IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3493 OF 2018

Asset Reconstruction Company India Pvt. Ltd. … Petitioner

V/s.

Deputy Commissioner of Income-tax-
Circle6(1)(2), Mumbai and ors. … Respondents

Mr.Jitendra Jain i/by Mr.Atul Jasani for the Petitioner.
Mr.N.C.Mohanty for the Respondents.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 24, 2019.

P.C.:-

1. Rule having been issued previously, we have heard learned counsel for the parties on final hearing.

2. Petitioner has challenged a notice of reopening of assessment dated 30th March, 2018.

3. Brief facts are as under:-

Petitioner is Asset Reconstruction Company India Private

Limited ("ARCIL" for short) and is engaged in the business of securitisation and asset reconstruction and also acts as trustees for the non-performing financial assets acquired from the various banks and financial institutions.

4. For the assessment year 2011-12, the petitioner had filed return of income on 30th September, 2011 declaring income of Rs.79.23 crores. The return was taken in scrutiny by the Assessing Officer who passed the order of assessment under Section 143(3) of the Income Tax Act ("the Act" for short) on 25th March, 2014. To reopen such assessment the Assessing Officer issued the impugned notice which as can be seen was done beyond the period of four years from the end of assessment year. In order to issue the notice, the Assessing Officer had recorded following reasons:-

> "The assessee, M/s Asset Reconstruction Company India Ltd. assessed with the charge of the ACIT 6(1)(2),Mumbai, filed its return of income on 14.10.2010 at Rs.86,82,25,240/- Assessment u/s 143(3) of the Act was completed on 26.03.2013 determining total income at Rs.89,66,70,995/- as per ITD system.
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> 2. Vide letter dated 25.03.2017, the DCIT CC 2(2), Mumbai has informed that M/s Asset

Reconstruction Company India Ltd. has had dealings with M/s Avance Technologies Ltd. which was indulged in providing bogus accommodation entries. The copy of the said letter dated 25.03.2017 is enclosed for ready reference.

3. As per letter dated 25.03.2017, a search u/s 132 of the Act was carried out at the residence and various premises of Shri Shirish C. Shah who happened to be the main person engaged in providing bogus accommodation entries like long term capital gain, share capital with huge share premium, turnover, loan etc. Shri Shirish C Shah, directly and indirectly controlled more than 200 companies which included some of the public limited companies also. An enquiry was made with M/s Asset Reconstruction Company India Ltd. regarding the nature of transactions with M/s Avance Technologies Ltd. during FY 2010-11 (relevant to AY 2011-12). M/s Asset Reconstruction Company India Ltd. explained that they had purchased Non Performing Assets (NPA) of M/s Avance Technologies Ltd from Allahabad Bank in the year 2009. Against the same, M/s Avance Technologies Ltd had paid Rs.2.70 Cr to M/s Asset Reconstruction Company India Ltd. However, as M/s Avance Technologies Ltd was engaged in providing bogus accommodation entries to various parties in connivance with Shri Shirish C Shah, the claim of M/s Asset Reconstruction Company India Ltd. may be investigated.

4. In view of the above and based on the material evidence available on record, prima facie, it is seen that the assessee, M/s Asset Reconstruction Company India Ltd has had dealings with Avance Technologies Ltd., which was indulged in providing bogus accommodation entries and that income chargeable to tax to the tune of Rs.2.70 Crore has escaped assessment in

> F.Y. 2010-11 i.e. A.Y. 2011-12.
> 5. In view of the above, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 on account of the above mentioned transaction and that this escapement is due to the failure of the assessee company to disclose fully and truly all material facts relevant to the determination of its correct income.
> It is clear from the above that the income chargeable to tax has escaped assessment for the amount of One Lac Rupees or more in this assessment year, AY 2011-12.
> Thus, I am satisfied that this is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961. Accordingly, the case may kindly be re-opened u/s 147 of the Income Tax Act, 1961 and notice u/s 148 may be issued to bring to tax the income so escaped for the assessment year, AY 2011-12."

5. Upon being supplied the reasons, the assessee raised objections to the notice of reopening by the letter dated 24th September, 2018 and 17th October, 2018. Such objections were however rejected by an order dated 3rd October, 2018 by the Assessing Officer. Hence the Petition.

6. We have heard learned counsel for the parties at considerable length. If we peruse the reasons, the stand of the

Assessing Officer is that he received information from the Investigation Wing that one S.C.Shah is a main person who is engaged in providing bogus accommodation entries through several companies controlled by him. It was found that ARCIL had entered into transactions with one M/s Avance Technologies Limited ("Avance" for short). ARCIL had purchased Non-Performing Asset (NPA) of said Avance from Allahabad Bank in the year 2009. Against this, Avance had paid a sum of Rs.2.70 crores to ARCIL. According to the information of the Assessing Officer, Avance was engaged in providing bogus accommodation entries at the instance of said S.C.Shah. On the basis of such information, the Assessing Officer was prima facie of the view that the assessee i.e. ARCIL has dealing with Avance which in turn has indulged in dealing with various accommodation entries and therefore, income chargeable to tax of Rs.2.70 crores had escaped assessment.

7. In our opinion, the very premise of Assessing Officer to form a belief that income chargeable had escaped assessment is completely invalid. As per the information received by the

Assessing Officer and to which the assessee raised its no dispute, the assessee had as an Asset Reconstruction Company dealt with Avance. Avance was a borrower of Allahabad Bank. The assessee purchased NPA from Allahabad Bank. By way of recovery, Avance paid a sum of Rs.2.70 crores to the assessee. Whatever be the nature of existence of Avance, its dealings with other individual entities and dealings of said S.C.Shah, we simply fail to appreciate how the Assessing Officer in the present case asserts that in case of the assessee income chargeable to tax has escaped assessment. Even going by the information at the command of the Assessing Officer, the assessee having purchased the NPA from Allahabad Bank, received the payment of Rs.2.70 crores from Avance. This has nothing to do with the alleged dubious dealings of Avance at the instance of S.C.Shah. In clear terms, the very formation of the belief by the Assessing Officer that income chargeable to tax in the hands of the assessee had escaped assessment, lacks validity.

8. The department as well as the counsel for the revenue

have tried to improve upon the reasons stated by the Assessing Officer by suggesting that it would be necessary to verify whether such income was offered to tax by the assessee or whether the Trustee for whom assessee claims would have received the income had offered the same to tax. None of these elements find place in the reasons recorded by the Assessing Officer. As is well settled by series of judgments of various Courts; that notice of re-opening of assessment can be supported on the basis of reasons recorded by the Assessing Officer for this purpose. Reliance can be placed on the decision of the Court in case of **Hindustan Lever Ltd. Vs. R.B.Wadkar, Assistant Commissioner of Income-Tax and ors.**[1]. Thus, the notice of reopening of assessment need to be judged only on the basis of reasons recorded by the Assessing Officer. When the reasons do not record any other element of income chargeable to tax having escaped assessment, it would not possible for the revenue to bring such element into consideration either through affidavit or oral arguments. We have examined the reasons and find that these reasons simply do not provide the live link to the

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1 (2004) 268 ITR 332 (Bom)

formation of belief by the Assessing Officer that assessee's income chargeable to tax has escaped assessment. In the result, impugned notice is set aside. Petition is disposed of.

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

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