is a settled position in law that grant of the sanction by the Commissioner of Income Tax under Section 151 of the Act, is not a mechanical act on his part but it requires due application of mind to the reasons recorded before granting the sanction. This has been so provided as to safeguard against issue of reopening notice (which

seek to disturb the settled position) to ensure that assessee is not troubled with reopening issues without satisfactory reasons. Therefore, it must pass muster of the Superior Officer in the context of Sections 147 and 148 of the Act, before it is issued to the party.

9. In the above view, as the sanction order indicates non-application of mind to the reasons recorded by the Assessing Officer, the impugned notice is bad in law. Thus, quashed and set aside.

10. Accordingly, the petition is allowed.

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

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