R.M. AMBERKAR
(Private Secretary)

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

WRIT PETITION NO. 3540 OF 2018

Shilpi Jewellers Pvt Ltd .. Petitioner

Versus

Union of India & Ors. .. Respondents

....

- Mr. Naresh Jain a/w Ms. Neha Anchliya and Ms. Laxmi Rungta i/by Agrud Partners for the Petitioner
- Mr. Suresh Kumar for the Respondents

....

CORAM : AKIL KURESHI &
S.C. GUPTE, JJ.

DATE : FEBRUARY 8, 2019.

P.C.:

1. Heard learned counsel for the parties for final disposal of the petition.

2. The petitioner has challenged a notice of reopening of assessment dated 29.3.2018. The petition arises in following background:-

2.1 Petitioner is a registered company and is engaged in the business of manufacturing and trading in gold and diamond jewellery. For the assessment year 2011-12, the petitioner had filed return of income which was taken in scrutiny by the assessing officer. He passed order under section 143(3) of the Income Tax Act ("the Act" for short) on 14.2.2014. To reopen such assessment, the Assessing Officer issued the impugned notice. In order to do so, he had recorded the following reasons:-

> **"Reasons to believe that income chargeable to Tax escaped assessment u/S. 147 of the Income Tax Act** :
>
> 1. Assessee filed return of income on 29.09 2011 declaring total income at Rs. 1,70,96,584/- The return was processed u/S. 148(1) of the Income Tax Act, 1961. Subsequently, assessment u/s 148 (8) was completed on 14.02.2014 at an assessed income of Rs 1,78,26.210/-
>
> 2. Subsequently, in this case, information was received from the DDIT (Inv) Unit - 3(1), Mumbai vide letter dated 19 08 2018 wherein it was mentioned that information received indicates that the account No. 026105006060 (ICICI Bank- Zaveri Bazar Branch (had suspicious transactions due to large value non-cash transactions in the account. The account holder ie. assessee is a trader of gems and jewellery, purchases bullion, make ornaments and sells them. In the transactions pattern, it was observed that credits in the account are by way of large value RTGS, NEFT, cash deposits, transfers and outward clearing while on the outflow side, majority of the debits are by way of RTGS / NEFT. There are debits also by way of transfers, internet fund transfer and inward clearing cheques. The value of transaction appears to be high in relation to the expected business activity. The total of debits and credits are of Rs. 60.28

crore and Rs. 60.54 crore respectively while the total turnover of the assessee for the year under consideration was Rs. 241.48 crores. The assessee has not submitted the authentic details regarding transactions with Emerld Jewel Industry. Mayur Jewel and Raksha Bullions and further supporting documents regarding sales i.e sales vouchers, bill etc., were not provided. Hence, the transactions made these parties suspicious. Accordingly, the unexplained credit for the year under consideration amounted to Rs. 33.34 crore.

3. It is to mention here that assessee has entered into transactions with Emerald Jewel Industry, Mayur Jewel and Raksha Bullions for which no supporting documents were provided, thus makes the transactions with these parties suspicious.

4. Further, I have also examined the information vis-a-vis the return of income of the assessee. After appraisal of the material on record there is enough reason to believe that the assessee prima facie has inflated its sales and the assessee has clearly failed to disclose all material facts for determination of income.

5. Hence, I have reason to believe that income of Rs. 33.34 crores chargeable to tax, has escaped assessment by reason of the failure on part of assessee to disclose fully and truly all material facts necessary for its assessment for A.Y. 2011-12 within the meaning of the provisions of section 147 of the Income Tax Act, 1961."

2.2 Upon being supplied the reasons, the petitioner raised objections to the notice of reopening under letter dated 30.10.2018. Such objections were, however, rejected by the Assessing Officer by order dated 1.11.2018. Hence, this petition.

3. Inviting our attention to the reasons recorded by the Assessing Officer and other documents on record, learned counsel for the petitioner raised following contentions:-

i. The impugned notice has been issued beyond the period of four years from the end of relevant assessment year. There was no failure on the part of the assessee to disclose truly and fully all material facts;

ii. The Assessing Officer has acted mechanically on the basis of the information supplied to him by the investigation wing;

iii. The Assessing Officer had no reason to believe that the income chargeable to tax had escaped assessment since the reasons stated do not establish a live link with escapement of income chargeable to tax.

4. On the other hand, learned counsel Mr. Suresh Kumar for the Department opposed the petition contending that the Assessing Officer has recorded proper reasons for issuing the notice. Information supplied from the investigation wing suggested non-genuine transactions of sales by the petitioner to three listed parties. The issues raised by the assessee can be examined during the course of reassessment.

5. We have heard the learned counsel for the parties and perused the documents on record. Perusal of the reasons recorded by the Assessing Officer would show that as per the information supplied to him by the investigation wing, the petitioner was maintaining a bank account of one ICICI Bank, Zaveri Bazar Branch. In such bank account, there were high value of RTGS, NEFT and cash deposit transfers. Likewise, there was outward clearing through similar modes. The debits were to the tune of Rs. 60.28 crore and credit to the tune of Rs. 60.54 crore. The information further suggests that the assessee had not submitted authentic details regarding the transactions with Emerld Jewel Industry, Mayur Jewel and Raksha Bullions and further supporting documents relating sales i.e sales vouchers, bills etc. It was, therefore, suggested that the assessee's transactions with these parties were suspicious. The Assessing Officer in the reasons recorded that he has examined such information and formed a belief that "the assessee prima facie has inflated its sales and the assessee has clearly failed to disclose all material facts for determination of income."

6. For multiple reasons, the impugned notice cannot be sustained. Firstly, as noted, the reopening of assessment is done beyond the period of four years from the end of relevant assessment year. Original assessment was completed after scrutiny. There had, therefore, to be failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment. In the present case, there are two suggestions in this respect in the reasons recorded. Firstly, it is stated that the assessee had not produced supporting documents relating to sales i.e sales vouchers, bills. etc in relation to three noted parties. According to the Assessing Officer, therefore, these transactions were suspicious. We do not find any provision under which without being called to do so, the assessee along with return or even during the assessment, was required to produce such documents before the Assessing Officer. If during the assessment proceedings, the Assessing Officer desired to verify such sales, he could have called upon the assessee to produce the same. There was no unilateral duty of the assessee to produce such documents uncalled for. The very foundation, therefore, for the

Assessing Officer to record that the transactions were suspicious, thus, fails.

7. Second element is that the assessee had not fully disclosed the material facts since the transactions were not genuine. However, we find that the very foundation for the Assessing Officer to make such a suggestion is bereft of any material logic, thus, the later suggestion on his part, would automatically not survive. In plain terms, thus, the Assessing Officer wishes to carry out fishing inquiry through reopening of assessment which as per settled law is impermissible.

8. Additionally, we also find that the the suggestion of the Assessing Officer that income chargeable to tax had escaped assessment is itself questionable. Even if we accept the stand of the Revenue, according to the Assessing Officer, the assessee had inflated its sale. Once these sales were duly reflected in the assessee's accounts, we do not understand how the Revenue can contend that the assessee's income had escaped assessment. This is not a case where the Revenue contends that the purchases made by the assessee were inflated and therefore, the assessee had tried to suppress the profit.

9. In the objections, the assessee had also questioned the quantification of the escaped income of Rs. 33.34 crore. In reply to the petition, the Assessing Officer stated that the same emerges from the information received by him from the investigation wing. This clearly reflects non application of mind on the part of the Assessing Officer recording the reasons.

10. On all the above grounds, the impugned notice is quashed and set aside. Writ Petition disposed of.

[S.C. GUPTE, J.] **[AKIL KURESHI, J]**