

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

WRIT PETITION NO. 2854 OF 2022

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Devkant Synthetics India Pvt. Ltd.,
having its office at
1006 Raheja Centra, Nariman Point,
Mumbai – 400 021.

... Petitioner

Versus

1. Additional/Joint/Deputy/Assistant
Commissioner of Income Tax Officer,
National Faceless Assessment Centre
(‘NFAC’), Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
New Delhi – 110 003.
2. The Income-tax Officer, Ward 3(1)(1),
Room No.666, 6th Floor,
Aaykar Bhavan, Maharishi Karve Road,
Mumbai – 400 020.
3. Principal Commissioner of Income-tax-3,
Aaykar Bhavan, Maharishi Karve Road,
Mumbai – 400 020.
4. The Union of India,
Through the Secretary, Dept. of Finance,
Ministry of Finance, Govt. of India,
North Block, New Delhi – 100 001.

...Respondents

Mr.Nishant Thakkar with Ms.Jasmin Amalsadvala i/b Mint &
Confreres, Advocate for petitioner.

Mr.Akhileshwar Sharma with Ms.Shilpa Goel, Advocate for
respondents.

**CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, JJ.**

**RESERVED ON : 30th JANUARY 2023.
PRONOUNCED ON : 10th FEBRUARY, 2023.**

J U D G M E N T

PER DHIRAJ SINGH THAKUR :

1. The petitioner in the present petition challenges the reassessment proceedings initiated pursuant to a notice, dated 31st March 2022 issued under section 148 of the Income Tax Act, 1961 ('the Act') leading to the final order of reassessment, dated 26th March 2022 relevant to the assessment year 2013-14. Demand notices as also the penalty notice, both dated 26th March 2022, pursuant to the passing of the order of reassessment are also challenged in the present petition.

2. Briefly stated the material facts are as under :

2.1 The petitioner is a company engaged in the business, *inter-alia*, of trading in shares and securities. It is stated that during the previous year relevant to the assessment year 2013-14, shares and securities amounting to Rs.36,04,65,386/- were traded. It is

stated that after considering the purchase costs and other business expenditures, the petitioner reported a profit before tax of Rs.63,68,739/- in its Profit and Loss account for the year ending 31st March 2013.

2.2 A return of income for the assessment year 2013-14 was filed declaring a total income at Rs.23,16,530/-, which included the income earned from the sale of shares and securities under the head of 'Profits and Gains from Business and Profession'. Subsequently, the Assessing Officer issued a notice, dated 9th September 2014/9th June 2015 in terms of section 143(2) of the Act calling *inter-alia* for further information as regards certified copies of auditor's report, balance-sheet, profit and loss account etc. The information was furnished by the petitioner vide communication dated 3rd September 2015.

3. Respondent No.2 then issued a notice under section 142(1) of the Act on 30th October 2015 calling upon the petitioner to furnish the scrip-wise details of opening stock purchases, sales and closing stock in the prescribed format. It also required the petitioner to submit a copy of Form No.10DB which is a Form evidencing payment of securities transaction tax on the

transactions entered in a recognised stock exchange, duly certified and reconciled with the audited accounts. The petitioner was also required to submit a copy of all the demat accounts of the assessee-company for the financial year 2012-13. All these documents were then furnished to the Assessing Officer. The petitioner then proceeded to file partial details called for by the respondents.

4. In between, the petitioner states that it was handed over a copy of the Annual Information Report ('AIR'), dated 22nd January 2016 which contained the details of the transactions made by the petitioner with respect to the purchase and sale of shares/ derivatives for the assessment year under consideration as available on the records of the Income Tax Department. The petitioner was directed to reconcile all the entries as per the petitioner's books and to provide documentary evidence for the same.

5. The petitioner further submitted the requisite documents vide communication dated 28th January 2016, furnished all the requisite documents to the Assessing Officer, including a copy of

Form 10DB and the scrip-wise details of opening stock purchase of shares, sale of shares and closing stock. The petitioner also claims that it submitted a statement reconciling the transactions mentioned in the Annual Information Report of the department with the transactions entered into in the books of accounts of the petitioner. A copy of the said reconciled statement is also on record.

6. The case of the petitioner is that it was only after the Assessing Officer had satisfied itself thoroughly on all the issues which had been identified during the proceedings that a final order of assessment, dated 29th March 2016 came to be passed under section 143(3) of the Act assessing the petitioner's income at Rs.37,36,365/-.

7. Mr.Nishant Thakkar, learned counsel for the petitioner further stated that the order of assessment under section 143(3) of the Act was thereafter scrutinized by respondent No.3-The Principal Commissioner of Income Tax in exercise of the powers under section 263 of the Act. It was stated that after scrutiny, the said respondent No.3 found that disallowance under section 14(A)

made was erroneous and prejudicial to the interest of revenue, and therefore, took steps to revise the original assessment order to that extent while the assessment order on the other issues was not interfered with.

8. Notice dated 31st March 2021 was issued by the Assessing Officer under section 148 of the Act seeking to reopen the assessment on the ground that the income chargeable to tax had escaped assessment. The reasons furnished to the petitioner following the mandate of the Supreme Court in the case of ***GKN Driveshafts (India) Ltd vs Income Tax Officer And Ors.***¹ were furnished to the petitioner which read as under :

“.....Assessee Company has filed return of income for A.Y. 2013-14 on 24.09.2013 declaring total income at Rs.23,16,530/-. The case was selected under CASS and the assessment was completed on 29.03.2016 u/s. 143(3) at 25,37,651/-.

Sr. No.	Transaction	Amount	Trading client code
1	Purchase of equity share in a recognised stock exchange	35339046.20	D3627
2	Purchase of equity share in a recognised stock exchange	35537500.00	WW2722
3	Purchase of equity share in a recognised stock exchange	26672860.27	D256
4	Sale of equity share (settled by the actual delivery or transfer)	59181932.88	D256

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	in a recognised stock exchange		
5	Sale of equity share (settled by the actual delivery or transfer) in a recognised stock exchange	35725400.77	D3627
6	Sale of equity share (settled by the actual delivery or transfer) in a recognised stock exchange	24147410.70	WW2722
7	Sale of equity share (settled otherwise than by the actual delivery or transfer) in a recognised stock exchange	10742658.85	D256
8	Sale of equity share (settled otherwise than by the actual delivery or transfer) in a recognised stock exchange.	6656.00	WW2722
9	Sale of equity share (settled otherwise than by the actual delivery or transfer) in a recognised stock exchange	47740486.75	D3627
10	Sale of option in securities (derivative) in a recognised stock exchange	146600.00	D256

3. It is true that the assessee has filed a copy of annual report and P & L account and balance sheet along with return of income where various information / material were disclosed. However, the requisite full and true disclosure of all the material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of account, annual report, P & L a/c., balance-sheet or other evidences as mentioned above, the requisite material facts as noted above in the reason for reopening were embedded in such a manner that the material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provision of Explanation 1 of Section 147 of the Act.

4 Since, the sale of such derivatives and profit and loss from the trading has not been disclosed by the assessee, the only requirement is to initiate proceeding u/s. 147 of the

Act to bring to tax the transaction detailed above. As the assessee has undisclosed income during the A.Y.2013-14 which were escaped from assessment. I, therefore, have reason to believe that the assessee income chargeable to tax has escaped assessment for the year under consideration to the extent of Rs.6,90,99,078/-, being earned through sale of derivative in a recognised stock exchange of Rs.4,78,93,742/- and trading of equity of Rs.2,15,05,336/-. Therefore, the assessment for AY 2013-14 is required to be reopened u/s. 147 of the IT Act.

9. Objections were filed to the reopening of the assessment which were disposed of by the Assessing Officer vide order, dated 18th March 2022. Finally, the order of re-assessment, dated 26th March 2022 was passed, which is impugned in the present petition.

10. The order of reassessment is challenged, *inter-alia*, on the ground that there was no failure on the part of the petitioner to disclose any material fact fully and truly, which was a condition precedent for exercise of jurisdiction beyond the period of four years in terms of the first proviso to section 147 of the Act. It is stated that all the transactions referred to in the reasons recorded had not only been furnished during the scrutiny assessment proceedings but were also gone into by the Assessing Officer, who only after having satisfied itself thoroughly, had passed the order of assessment under section 143(3) of the Act.

11. Per contra, counsel for the respondents Mr.Sharma, with reference to the reply affidavit, urged that the sale of shares and the profits derived from trading in derivatives, had not been disclosed by the assessee, and therefore, it was urged that the Assessing Officer was justified in initiating the reassessment proceedings. It was, therefore, urged that once it was established that the relevant transactions, as identified in the reasons recorded, were not disclosed by the petitioner during the course of the earlier assessment proceedings, the argument that the order of reassessment was nothing but a change of opinion would be untenable.

12. We have heard learned counsel for the parties, at length.

13. With a view to exercise jurisdiction in terms of section 147 of the Act, in a case, where reassessment proceedings were sought to be initiated beyond the period of four years, besides the requirement of having reason to believe that income chargeable to tax has escaped assessment, the Assessing Officer has to further be satisfied that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment during the original assessment proceedings.

14. In the present case, the basis for re-opening is the non-disclosure of certain transactions, which have been mentioned in the reasons recorded by the Assessing Officer during the original assessment proceedings. The basis is the information derived from the Insight Portal of the department. In other words, the Insight Portal appears to have flagged certain transactions pertaining to purchase and sale of equity as also trading in derivatives on the recognised stock exchanges. Although, in the reasons, the Assessing Officer has stated that the assessee had filed a copy of the annual report, profit and loss account and balance-sheet along with the return of income, yet, it is stated that full and true disclosure necessary for the assessment had not been made in regard to the 10 transactions mentioned in the reasons. However, from the material on record, it is clear that during the course of assessment proceedings under section 143(3) of the Act, the Assessing Officer had called for all the requisite details including the certified copy of the Auditor's report, Directors report as also the balance-sheet and Profit and Loss account vide notice dated 9th June 2015 under section 142(1) of the Act, and subsequently, vide notice dated 30th October 2015 issued under section 143(1) of the Act, the petitioner was required

to produce, *inter-alia*, the scrip-wise details of opening stock, purchases and sales as also the closing stock for the relevant assessment year along with documentary evidence in support thereof. Not only this, the Assessing Officer had also required the petitioner to submit Form No.10DB duly certified and reconciled with the audited account. The petitioner was also required to furnish a copy of all the demat accounts of the company for the financial year 2012-13. The petitioner was also asked to reconcile the entire trade transactions with the details of annual information report submitted to the petitioner by the department. All the aforementioned information and documents, were provided to the Assessing Officer as per the stand of the petitioner.

15. In the present case, it is not the stand of the revenue that the Assessing Officer had not sought for the copies of all the demat account of the assessee for the relevant financial year 2012-13, or that even when it was called, it was not furnished by the assessee. Neither is it the case of the revenue that the reconciliation statement sought by the Assessing Officer and other details contained in various notices issued by the Assessing Officer were not provided during the course of the proceedings. If

that be so, we find it difficult to accept the argument that the petitioner had failed to disclose all material facts fully and truly.

16. Counsel for the petitioner Mr. Nishant Thakar took pains to explain to us each and every transaction which otherwise forms a part of the reasons recorded, with the transaction statements placed on record as also the reconciliation statement prepared by the petitioner in the present case. In fact, it appears to us that the Assessing Officer, upon receipt of the information regarding the transactions made by the petitioner, proceeded to presume that the same were not disclosed by the petitioner during the course of the earlier proceedings under section 143(3) of the Act, which presumption in our opinion was not only erroneous but contrary to the record. We hold that there was no basis to hold that there was any failure on the part of the assessee to disclose any material facts fully and truly during the regular assessment proceedings and further that reassessment proceedings are nothing but a change of opinion.

17. For the reasons mentioned above, in our opinion, the impugned notice also the order of reassessment are without

jurisdiction, and are, therefore, quashed and set aside. All consequential orders and or notices viz. demand and or penalty notices are also quashed.

18. The petition is disposed of accordingly.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]