$~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 13397/2019

MATRIX CLOTHING PVT. LTD. ..... Petitioner

Through: Mr. Salil Aggarwal, Mr. Madhur Aggarwal and Mr. Uma Shankar, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOMETAX CIRCLE - 16(2)NEW DELHI ..... Respondent

Through: Mr. Sunil Agarwal, Senior Standing Counsel with Mr. Tushar Gupta, Ms. Priya Sarkar and Mr. Akash Pratap Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 20.12.2019

C.M. No. 54390/2019 (exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 13397/2019 & C.M. No. 54389/2019

3. The Petitioner has preferred the present writ petition to assail the notice under Section 148 of the Income Tax Act dated 31.03.2019 and the order dated 25.11.2019 disposing of the objections preferred by the Petitioner to the said notice. The said notice relates to the assessment year 2016-17 and it has been issued within a period of four years from the close of the

assessment year 2016-17. The reasons recorded by the Respondent on issuance of the said notice are the following:

"*1. A survey u/s 133A of the Act has been conducted at premises on 27.03.2019. During the course of survey a trial balance for the F.Y. 2018-19 (upto 27.03.2019) was found, where the manufacturing expenses were as Rs.32.84 Cr. as against the total receipt of Rs.370.79 Cr. Therefore the manufacturing expenses in the business comes around at 8.86% of the total receipt. However, in Return of Income for A.Y. 2016-17 relating to F.Y. 2015-16, the manufacturing expenses has been claimed of Rs. 70.95 Cr which is 25.86% of the total receipt of Rs. 274.28 Cr. This clearly shows that the assessee has claimed excessive expenses under the head manufacturing expense to tune of 17% of total receipt which is Rs. 46.65 Cr.*

2. During the course of survey, it was found mat assessee claimed Rs.10.74 Cr. as R&D expenses. But no specific machinery was found for the purpose of doing R&D work. Further statement of 3 persons named Ms. Komal Singh, Ms. Sanah Deepa Usmani & Ms. Sonika were recorded and it was contended by them that they have the diploma courses in Fashion Designing and they don't have specific qualification for doing research work.

Further, the assessee was also asked to furnish the details of Project reports undertaken for the purpose of doing research, any specific Product or Process developed as a result of result of research etc. But no details were provided. Furthermore, It was also found that although the assessee has claimed huge expense of Rs. 10.74 Cr. as R&D expenses there is no sign it has resulted any significant increase in the total turnover or In the profitability of the assessee business. Rather the bogus expenses claimed as R & D has the effect of reducing the net profit of business by 50% compared to last year profit.

Therefore, I have reason to believe that an income of Rs.57,39,00,000/- has escaped assessment under section 147 of *the Income Tax Act, 1961. Since assessment u/s 143(3) of the Act for A.Y. 2016-17. Therefore notice u/s 148 of Income Tax Act is issued for initiating proceeding u/s 147*."

4. The reasons take note of the fact that the assessment was undertaken by resorting to Section 143 (3) of the Income Tax Act and it was completed vide order dated 13.12.2018. From the above reasons, it would be seen that the reopening is premised on the factual position uncovered during survey under Section 133A of the Act on 27.03.2019. There are two primary reasons given by the Respondent. The first relates to the percentage of manufacturing expenses that the Petitioner claimed during the assessment year in question which was 25.86 percent, as opposed to the expenditure allegedly incurred towards manufacturing expenses as found in the trial balance for the financial year 2018-19 (up to 27.03.2019), which showed that the manufacturing expenses came to only 8.86 percent. On the basis of this reason, the present notice has been issued alongwith notices for the assessment years 2014-15 and 2015-16. Separate petitions have been preferred before us which are listed today itself, being W.P.(C)s 13418/2019 & 13495/2019 in relation to the aforenoted assessment years. Prima facie, we find merit in the submission of the Petitioner that the aforesaid reasoning cannot justify the reopening of the proceedings. Consequently, in the other two writ petitions being W.P.(C)s 13418/2019 & 13495/2019, we have entertained the petition and issued notices, staying further proceedings under Section 148 of the Income Tax Act. The matter does not, however, stop here so far as the present petition is concerned which relates to assessment year 2016-17. During the relevant assessment year 2016-17, the Petitioner claimed expense of 10.74 crores as R & D expenses. During

survey, it was found that there is no sign of the Petitioner having undertaken any research and development. Statement of three persons were recorded, who claimed that they have undertaken diploma courses in Fashion Designing and that they did not have any specific qualification for doing research work. The Petitioner had nothing to show, to establish the activities/steps taken towards research and development (R&D). The notice therefore, alleges that the expense claimed towards research and development is a bogus expense.

5. The submission of learned counsel for the Petitioner in this regard is that the Petitioner had been granted approval in terms of Section 35 (2AB) (1) of the Act. The said approval has been placed on record and perused by us. It only states that the Petitioner has adequate R & D facilities for carrying out research as per the research objectives contemplated. In that regard, capital expenditure of Rs. 106.25 lacs was certified. Learned counsel for the Petitioner emphatically relies upon the said certificate.

6. In our view, mere reliance on paper certificate would not be sufficient to establish that, as a matter of fact, R & D activities were undertaken, entailing expenditure of Rs.10.62 crore. The Respondent has claimed that during survey, they have not found anything to show that any research and development activity has been undertaken by the Petitioner. In our view the same gives sufficient reason for formation of the belief that income of the assessee has escaped assessment. The Petitioner would have ample opportunity during the process of re-assessment to establish that, during the relevant assessment year, it had actually incurred the expenses towards acquisition of capital assets for carrying out research and development; it had employed competent personnel to carry out research and development;

it had actually carried out research and development and for the same, expenditure to the tune of Rs. 10.62 crores came to be incurred by it. We therefore, do not find any merit in this petition. We make it clear that no observation made by us shall influence the Assessing Officer when he undertakes the assessment.

7. The petition is disposed of in the above terms.

8. *Dasti*.

VIPIN SANGHI, J

SANJEEV NARULA, J

DECEMBER 20, 2019
nk