R.M. AMBERKAR
(Private Secretary)

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

WRIT PETITION NO. 187 OF 2019

M/s. Ankur Power Projects Pvt Ltd .. Petitioner

Versus

The Income Tax Officer 15(1)(1) & Ors. .. Respondents

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- Mr. Devendra H. Jain a/w Mr. Dharan Gandhi for the Petitioner
- Mr. Suresh Kumar for the Respondents

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : MARCH 8, 2019.

P.C.:

1. The petitioner has challenged a notice of reopening of assessment dated 28.3.2018 seeking to reopen the petitioner's assessment for the assessment year 2010-11. The Assessing Officer had supplied the reasons for reopening the assessment to the petitioner in which it was conveyed that the Assessing Officer had received information from the investigation wing of the department concerning one Abhijit Sharma and the statement of account No. 1670301130608 of ICICI Bank was summoned for a period from 1.4.2010 to 31.3.2013. The Assessing Officer further stated that :-

"..... On perusal of bank statement, it is seen that huge amount was deposited in the above mentioned account mainly through clearing / transfer / RTGS which were followed by transfer of the said funds through cheque in the accounts of M/s. Ankur Power Project Pvt Ltd/ in different dates totaling to Rs. 3,04,98,000/-.

The DDIT has concluded with the following remarks:-

> "When the ITD analysis of M/s. Abhijit Sharma was done, it was found that these entities are having low / NIL turnover and meager profit after tax (PAT). Prima facie, it seems that this company have been used for routing of unaccounted funds."

Thus, it is seen that M/s. Ankur Power Project Pvt Ltd is one of the beneficiary of accommodation entries from Abhijet Sharma. The amount involved in the transaction is Rs. 3,04,98,000/- for AY 2011-12."

2. The case of the petitioner is that the reasons proceeded on entirely incorrect factual basis, that the assessee had received a sum of Rs. 3.04 crores on different dates from the said account number 1670301130608 of ICICI Bank which was towards bogus accommodation entries. It is the case of the petitioner that no such amount was received from such bank account and in fact, the petitioner had invested such sum of Rs. 3.04 crore with one M/s. Kirlampudi Commerce Pvt Ltd who is the holder of the account in question.

3. The petitioner had raised objections to the notice of reopening of assessment under a communication dated 12.10.2018. Such objections were rejected by the Assessing Officer on 5.11.2018. As per the decision of this Court in the case **Asian Paints Ltd Vs. Dy. CIT & Anr.**[1], the Assessing Officer had to wait for a period of four weeks after disposal of the objections before finalizing the assessment. Without doing so, the Assessing Officer passed reassessment order on 3.12.2018. The petitioner has, therefore, challenged the very reassessment proceedings as well as the order passed pursuant to such notice.

4. As noted, the case of the petitioner is that the reasons proceeded on erroneous grounds and that such objection was taken in the communication dated 8.10.2018. Learned counsel for the department, however, submitted that no such specific objection was taken as is now being taken before this Court in the objections and that, therefore, the Assessing Officer had no occasion to meet with such a pointed factual assertion.

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1 (2008) 296 ITR 90 (Bom)

5. Under any circumstances, the action of the Assessing Officer to pass the final order of assessment even before the period of four weeks as envisaged by the decision of this Court in the case of Asian Paints Ltd (supra) had expired, cannot be approved. The Assessing Officer has filed an affidavit apologizing for such lapse of which we take note. The order of assessment, therefore, shall have to be set aside. While doing so, in view of the peculiar facts of the case, we permit the petitioner to file further objections to the notice of reopening of assessment. This recourse we adopt for the reason that the assessee had raised the ground of the reasons proceeding on incorrect factual premise, but the pointed objection as is elaborated before us now was not taken. If the assessee is correct in contending that the reasons proceeded on entirely erroneous footing and that even going by record, in case of the petitioner, it cannot be stated that the income chargeable to tax had escaped assessment, surely reassessment proceedings would be a futile exercise.

6. Under these circumstances, we dispose of the petition with following directions:-

i. Impugned order of the assessment dated 3.12.2018 is quashed. The proceedings are revived from the stage of issuance of notice of reassessment.

ii. The petitioner shall raise sufficient objections to the reassessment proceedings latest by 25.3.2019.

iii. The Assessing Officer shall dispose of such objections latest by 30.4.2019.

iv. By and under this order, notice of re-assessment shall be deemed to have been stayed from the date of its issuance for a further period of four weeks after the order disposing of such objections is communicated to the petitioner, such stay of notice of reopening shall continue.

With these directions, Writ Petition is disposed of.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**