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

\+ **WPC 13045/2022**

RENU PROPTECH PVT. LTD. ..... Appellant

Through: Mr Salil Aggarwal Senior Advocate with Mr Madhur Aggarwal, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr Puneet Rai, Senior Standing Counsel with Ms Adeeba Mujahid, Jr St. Counsel for Income Tax Dept. Along with Mr Nikhil Jain, Advocate.

% Date of Decision: 9th September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (Oral):

1. Present writ petition has been filed challenging the Order dated 22nd June, 2022 passed under Section 148A(d) of the Income Tax Act, 1961 ('the Act') and the Notice dated 22nd June, 2022 issued under Section 148 of the Act for the Assessment Year ('AY') 2016-17.

2. Learned Senior Counsel for the petitioner states that the impugned

order has been passed without considering the Assessee's reply dated 6th June, 2022. He states that Rs.17.70 Crores, which is the income alleged to have escaped assessment was in fact added in the income of the assessee by the Assessing Officer ('AO') in the original assessment order passed under Section 143(3) of the Act on 30th December, 2018. He states that the assessment order determined the taxable income of the assessee at Rs.89,37,17,920/-, after making a total addition of Rs.88,30,29,000/- under Section 68 of the Act, which included the said sum of Rs.17.70 Crores. He states that the said assessment order has been a subject matter of appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)'] and Income Tax Appellate Tribunal ('ITAT'). The ITAT vide order dated 26th April, 2021 in ITA No. 7653/Del/2019 allowed the appeal of the assessee and the additions were deleted. He therefore states that the information alleging that the assessee has received bogus or fictitious share capital from bogus companies of M/s BDR Builders and Developers Pvt. Ltd. amounting to Rs.17.70 Crores is not new information and is not relevant for initiating reassessment proceedings.

3. Learned Senior Standing Counsel for the Revenue, Mr. Puneet Rai states that the impugned reassessment notice has been initiated pursuant to the information dated 30th March, 2020, which has admittedly been received after passing of the assessment order. He states there was no scrutiny undertaken of the share capital received by assessee from M/s BDR Builders and Developers Pvt. Ltd. during the course of the original assessment proceedings and therefore no reliance can be placed on the previous assessment proceedings. He states that the present case does not

warrant any interference in writ jurisdiction as the Revenue's contentions with respect to assessee's transactions, which as per information were found to be bogus entries from bogus entities, is a matter of evidence and the veracity of the said transactions cannot be determined in these proceedings.

4. We have heard the learned counsel for the parties and perused the paper book. This Court finds that the petitioner has not brought on record any material on record to establish that the reassessment proceedings are being undertaken in an arbitrary manner. The respondent issued a show cause notice dated 23rd May, 2022, wherein it is stated that :

> *"3.........*
> *In the present case, information was received on insight portal that assessee company has taken bogus/fictitious share capital from bogus companies of M/s. BDR Builders and Developers Pvt Ltd amounting to Rs.17.70 Crores."*

The petitioner was provided with letter dated 30th March, 2022 of the Deputy Director of Income Tax (Investigation), New Delhi, along with the Notice dated 23rd May, 2022 issued under Section 148A(b) of the Act. The said letter identified the petitioner herein with reference to information collated during a survey action carried out on the BDR Group and enclosed the survey report for the review of the AO. The relevant extract of the said letter is reproduced hereinbelow:-

> "3. *<u>Several companies of the BDR Group have received huge funds in the form of share premium from many dubious persons/entities over the years</u>. The statement of dummy directors like Shri K C Gupta and Shri Rajesh Verma were recorded during survey wherein*

they admitted that they were made directors in various companies by Shri Rajesh Gupta/Shri Dinesh Gupta and they play no role in these companies. Further, share capital and share premium in some companies were received from Shri Rohit Kumar, Shri Rajesh Verma and Smt. Rekha Verma. Shri Rohit Kumar and Shri. Rajesh Verma are the employees in the companies of BDR Group and Smt. Rekha Verma is wife of Shri Rajesh Verma. During the survey proceedings, statements (Refer Chapter-9) of these three persons were recorded on oath. All these three persons, in their statement, mentioned that they know nothing about the investments in the form of share purchase in various companies of BDR Group in their name. They used to sign documents including blank bank cheques on direction of Shri Dinesh Gupta/Shri. Rajesh Gupta.

3.1 <u>The shares of various companies of BDR group were acquired by many persons at price below than the FMV as per the provisions of Act. In many cases such persons lack creditworthiness as well which is discussed in details in subsequent chapters</u>." (Emphasis supplied)

5. The present reassessment proceedings have been initiated in pursuance of the aforesaid letter and survey report, which, as per the AO, shows that the funds received by the assessee as share capital from M/s BDR Builders & Developers Pvt. Ltd. are not genuine.

6. As regards the petitioner's contention that this precise issue of source of its share capital was examined during original assessment proceedings *prima facie* appears to be incorrect. In fact, a perusal of the order of CIT(A) reveals that while examining and verifying the veracity of the source of funds received by the petitioner herein from Rajesh Gupta HUF and Shri Sanchit Gupta, as share capital, the CIT(A) presumed that the funds received by the said shareholders from M/s BDR Builders and Developers Pvt. Ltd. were genuine and on the said assumption, the said

additions were deleted. The CIT (A), in fact, relied upon the confirmations issued by M/s BDR Builders and Developers Pvt. Ltd. as valid to arrive at the aforesaid finding in respect of Rajesh Gupta (HUF). The relevant portion of the order of the CIT(A) with respect to Shri Sanchit Gupta reads as follows:-

> *"On careful examination of the explanation of the assessee supported by documentary evidences and the findings of the A.O. it is seen that the AO has not pointed out any specific discrepancy in the nature and source of funds available to the shareholder amounting to Rs. 3,41,50,000/- which is claimed to have been used for making investment in the assessee company.* ***<u>The AO has not pointed out any discrepancy in the transaction of sale of shares of BDR Builders & Developers Pvt Ltd. by the shareholder</u>*** *<u>and has also not found any discrepancy in the fact of having received back loan of Rs. 1.00 crore from Nishit Infratech Pvt. Ltd.</u>* ***<u>These transactions are duly verifiable from the bank statement of the shareholder also</u>****. <u>Therefore, the nature and source of funds in the hands of the shareholder to the extent of Rs. 3,41,50,000/- is found to be duly explained in the absence of any material contrary to the claim of the assessee</u>. However, I agree with the A.O that the funds received on sale of shares of a company who is a accommodation entry provider cannot be treated as explained fund."*
>
> (Emphasis supplied)

7. This Court therefore does not find any merit in the submission of the petitioner that the doubt cast on the genuineness of the amount of Rs.17.70 Crores infused by the shareholders of the assessee from their receipts from M/s BDR Builders and Developers Pvt. Ltd., which is alleged to be an entry provider of bogus capital, is not new information. During the course of earlier assessment proceedings, the authorities did not suspect the funds received by assessee's shareholders in its transactions with M/s BDR Builders and Developers Pvt. Ltd. and relied

upon the confirmations issued by the said company to hold it as genuine. The contention of revenue that M/s BDR Builders & Developers Pvt. Ltd. uses layered transactions and banking channels to provide bogus share capital from bogus companies and the assessee and its shareholders are beneficiaries of the said transactions is factual and the same will have to be examined by the AO.

8. The petitioner does not dispute that the funds received by it as share capital were raised by its shareholders from M/s BDR Builders and Developers Pvt. Ltd. and therefore the genuineness of the said transactions cannot be determined in these proceedings.

9. The allegation of the petitioner, that its reply dated 02nd June, 2022 was not considered by the AO, is incorrect. The said reply has been noted and dealt with in the impugned order.

10. This Court is of the view that the petitioner is challenging the impugned order on merits. The veracity of the contention of Revenue that M/s BDR Builders and Developers Pvt. Ltd. has provided bogus/fictitious capital to the petitioner herein cannot be examined in the writ proceedings. The Supreme Court in ***Commissioner of Income Tax and Ors. v. Chhabil Das Agarwal, (2014) 1 SCC 603*** has held that the Act of 1961 provides complete machinery for assessment/reassessment of tax, the assessee is not permitted to abandon that machinery and invoke writ jurisdiction of High Court under Article 226.

11. The present case does not fall under the exceptional grounds on which the writ jurisdiction of this Court can be invoked. Accordingly, the

present writ petition along with the pending application is dismissed. However, this Court clarifies that the AO shall decide the matter on its own merits without being influenced by any observation made in the present order.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 09, 2022
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