

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on: 09.04.2019

+ **W.P.(C) 11736/2018, C.M. APPL.45395-45396/2018**
+ **W.P.(C) 12546/2018, C.M. APPL.48699-48700/2018**

SANJIVANI NON-FERROUS TRADING PVT. LTD.

..... Petitioner

Versus

INCOME TAX OFFICER WARD 22(3) NEW DELHI

..... Respondent

Through : Sh. Rajesh Mahna, Sh. Manu. K. Giri and Sh. Ramanand Roy, Advocates, for petitioner.

Sh. Zoheb Hossain, Sr. Standing Counsel with Sh. Vivek Gurnani, Advocate, for respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner challenges the reopening of the assessment for AYs 2011-12 and 2012-13 – through orders dated 31.03.2018. In both the cases, the assessments were originally completed under Section 143(3) of the *Income Tax Act, 1961* [hereafter “the Act”].

2. The petitioner is a subsidiary of M/s. Century Metal Recycling Private Limited [hereafter “CMR”]. A survey was taken of CMR on 26.03.2015. The survey report led to the issuance of the reassessment notices in the present case. The rationale for the reassessment in both the cases is identical. The extract of one of the “reasons to believe” involved – for AY 2012-13 is

as follows:

“2.3 During the course of survey operation, it has been observed that CMR purchase their maximum raw material from its subsidiary company M/s. Sanjivani Non Ferrous Trading Pvt. Ltd. The perusal of the financials of the said company revealed the fact that the company showing lower profits despite huge turnover. A tabular chart showing year-wise turnover and profit declared by M/s Sanjivani Non Ferrous Pvt. Ltd is shown as under:

Assessment Year	Turnover Rs. In crores	Profits (Rs. In Lakhs)
2013-14	700	29.22
2012-13	597	30.73
2011-12	501	29.71

During the course of survey operation, various incriminating documents were found and impounded which clearly shows that the said company has been used to raised bogus purchases in CMR. Annexure-1 containing Printed pages 2851-2900 i.e. Pages 1 to 194 consists bill book of Khushkera Mini Truck Operator Union, Honda Chowk near Sunbeem Company, Industrial Area, Khushkhera, Tapukara, Distt. Alwar (Raj.) was found at the entry gate of premises situated at 182, Sector-5, Manesar (Gurgaon).

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2.6 Contemporaneously, statement of Sh. Viral Shah, Assistant Manager (Finance & Accounts) in CMR was also recorded wherein he has been confronted with the same facts. In his reply he has stated that he has no account in the name of Khushkhera Mini Truck Operator Union in the books of accounts of CMR and he had never heard the name of this transporter.

Thus, it is established beyond of any doubt that the assessee is factually involved in procuring bogus bills from its subsidiary company M/s. Sanjivani Non Ferrous Trading Pvt. Ltd.

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5. **Findings of the A.O:**

In the light of above discussion, it is apparent that the assessee company has made bogus sales amounting to Rs.5,97,36,46,243/- crore to its associate concern M/s CMR which is apparent from the discussion in above paras. On perusal of the ITR filed by the assessee it has been observed that against the total sales of Rs.5,97,36,46,243 the assessee has declared net profit of Rs. 33,12,137 (0.05%). As the assessee has indulged in the activity of bogus sales taking the NP. rate to be 1.5 of the sales the income escaping assessment, would be Rs.8,96,04,693 (1.5% of sales turnover of Rs. 5,97,36,46,243). The case of the company is squarely covered under explanation 1 of section 147 of I.T Act. The requisite full and true disclosure of all material facts necessary for assessment has not been made available by the company. The requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be verified by the AO from the return of income and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the Act.

6. **Basis of forming reason to believe and details of escapement of income**

As mentioned in para 5 above the assessee company has made bogus sales amounting to Rs. 5,97,36,46,243 in the A.Y 2011-12. Therefore I have reason to believe that the income of Rs. 8,62,92,556 (1.5% of sales turnover of Rs. 5,97,36,46,243 less profit already declared Rs.33,12,137) escaped assessment as defined by section 147 of the Act for A.Y2012-13.

The income chargeable to tax has escaped assessment for this year by the reasons of the failure on the part of the assessee to

disclose fully and truly all material facts. Therefore it is a fit case for the issuance of notice u/s 148 of the Act for AV 2012-13.”

3. It is argued by Sh. Rajesh Mahna, learned counsel, that the nature of scrutiny orders for the relevant years clearly show that the Assessing Officer (AO) took into account the same questions which the Revenue seems to have agitated, which has triggered the reassessment notices. He relies upon the scrutiny assessment orders dated 05.03.2014 and 31.03.2014. Both these orders were concededly made under Section 143(3) of the Act. It is contended that the Revenue's reasoning virtually amounts to a second opinion or review of the final scrutiny assessment for both years. Learned counsel emphasises that what materials were gone into by the AO were borne from documents produced along with the writ petitions, which includes copies of the invoices and other supporting documents to substantiate the petitioner's claim for valid sale to CMR. Learned counsel highlighted that the goods were procured on a wholesale basis, cleared by the petitioner and thereafter sold to CMR, its group company. It was also submitted that the invoices which were allegedly raised were undoubtedly carefully gone into by the AO in the previous scrutiny assessment years and had also passed muster by the superior authority, i.e. the Commissioner.

4. It is evident from the above discussion that the trigger for the reassessment notice in this case was a survey conducted in the premises of CMR. The AO became aware of this survey report when the investigation wing through a letter dated 19.03.2018 shared a copy of it with him. Besides extracting the turnover for three years and the disproportionately low profits declared, the reassessment notice also alludes to several incriminating

documents pointing to suspect nature of sale and which the petitioner had declared.

5. The reassessment notices talk about the statements of two employees and officials of CMR who were completely unaware and disclosed no knowledge about the invoices raised upon the transporter, or even its existence. According to the documents filed, the transporter was responsible for transporting goods to CMR from the petitioner. Undoubtedly, the assessee is under a responsibility to disclose all relevant material. Conversely, the AO cannot lightly order reassessment unless the discovery is not true or not full in the sense of the material facts [refer *Calcutta Discount Co. Ltd. v. Income Tax Officer* 41 ITR 191]. Likewise, the decision in *CIT v. Kelvinator of India Ltd.* 320 ITR 561 is also significant in that it directs that an AO cannot validly invoke the power of reassessing concluded assessment order unless tangible material is available, i.e. outside of the record or unless that official becomes aware that material facts were withheld in the course of the original assessment. In *Ms. Phool Chand Bajrang Lal and Anr. v. Income Tax Officer and Anr.* 1993 (4) SCC 77, the question as to the bonafides disclosed or materials brought on record in the concluded assessment was in issue. The Supreme Court held as follows:

“25. From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen assessment under Section 147(a) read with Section 148 of the Income Tax 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment

proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income-tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if one the basis of subsequent information, the Income-tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment. The High Courts which have interpreted Burlop Dealer's case (Supra) as laying down law to the contrary fell in error and did not appreciate the import of that judgment correctly.”

6. In the present case, the materials on record and made available to the AO are in the form of a survey report dated 26.03.2015, i.e. after conclusion of the scrutiny assessments for both years, and the relative records were shared with the AO only on 19.03.2018.

7. Given the time constraint after analysing the report of the survey, including the statement recorded during the survey, the AO was of the opinion that the issue of profitability which appears to be gone into, requires re-examination not because of a second opinion or review but because of the survey conducted subsequently. The materials clearly showed that the sales declared were suspect, to say the least. For the above reasons, the Court is of the opinion that the relief claimed in these petitions, i.e. quashing of the impugned reassessment notice cannot be granted. The writ petitions are accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**PRATEEK JALAN
(JUDGE)**

APRIL 9, 2019

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