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ORDER SHEET
WPO/1022/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

UNIVERSAL ENTERPRISES LIMITED
VS
INCOME TAX OFFICER WARD 6/2 KOLKATA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 17th May, 2023.

Appearance:
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
...For the Petitioner
Mr. Om Narayan Rai, Adv.
Mr. Prithu Dudhoria, Adv.
...For the Respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 23rd July, 2022, under Section 148A(d) of the Income Tax Act, 1961 relating to the assessment year 2015-16.

I have perused the aforesaid impugned order which was passed after giving opportunity of hearing to the petitioner and it appears on perusal of the aforesaid order that in course of investigation carried out by Unit-6 (Inv.), Mumbai under the “Project Falcon”, regarding the claim of fictitious losses/profits through coordinated and premeditated trading in illiquid stock options and it had come to notice that there are several instances/internal alerts wherein a set of entities were consistently seen incurring trading loss by executing Reversal of trades in options on individual stocks (“stock options”) in Equity Derivative Segment. It also appears from the said investigation as has been recorded that along with Reversal of Trades, huge losses are being generated by various clients by letting the option expire instead of acting upon the option. It also appears on investigation as appears from recording by the assessing officer that in course of investigation, statements under oath were recorded from various brokers involved in the above mentioned transactions and in their statements brokers had admitted that various clients traded in illiquid stock through derivatives options with a sole motive of generating losses. Further the modus operandi which were corroborated with the fact that transactions are either left to expire or reversed on the same day within few seconds to few hours. Further relevant portion of the aforesaid impugned order showing involvement of the petitioner is recorded as hereunder :

"In this light, the transactions done by the assessee is analysed and they are found to be an unfair trade practice with an intention to create an artificial loss/profit. A general observation that emerges in the impugned transactions is that the same have been carried on in Option Segment at strike prices which are deep in-the-money or deep out-of-the money and never at strike prices around at the money. The trading in options is governed by the premium associated at every strike prices which inter-alia have a definite intrinsic value for all options in the money. The intrinsic value is said to be zero or all out of money strike prices. In the present case the assessee has paid an abnormally high premium through a preset arrangement in a case where there was no intrinsic value and hardly any time value being a settlement day trade (OR "near to a settlement day trade") which is beyond what a reasonable person can act and the preponderance of human probabilities is weighed heavily against the assessee who is engaged in a got up transactions to book bogus loss to set-off his profits which could have otherwise subjected to tax.

In the light of the above discussion and on the basis of material available on the record, it can be safely deduced that the assessee-company had taken bogus loss amounting to the tune of Rs. 2,08,13,125/- by the way of coordinated and premeditated trading in illiquid stock options on the Bombay Stock Exchange. Commission expenses @ 2% of Loss of Rs. 2,08,13,125/- which comes to Rs. 4,16,263/- is also to be included in the income escaped for assessment. It is clear that the impugned income (Rs. 2,08,13,125/- + 4,16,263/-) totaling to Rs. 2,12,29,388/- is chargeable to tax which has escaped assessment for the assessment year 2015-16."

In view of the facts as recorded hereinabove, this Court is not inclined to exercise its Writ Jurisdiction under Article 226 of the Constitution of India and accordingly this writ petition being WPO 1022 of 2023 is dismissed.

(MD. NIZAMUDDIN, J.)

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