IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO.2145 OF 2019

African Daisy Realty Pvt. Ltd. & anr. … Petitioners

Vs

Union of India & Ors. … Respondents

Mr.Nikhil Rngta with Mr.Rajat Gupta for the Petitioners
Mr.Sham Walve for Respondents

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATED: AUGUST 5, 2019

P.C.:

1. This petition is filed by the assessee challenging the notice of reopening of assessment dated 29.2.2019 passed by Respondent No.2 – Assessing Officer seeking to reopen the petitioner’s assessment for the Assessment Year 2012-2013. The Assessing Officer provided reasons recorded by him for reopening of the assessment which reads as under:

> “REASON FOR REOPENING UNDER SECTION 147 OF THE INCOME TAX ACT, 1961.
> The assessee filed its return on 30.09.2012 declaring total income of Rs.2200. The return was processed u/s 143(1) of the Income-tax Act, 1961 (herein after “the Act”) on 22/02/2013. As per Memorandum of Association, the main object of the company was to carry on business of developers, builders, masonary, general construction

contractor etc. However, on perusal of return of income and profit & loss account, no such business activity found to be carried out by the assessee.

2. The case of the assessee was selected for scrutiny under CASS for AY 2013-14 on the reason of Large increase in unsecured loans. During the course of the assessment proceedings for this AY, notices u/s 133(6) were issued to 10 loan creditors. Out these, 8 notices were returned back and balance 2 loan creditors did not replied. Considering these facts and details/documents available on record, the Assessing Officer added unsecured loans of Rs.8,71,62,441/- received during the FY 2012-13 as income of the assessee. The CIT (A) confirmed this addition. During the course of this assessment proceedings, the Assessing Officer has also found that the assessee received loan of Rs.10,27,21,810/- from following firms/company. Notices u/s 133(6) were issued these firms by the AO, but these notices were either returned back or no reply received. These facts were apprised to the assessee during the course of assessment proceedings for AY 2013-14 but the assessee did not submit any reply.

S.No.	Name of the unsecured loan creditors	Amount of loan
1.	Himalayan Hogweed Reality Pvt. Ltd.	3,78,17,872
2.	Idea Trading Company	2,20,15,266
3.	Nikita Sales Corporation	1,94,23,843
4.	Parshwa Aluminium	94,36,412
5.	Riddhi Enterprises	88,72,100
6.	Sharma Enterprises	51,56,317
	Total	10,27,21,810

3. The return of income of assessee for this assessment year is verified and found that the assessee has unsecured loans of Rs.10,27,21,810/- as per balance sheet.

4. The above facts proves that the assessee company has received unexplained cash credit u/s 68 of the Act of

Rs.10,27,21,810/- in its books of accounts during the AY 2012-13."

2. The petitioner raised objections to the notice of reopening of assessment. Such objections were however rejected by an order dated 31.5.2019. Hence, the petition.

3. At the outset, we may record that the return filed by the petitioner to the said A.Y. 2012-13 was accepted u/s 143(1) of the Income Tax Act ("the Act" for short), without scrutiny. In that view of the matter, as is settled through a series of judgments of the Supreme Court and this Court, the Assessing Officer had much wider latitude in reopening the assessment if he had tangible material at his end to enable him to form a belief that income chargeable to tax has escaped assessment, he could by recording reasons, issue notice for such reassessment. Reference in this regard, can be made to the judgments of the Supreme Court in the case of **Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers (P) Ltd.**[1] as well as in the case of **Deputy Commissioner of Income Tax vs.Zuari Estate Development & Investment Co. Ltd.**[2]

1 (2007) 291 ITR 500 (SC)
2 (2015) 373 ITR 661 (SC) : [2016] 236 Taxman 1

4. In this background, we may refer to the reasons recorded. The Assessing Officer in his assessment has recorded that the assessee has declared total income of Rs.2200 for the said Assessment Year in the return of income filed. He recorded that the return of income of the petitioner for the Assessment Year 2013-2014 was taken in scrutiny. During such scrutiny assessment, since much increase in unsecured loans was noticed, notices u/s 133(6) of the Act were issued to ten loan creditors. Out of these ten creditors, notices to eight returned back. The other two loan creditors did not reply. The Assessing Officer proceeded to frame the assessment on the basis of material on record. He made addition of a sum of Rs.8.71 crores (rounded off) to the unsecured loans received during the period relevant to the Assessment Year 2012-2013 to the income of the assessee. The CIT (Appeals) confirmed this addition. During the course of such assessment, the Assessing Officer also noticed that the assessee had received loan of Rs.10.27 crores (rounded off) from various firms and companies. Notices u/s 133(6) were issued to such firms also, which were returned back or were not responded to. The assessee also did not submit his reply in connection with the said loans of Rs.10.27 crores. The Assessing Officer had verified the return of the income of the assessee for the said Assessment

Year 2012-2013 and found that the assessee had disclosed having received unsecured loans of Rs.10.27 crores. According to the Assessing Officer, this would show that the assessee had received unexplained cash credit of Rs.10.27 crores in terms of section 68 of the Act. He, therefore, had reason to believe that the income chargeable to tax had escaped assessment.

5. We do not find that the reasons recorded by the Assessing Officer are such that it can be stated that the reasons lacked validity. The learned Counsel for the petitioner however submitted that the petitioner had made full disclosures about such unsecured loans and in any case, the assessment for the Assessment Year 2013-2014 is not yet final, the assessee had filed appeal which is pending.

6. Neither of these two grounds permit us to quash the impugned notice of reassessment. Mere disclosure of receipt of unsecured loans would not be sufficient to avoid reassessment in case where the return was accepted without scrutiny. Further, the Assessing Officer has only referred to the assessment of the subsequent Assessment Year to demonstrate the nature of unsecured loans received by the assessee. There is no provision which would require him to await finality of such assessment before issuing the notice of reassessment.

7. In the result, the petition is dismissed.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**