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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3089 OF 2021

Rajdeep Marketing Private Limited … Petitioner.

Versus

Income Tax Officer Ward-3(3)(1), Mumbai And Ors. … Respondents.

. . . . . .

Mr. Dharan V. Gandhi, Advocate for the Petitioner.
Mr. Sham V. Walve, Advocate for the Respondents-Revenue.

. . . . . .

CORAM : K. R. SHRIRAM AND
N. J. JAMADAR, JJ.

DATE : 28th JANUARY, 2022

(THROUGH VIDEO CONFERENCING)

P. C. :

1. Petitioner received a notice dated 30th March 2021 under Section 148 of the Income Tax Act, 1961 (the said Act), for Assessment Year 2015-2016 from respondents, stating that, they have reasons to believe that petitioner's income chargeable to tax has escaped assessment, within the meaning of Section 147 of the Act. In the reasons recorded for escapement of income, paragraph No.2 reads as under :-

> *"2. In the case of assessee there was information received form the Pr. Director of Income-tax (Investigation), Kolkata vide letter dated 30.6.2016 and conveyed that credible information was received that Mr. Sunil Shaw, Mr. Sailesh Kumar Singh, Mr. Ramu Saha, Mr.Gautam Saha and Mr.Madhusudhan Saha maintain various current account in the name of different firms/concerns/companies. They have declared trading as business activity. There were high value cash deposits in these accounts and the proceeds were immediately withdrawn in cash from ATMs, cheque issuance, fund transfer, RTGS. The case has been investigated by DDIT*

(Inv.) Unit 3(1), Kolkata and the list containing the beneficiaries was also encoded, wherein assessee's name appears at Sr. No.2 for Rs.45,00,000/- transaction with SKYLARK LOGISTICS AGENCIES PVT LTD., INDUSIND A/C-0305-JG0364-050/200011924533 PERIOD – 01/07/2011 TO 01/2/2016.

It was also conveyed that statement of Shri Madhusudhan Saha, Ramu Saha, Kausik Das, Sailesh Kumar Singh, Sanjiv Kumar Jaiswal, Sunil Shaw, all dummy directors were recorded on oath, where they all accepted in their statement that they have arranged for bogus accommodation entry and beneficiaries have been identifies with PAN and address by the DDIT (Inv)., Unit 3(1), Kolkata. They all confirmed that they were the dummy directors of the companies and the companies had no real business and these companies are managed and controlled by Shri Neeraj Jain, Shri Vineet Kejriwal, Sanjay Agarwal and Aswini Mehta. It was also conveyed that a survey operation at the office premises of M/s Amit Bhagat & Associates was conducted on 29.12.2014 at Kolkata by the DDIT (Inv)Unit 4(3),. During the course of survey, the statement of Sri Neeraj Jain was recorded. In his statement, he has stated that the main source of his income is from commission for providing accommodation entries in the form of share capital, unsecured loans, and bogus sub-contractual work through various jamakharchi/paper/shell companies to various beneficiaries. He has also stated the names of dummy Director of these companies who are his employees who lent their names for directorship in lieu of monthly salary. They are Madhusudhan Saha, Goutam Saha, Dilip Jain, Santosh Kumar, Prakash Jha. From the examination of more than 16 bank accounts, it is seen that the accounts were being used for providing accommodation entries to various beneficiaries in the form of bogus sale of shares, share capital, unsecured loans, providing bogus income and losses from commodity trading etc., from various companies running directly under the control of Neeraj Jain, Vineet Kejriwal, Sanjay Agarwal, Aswin Meha. It was found that the cash was first deposited in the accounts of the proprietorship / firm/ individual's bank accounts. Then the cash was transferred to the bank accounts paper/shell/ jamakharchi companies for layering and ultimately the fund was transferred by Transfer / RTGS to the beneficiaries in theform of bogus sale of share capital, unsecured loans, providingbogus income and losses form commodity trading etc. It was also found that some time funds were credited in the bank accounts of various proprietorship concerns/ companies in the form of RTGS/cheque which is also a kind of accommodation entry used for the purpose of bogus billing and sell of shares by the Jamakharchi/ shell/ paper concerns. It was also conveyed that from examination of various transactions of the beneficiaries it may be concluded that the beneficiaries have booked bogus accommodation entries in *various forms in their books and portions of sections 68 and 69 of the IT Act read with the provisions of section 115BBE is applicable."*

Petitioner filed objection to this notice. These objections came to be rejected by an order dated 6th July 2021. Petitioner is impugning this notice dated 30th March 2021 and this order dated 6th July 2021 in this Petition.

2. For Assessment Year 2012-13 also petitioner had received a notice dated 26th March 2019 under Section 148 of the Act and the reasons for reopening was identical to what has been recorded for Assessment Year 2015-16.

3. Mr. Gandhi submitted that when petitioner received a notice under Section 148 for Assessment Year 2012-13, petitioner had filed its objections along with an Affidavit of one Kishore J. Tanna, Director of Petitioner stating that petitioner had nothing to do with M/s Skylark Logistics Agencies Pvt. Ltd. and petitioner never had any bank account with Indusind Bank as alleged in the reasons recorded for escapement of income. Mr. Gandhi submitted that after considering this affidavit and objection, an order dated 24th May 2019 was passed for Assessment Year 2012-13 confirming the validity of notice issued under Section 148 of the Act and assessment order dated 4th December 2019 for Assessment Year 2012-13 came to be passed.

Mr. Gandhi further submitted that in the assessment order for Assessment Year 2012-13 respondents have accepted the explanation of petitioner that petitioner had nothing to do with M/s. Skylark Logistics Agencies Pvt. Ltd. and that it did not have the bank account with Indusind bank as alleged. Mr. Gandhi made this submission because in the assessment order there is no addition made under this head.

4. We have considered the petition, the affidavit-in-reply as well as heard the counsels and we are in agreement with the submissions made by Mr. Gandhi. If on identical reasons raised for Assessment Year 2012-13 petitioner's explanation has been accepted and no addition made, certainly on the same ground, we wonder how an allegation of escapement of income can be made for the subsequent Assessment Years. In our view, the reasons have been recorded without application of mind.

5. We have to also note that there is another Writ Petition No. 284 of 2022 listed today of the same petitioner for Assessment Year 2014-15, in which also the reasons recorded for escapement of income is identical to Assessment Year 2015-16 and Assessment Year 2012-13.

6. Mr. Walve made a valiant attempt to justify the reasons and issuance of notice, but when he was confronted with these irrefutable facts, Mr. Walve had no option but to throw in the towel.

7. In the circumstances, petition is allowed in terms of prayer clause – (a), which reads as under:

> *"(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said notice dated 30th March*

2021 (“Exhibit K”) and the subsequent Order dated 06th July 2021 (“Exhibit O”).

8. Petition disposed.

WRIT PETITION NO. 284 OF 2022

9. For the reasons recorded in Writ Petition No.3089 of 2021, this Petition is also allowed in terms of prayer clause – (a), which reads as under:

> *“(a) that this Hon’ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner’s case and after going into the legality and propriety thereof, to quash and set aside the said notice dated 30th March 2021 (“Exhibit K”) and the subsequent Order dated 06th July 2021 (“Exhibit O”).*

WRIT PETITION NO. 283 OF 2022
ALONG WITH
WRIT PETITION NO. 311 OF 2022

10. We are informed that there are two other petitions filed by petitioner being Writ Petition No. 283 of 2022 and Writ Petition No.311 of 2022 for Assessment Year 2013-14 and 2016-17, respectively, where also reasons identical to the reasons for reopening recorded for Assessment Year 2015-16, has been recorded.

11. Therefore we pass the following order :-

(i) Mentioned. Not on board.

(ii) By consent of the parties, taken up for hearing.

(iii) For the reasons recorded in Writ Petition No.3089 of 2021, both Petitions are also allowed in terms of prayer clause (a), which reads as under:

> *"(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said notice dated 30th March 2021 ("Exhibit K") and the subsequent Order dated 06th July 2021 ("Exhibit O").*

(N. J. JAMADAR, J.) **(K. R. SHRIRAM, J.)**

MANOJ R TANDALE
Digitally signed by MANOJ R TANDALE
Date: 2022.01.31 18:00:55 +0530