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

Decided on: 14th February, 2019

+ **W.P.(C) 10857/2016**

REVOLUTION FORVER MARKETING PVT. LTD Petitioner

Through: **Mr.S.Krishnan & Ms.Sujata
Kashyap, Advocates**

versus

INCOME TAX OFFICER

..... Respondent

Through: **Mr.Ajit Sharma, Advocate**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (OPEN COURT)

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1. The petitioner is aggrieved by the impugned notice dated 30.03.2016, under Section 147/148 proposing to re-assess its income for A.Y.2009-10. It contends that all information necessary for computation of income was provided in the returns and that taking them into consideration the AO framed the scrutiny assessment under Section 143(3) on 30.11.2011.
2. The relevant parts of the impugned re-assessment notice reads as follows:

*“Information was received from ITO (investigation)
Unit-2 New Delhi vide letter F.No.ITO(Inv.)/U-2/S-56/2015-
16/ 307 dated 28.03.2016. The contents of the letter are as
under:*

2. During the course of investigation on a STR No.1000062089 (UIN 120718442) in the case of M/s AVS Mann and CO, K-11, 1st Floor, Rajouri Garden, New Delhi-110027 received in this office.

3. In the dissemination note it has been stated that “The bank has identified an account no.207010200013439 in the name of Revolution Forever Mkt. Wherein, frequent intersol cash deposits. Transfers and clearing are seen. The total turnover of the account since account opening is over Rs.72.10 crores. Out of total credit Rs.14.78 crores are in form of cash, as declared by the customer, company is trading in FMCG products in line of MLM model. On scrutiny over internet it was observed that the said company hold a website in the name of <http://www.revolutionforever.com>. On perusing the company website, various offers/schemes resembling of MLM companies are there business plan can generate unlimited income. Mr.Gurjeet Singh/Mr.Mann Ramanjeet / Mr.Abhishek Johri / Mr.Davinder Singh / Mr.Mukesh Kumar Sharma authorised signatory of Revolution Forever Mkt. Ltd. Mr.Gurjeet Singh is a common authorised for 9 current account no.035010200026895, 207010200007931 & 106010200016010 (REVOLUTION FOREVER MKT. LTD.), 207010200014261 (MARG LIFE CARE AND FINANCIAL PRODUCTS PRIVATE LIMITED), 20701020000731 (REVOLUTION FOREVER TECHNOLOGIES), 910020031920816 (A. V. S. MANN AND CO. (HUF)), 910020047999532 (JIVA ANDEEP ENTERPRISE) and 207010200013129 (VENUS LIFE CARE), wherein Bank and observed high value transfer credits followed by clearing and transfer debits. Instances of case deposits and withdrawals are also observed. Mr.Gurjeet Singh also mainrains two saving bank accounts no. 207010100295482 and 040010100218085, wherein High value transfer and RTGS credits following by transfer and RTGS debits are seen. Mr.Davinder Singh

maintains a saving bank account no.207010100299718, wherein transfer from main account and clearing debit are observed. There are transfer transactions between Account of Revolution Forever Mkt. Ltd. and various account herein mentioned as related account. There is a trend of transfers from main account and clearing credits following by cash withdrawals and clearing debit in all the related accounts. Based on the nature of transactions resembling of MLM activity and internet findings, intent of the customer is suspicious.”

4. From the replies/submissions made by ARs of the assessee during the investigation proceedings viz-a-viz allegation made in the STR, the following points emerges:-

(a) In the STR the bank identified on account no. 20701020013439 maintained with Axis Bank Ltd. C-3/21, Janakpuri, Delhi-58 which belongs to M/s Revolution Forever Marketing Pvt. Ltd. which is the main company having various office maintained by different entities at different locations. The main business of the company is to do online marketing and supply of goods through its various representatives, firms from different locations.

(b) M/s Revolution Forever Marketing Pvt. Ltd. has following parties with whom it deals during the whole process (whose name also reflects in the STR). Further, the assessee has submitted all the bank accounts:-

- (i) M/s Marg Life Care and Financial Products Pvt. Ltd.*
- (ii) M/s AVS Mann & Co.HUF*
- (i) M/s Revo Life care*
- (ii) M/s J.S.Technologies,*
- (iii) M/s Jivandeep Enterprise.*
- (iv) M/s Venus Life Care.*
- (v) Mr.Manoj Kumar Rai.*

- (vi) *Sh.Ranjit Kumar Bhardwaj.*
- (vii) *Sh.Amod Kumar.*

(c) With regard to credit entries of aggregate Rs.72.10 Crores and Rs.14.78 crore cash deposited since the opening of above stated bank account on various dates remained unverified during the F.Y.2008-09. Further, assessee has shown his turnover amounting to Rs.4.36 crores which does not match with the bank accounts maintained by the Company during the F.Y. 2008-09.

Keeping in view of above facts and circumstances, I have reason to believe that an amount at least Rs.4.36 crore has escaped assessment in the case of M/s Revolution Forever Marketing (P) Ltd. for the A.Y.2009-10, within the meaning of of section 147/148 of the Income Tax Act, 1961.”

3. It is contended that the assessee, a multi-level marketing company which specialises in FMCG products, transacts through various group companies/sister concerns, which are tasked to perform specific work on territorial and other defined basis. Its marketing model is dependent heavily upon cash receipts from consumers who subscribe to its segments, as members at various levels. Being a cash intensive transaction model, the business reflects deposits in the assessee's accounts.

4. Mr.S.Krishnan, learned counsel for the petitioner contends on behalf of the petitioner that once the scrutiny assessment was complete, based upon all the relevant material such as bank account statements, information vis.-a-vis sundry creditors and answers to the queries given apparently to the specification of the AO, the dredging of that material on the basis of information and vague internet searches, did not constitute material information, which was withheld from the Revenue at the stage of the return filing. It was contended that the impugned re-assessment notice was

preceded by some investigation [as evident from para 4 of the re-assessment notice]. Learned counsel faulted the notice for being open ended stating that para 4(c) and the inferences drawn i.e. amount of ₹4.36 crores had escaped assessment for assessment year in question, taking into consideration “credit entries of the aggregate ₹72.10 crores and ₹14.78 crores cash deposit since the opening of the above stated account on various dates”, cannot constitute fresh or tangible material justifying re-assessment.

5. Learned counsel for the Revenue resisted the petition and urged that the re-assessment was not based upon appraisal of the material by the AO but rather on the intimation received from the investigation wing, which had carried out inquiry into assessee’s accounts and affairs. It was submitted that the investigation report – which was quoted in material parts in the reassessment notice in the present case had clearly stated that income to the extent of ₹4.36 crores, at least, was remitted to have escaped assessment for A.Y. 2009-10.

6. The counter affidavit filed by the respondent/Revenue in the present case does not dispute that the petitioner had undergone scrutiny assessment in the first instance. The AO on that occasion satisfied herself/himself as to the veracity of the statements made and even that the relevant particulars relating to the bank accounts [together with the account statements for the concerned year] and all entries had been furnished. Furthermore, the AO was also aware of the fact that the assessee was engaged in multi-level marketing business model, which is dependent on cash intensive transactions that in turn leads to deposit of cash on daily basis in high volume. The material on record – the balance sheets filed along with the return disclosed the bank accounts and its particulars. The assessee had by a letter dated 19.09.2011 replied to various queries addressed to it by the

AO in reply to the notice in the course of scrutiny proceedings. These include letters of confirmation from major sundry trade creditors, list of purchases from sundry trade creditors of value of more than Rs.1 lakh, list of sundry creditors other than trade creditors; TDS Deduction Registers relating to distributors' incentives, statement of rent and TDS and all detailed statements of accounts of the company. Consequently in the opinion of the Court this is a disclosure of all related material of fact.

7. The law relating to the reopening of assessment is well settled unless the AO is satisfied that in the original assessment, including scrutiny assessment, disclosure of relevant material facts were not made or if some new materials subsequently lead the AO to believe that income has escaped assessment, reassessment is justified. As to what constitutes 'new material', this is now well settled by the judgment of the Supreme Court in *Commissioner of Income Tax vs. Kelvinator* 320 ITR 561. With respect to what are the duties of the assessee, with respect to cash deposits, the law is also well settled. The ruling in *Commissioner of Income Tax vs. Lovely Exports* (2014) 14 SCC 761 affirmed previous ruling of this Court. The primary duty is upon the assessee to disclose material facts relating to share application amounts, credits claimed etc. In the present case, the details of all sundry creditors were disclosed; the nature of business transactions by cash intensive transaction, all bank statements were also furnished in the original assessment. In case the AO was not satisfied, he ought to have made further inquiries seeking confirmations in respect of particular entries. In the present case, no such inquiry was made. The failure of the Revenue in that regard does not clothe it with the power to carry out reassessment under Section 147/148.

8. This Court is also of the opinion that the principal basis for reassessment appears to be the opinion of the Revenue that substantial cash transactions were carried out, having regard to the date of opening of the accounts, which were not verified. Now this Court is of the opinion that this reason is vague. The duty of the assessee is to disclose the bank statements for the relevant year, which it did. As to what inferences are to be drawn for the previous years is not within the remit of the AO and consequently of no relevance whatsoever at least in considering whether to issue or not to issue reassessment notice, on just cash intensive transactions; clearly, this reason is vague and unjustified.

9. In view of the foregoing reasons the impugned assessment notice and all consequential proceedings are hereby quashed.

10. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J.

PRATEEK JALAN, J.

FEBRUARY 14, 2019

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