IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 192 of 2016

Welcome Plywood Pvt. Ltd.,]
A/8, 2nd floor, Manu Bharti,]
212, S. V. Road, Andheri (West),]
Mumbai – 400 058] ...Petitioner

Versus

1. The Income-tax Officer, 11 (3)-4,]
4th floor, Aayakar Bhavan, M.K. Road,]
Mumbai – 400 020]

2. Commissioner of Income-tax, City 11,]
4th floor, Aayakar Bhavan, M.K. Raod,]
Mumbai – 400 020]

3. Union of India,]
Through the Secretary, Department of]
Finance, Ministry of Finance,]
Government of India, North Block,]
New Delhi – 100 001] ...Respondents

...

Mr. Madhur Agrawal i/by Mr. Atul K. Jasani for the petitioner.

Ms. Sushma Nagaraj for the respondents.

...

CORAM : DHIRAJ SINGH THAKUR AND KAMAL KHATA, JJ.

PRONOUNCED ON : 27TH JUNE, 2023

J U D G M E N T

[PER: KAMAL KHATA, J.]

1. This Petition under Article 226 challenges notice under section 148 of the Income-tax Act, 1961 ('Act') dated 13th March 2015 issued by Respondent No.1 proposing to reassess the income for the assessment year ('AY') 2009-10 and the order dated 30th December 2015, rejecting the objections raised by Petitioner challenging the validity of the said notice.

2. The reasons for opening are as under:

> *" The return of income in this case for A.Y. 2009-10 was e-filed by the assessee on 30.09.2009 declaring total income at Rs. NIL/.*
>
> *A search and survey action was carried out by investigation wing in the case of Shri Praveen Kumar Jain and his groups on 01.10.2013. The search action resulted into collection of evidences and other findings which conclusively proved that Shri Praveen Kumar Jain through a web of concerns run and operated by him, is engaged in providing accommodation entries of various nature like bogus unsecured loans, bogus share application and bogus sales (Purchase for the Beneficiaries) etc. As per the information received, it is seen that the following concern of Shri. Praveen Kumar Jain has provided entries in respect of shares at a premium to the assessee as under:-*

Sr. No.	*Name of the Bogus Concern Operated by Praveen Kumar Jain*	*PAN*	*F.Y.*	*Amount of transaction (Rs)*
1	*Khush Hindustan Ent. Ltd.*	*AACCK3597M*	*2008-09*	*34,50,000*
	Total			*34,50,000*

As per the information, it is seen that the above party has only issue accommodation entries to the assessee, which means that the assessee has entered into bogus transactions in the form of receipt of share premium. The total of such alleged share premium receipts works out to Rs.34,50,000/-

Thus I have reason to believe that the income of the assessee chargeable to tax has escaped assessment for the year under consideration and therefore it is a fit case for issue of notice u/s.148 of the Income-tax Act, 1961."

3. The Petitioner responded to the reasons giving all details and explanations. The relevant para is as under:

> " *Kindly see the Balance Sheet of the company as on 31/3/2009 and as at 31/3/2008. There is no change whatsoever of the capital of Rs.60 lacs. In fact there is no premium which is alleged in the letter. It appears that this notice has been issued wrongly to the assessee company as the company had never received any sum of Rs.34,50,000/- as alleged on account of share premium."*

4. The Respondent No. 1 placed reliance on the judgement of the Supreme Court in the case of Raymond Woollen Mills (1999) 236 ITR 34 (S.C) and rejected the objections of the Petitioner.

5. The criteria for reopening of assessment after a period of four years are no longer *res integra* in view of the judgement of this Court in the case of ***Ananta Landmark P. Ltd v Dy. CIT*** wherein this Court held that where assessment was not sought to be reopened on the *'reasonable belief'* that income had escaped assessment on account of failure of assessee to disclose truly and

fully all material facts that were necessary for computation of income, but was a case wherein assessment was sought to be reopened on account of *'change of opinion'* of AO the reopening was not justified. It is also held that where primary facts necessary for assessment are fully and truly disclosed the AO is not entitled to reopen the assessment on a change of opinion. It is held that while considering the material on record, one view is conclusively taken by AO, it would not be open for the AO to reopen the assessment based on the very same material and take another view.

6. The Supreme Court in the case of ***ITO vs Lakhmani Mewal Das***[1] has held that

> *"... the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from the assessment in the particular year because of his failure to disclose fully and truly all material facts.*
> *"The live link or close nexus which should be there between the material before the Income-tax Officer."*

7. In the present case, the Respondent No. 1 has received information from the office of DGIT (Inv.) that Khush Hindustan Ent. Ltd. has issued accommodation entries to the Petitioner for financial year 2008-09. However, even though the Petitioner has placed

1 [1976] 103 ITR 437

on record the Balance Sheet and pointed out that there is no change in the capital of ₹ 60 lakhs and no sum has been received leave alone a sum of ₹ 34,50,000/- on account of share premium, the Respondents have sought to take a stand that at this stage they are not required to look into the sufficiency and correctness of the information and can consequently reopen the case. Upon a bare perusal of the Balance sheet it is evinced that there is no transaction which would show a live link or nexus with the alleged transaction viz. receipt of ₹ 34,50,000/- on account of share premium as alleged by the Respondent. Besides the Respondent has failed to aver the particulars of the information available which has led to the belief that income has escaped assessment. There appears no new tangible material available on record to conclude that income had escaped assessment. In our view it is clearly a *'change of opinion'*.

8. We, therefore pass the following order-

i. The impugned notice dated 13th March 2015 and the order dated 30th December 2015, issued by Respondent No.1 for AY 2009-10 are quashed and set aside;

ii. Rule made absolute in above terms. No costs.

(KAMAL KHATA, J.) **(DHIRAJ SINGH THAKUR, J.)**