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W.P.Nos.13090 & 13431 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.13090 & 13431 of 2023

and

WMP.Nos.12855, 12856, 13106 & 13109 of 2023

M/s.Sheetala Credit & Holdings Private Limited

Represented by its Director

Mr.Prasanna Natarajan

having registered office at

Flat No.J-62, T-1 (3rd Floor)

Swapnaapt Dilshad Colony, Shahdara

New Delhi - 110095.

and

having administrative office at

New No.17, Old No.9, Crescent Avenue,

Kesavaperumalpuram, Chennai 600028.

... Petitioner in W.P.No.13090 of 2023

M/s.Twentieth Century -Apco Leasing Private Limited

Represented by its Director

Mr.Prasanna Natarajan

having registered office at

CK 5, Sector 11, 5th Floor, Salt Lake City

Kolkatta 700091

and

having its Administrative Office at,

New No.17, Old No.9, Crescent Avenue,

Kesavaperumalpuram, Chennai - 600028.

... Petitioner in W.P.No.13431 of 2023



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1. Income Tax Officer

Corporate Ward 6(2),
Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034.

2. The Principal Commissioner of Income Tax,

Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034.

... Respondents in W.P.No.13090 of 2023

1. Income Tax Officer

Corporate Ward 3(1),
Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034.

2. The Principal Commissioner of Income Tax,

Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034.

... Respondents in W.P.No.13431 of

2023

PRAYER in W.P.No.13090 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the 1st respondent and quash the impugned notices in ITBA/AST/F/148A(SCN)/2022-23/1050292503(1) dated 01.03.23 and ITBA/AST/F/148A(SCN)/2022-23/1051054176(1) dated 21.03.2023 both issued under Section 148A(b) of the Income Tax Act, 1961, and consequential order in ITBA/AST/F/148A/2023-24/1051916212(1) dated 06.04.2023 passed

<https://www.mhcn.org.in/jstis> under Section 148A(d) of the Income Tax Act, 1961 and further consequential



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notice in ITBA/AST/S/148_1/2023-24/1051916919(1) under Section 148 of the Income Tax Act, 1961 dated 06.04.2023 for the Assessment Year 2019-20 passed by the 1st respondent as illegal and not in accordance with law.

PRAYER in W.P.No.13431 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the 1st respondent and quash the impugned notice in ITBA/AST/F/148A(SCN)/2022-23/1051234267(1) dated 24.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961, and consequential order in ITBA/AST/F/148A/2023-24/1051915277(1) dated 06.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 and further consequential notice in ITBA/AST/S/148_1/2023-24/1051915567(1) under Section 148 of the Income Tax Act, 1961 dated 06.04.2023 for the Assessment Year 2019-20 passed by the 1st respondent as illegal and not in accordance with law.

In both W.P.'s

For Petitioner : Mr.Veerabadran
for R.Sivaraman

For Respondents : Mr.R.S.Balaji
Senior Standing Counsel

COMMON ORDER

Mr.R.S.Balaji, learned Senior Standing Counsel accepts notice for the respondents and is armed with necessary instructions to enable final disposal of these matters, even at the stage of admission.



2. I have had occasion to consider an identical challenge in

W.P.No.12918 of 2023 and by order dated 26.04.2023 have dismissed the Writ

Petition in the following terms:

The petitioner has challenged two notices under Section 148A(b) of the Income-Tax Act, 1961 dated 01.03.2023 and 21.03.2023, an order under Section 148(A)(d) dated 06.04.2023 and a notice under Section 148 of the Income-Tax Act, dated 06.04.2023.

2. *The main grounds put forth by the petitioner assailing the aforesaid proceedings are that (i) there is no liability to tax in respect of the transaction of buyout of shares of S.V.Global Mills Limited consequent upon the order of Apex Court dated 25.02.2019, (ii) the interest received on the aforesaid amount is proposed to be offered to tax in assessment year (AY) 2023 – 24 only whereas it ought to have been offered in AY 2019-20 and (iii) the issues in (i) and (ii) were not put to it for response in the notice under Section 148A(b) of the Act.*

3. *The petitioner is a private limited company and litigation involving the petitioner and five other entities ('shareholders') had reached the Apex Court consequent upon disputes inter se the six share holders before the Company Law Board.*

4. *By order dated 17.05.2018, the Hon'ble Supreme Court permitted a buyout of the shares inter se the parties. The Court also records that a sum of Rs.100 crores was paid to the respondents for the purchase of their shares. The petitioner, admittedly, is a respondent in the matter before the Apex Court, and has received a sum of Rs.18,62,03,348/-.*

5. *It is the taxability of the aforesaid amount that is in question in the impugned proceedings. The petitioner states that it proposes to offer the interest from the*



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aforesaid amount to tax for AY 2023 – 2024 and advance tax has been paid in the relevant financial year.

6. *In the interests of completion, the order of the Apex Court dated 17.05.2018 is extracted below:-*

“By our order dated 10.05.2018, having heard the learned Senior Counsel on either side, this Court directed that a sum of Rs. 100 Crores be paid to the Respondents for the purchase of all the respondent’s shares in the Company.

Mr. Kapil Sibal, learned Senior Counsel wished to examine on that date in how much time this payment can be made.

Today, we are told that Mr. P. Chidambaram’s client’s own offer in this Court was for land and not for money. We reiterate that we were told this on the last occasion, after which we passed the order dated 10.05.2018.

As a result, the shares, which we are informed is no longer the subject matter of any attachment, and are free to be sold, should be purchased by Respondent No.7 at the price of Rs.100 Crores, to be paid by Mr. Kapil Sibal’s client within a period of 9 months from today.

As a result of this share purchase of Rs. 100 Crores being ordered by this Court, we make it clear that there will be no triggering of the SEBI Takeover Regulations.

We also make it clear that this order does not amount to shares being transferred inter vivos, nor can the payment for the shares be treated as deemed dividend. On payment, the share capital of the Company shall stand reduced by virtue of our order.



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The observations of the High Court will not bind in any other proceedings between the parties.

Mrs. Vibha Datta Makhija, learned Senior Counsel, who appears on behalf of the Intervener, states that large sums have been defalcated by the Natarajan Group, which belong to depositors. She may urge this grievance before the appropriate forum in accordance with law.

With these observations, the Special Leave Petitions stand disposed of.

All the pending applications filed in the matters also stand disposed of.”

7. In notice under Section 148A(b) dated 01.03.2023, the assessing authority proceeds on the basis that for AY 2019 – 2020 (order of the Apex Court is dated 17.05.2018), there has been escapement of income. The allegation of escapement arises from the fact that in the return of income filed for AY 2019 – 2020, the petitioner has sought exemption in respect of the entirety of the amount of Rs.18,62,03,348/- received by it and has not offered the interest thereupon to tax.

8. The assessing authority has in the annexure to the notice stated as follows:-

“Following information has been disseminated as High Risk CRIU/VRU case pertaining to AY 2019-20 on Insight Portal selected under Risk Management Strategy (RMS) cycle 2 formulated by the CBDT:

The Hon'ble Supreme Court of India vide order dated 17.05.2018 had approved a buy-out of shares held by following entities in M/s.SV Global Mills Limited:

1.M/s.Satluj Credit and Holdings Pvt Ltd (840000 shares).



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2.M/s. Calcom Credit and Holdings Pvt Ltd
(840000 shares)

3.M/s.Rajat Chakra Credit and Holdings Pvt Ltd
(840000 shares)

4.M/s.Sheetala Credit and Holdings Pvt Ltd
(850000 shares)

5.M/s.Twentieth Century Apco Leasing Pvt
Ltd(288440 shares)

6.Smt. Rajalakshmi (578000 shares)

The Hon'ble Supreme Court directed that a sum of Rs.100 crores to be paid to the above entities for the buy-out of all their shares in the company. Further, the Hon'ble Supreme Court vide order dated 25.02.2019 directed M/s.SV Global Mills Ltd to deposit Rs.100 cores in the registry of Hon'ble Supreme Court within a period of two weeks and registry to invest the said amount in an interest bearing short term fixed deposit.

It is observed that shares had been transferred from assessee company to M/s SV Global Mills Ltd through the order of Hon'ble Supreme Court. Hence, capital gain arising out of transfer of shares requires to be taxed in the hands of the assessee company. However, it is observed from the Income Tax return filed by the assessee company for AY 2019-20 that an amount of Rs.18,62,03,348/- has been claimed as exempt income citing the order of the Hon'ble Supreme Court ie., Direction under Art.142 of the Constitution by SC, whereas the order of the Hon'ble Supreme Court do not appear to suggest/direct to treat the receipt as exempt income under the Income Tax Act, 1961.



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Further, the assessee company's share of interest amount on short term fixed deposit of Rs.100 crores is also requires to be taxed in the hands of the assessee company. Furthermore, against the deposit of Rs.100 crores, assessee company and others have got the benefit of acquiring the title of the land worth Rs.36 crores (Book value) from the Government of Puducherry as per the order of Hon'ble High Court of Madras, vide order dated 18.03.2021."

9. His line of thinking is thus clear, to the effect that while the assessee has sought exemption in respect of the amount of Rs.18.62 crores (approx), the assessing authority was of the view that the Apex Court had never indicated anywhere that the receipt should be treated as exempt under the Income-Tax Act. Furthermore, he has also expressed the view that the interest thereupon is liable to tax in AY 2019-20.

10. The argument of the petitioner revolves around the interpretation of Section 56(2)(x) to state that the amount of Rs.18.62 crores (approx) would not attract the rigour of the statutory provision. According to it Section 56(2)(x) only relates to a sum of money received without consideration, but in the present case, the consideration has been in the form of shares. It also confirms that the interest income is proposed to be offered to tax in AY 2023-24.

11. In the impugned order dated 21.03.2023, the assessing authority has rightly concluded that there is no capital gains that arises from the transaction since the entire transaction was a buyout of shares by virtue of order of the Apex Court. The officer, in this regard refers to the statement of the Apex Court that the transaction 'does not amount to shares being transferred inter vivos, nor can the payment for the shares be treated as deemed dividend'. Thus the clear inference that the officer has arrived at, is that there can be no instance of capital gain tax nor any levy under Section 2 (22) (e) of the Act dealing with deemed dividend.



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12. He points out that the receipt itself has not been held to be exempt. I see nothing untoward in the assessing authority having come to the aforesaid prima facie conclusion under the impugned order that there is escapement of income. This legal issue is to be decided by the assessing authority after detailed consideration of the petitioner's arguments in assessment and the matter is preliminary at this juncture.

13. On the liability to interest on the sum of Rs.18.62 Crores, it is a timing difference, and the officer prima facie believes that the interest must be taxed in AY 2019-20 relatable to the year when the order was passed by the Apex Court on the ground of accrual. Though the petitioner would suggest that the receipt had been delayed and it only after a few years that the amounts had been received, such submission involves the appreciation of facts and are best considered by the authorities.

14. The argument of petitioner to the effect that the taxability of the receipt has not been put to it in the show-cause notice is also devoid of merit, since the assessing authority has raised these issues specifically in the penultimate paragraph of the Annexure to notice under Section 148A(b). A notice under Section 148A(b) is not expected to be as detailed as order of assessment and it would suffice that the issue on the basis of which the re-assessment is proposed is outlined broadly therein. It is for the assessee/petitioner to respond on all aspects of the matter and seek clarifications, where it so requires.

15. Writ petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

3. The present petitioners are also respondents in the matter before the Hon'ble Supreme Court and hence, both Mr.Veerabadran, learned counsel appearing for the petitioner and the learned Standing Counsel would concur on



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the position that the facts and legal position as agitated in this matter is identical

to the petitioner in W.P.No.12918 of 2023.

4. In light of the aforesaid submission, the same order is taken to be passed in these matters as well.

5. These Writ Petitions are dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

27.04.2023

Index : Yes / No

Speaking Order

Neutral Citation: Yes

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To

1.Income Tax Officer

Corporate Ward 6(2),

Wanaparthi Block,

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Nungambakkam, Chennai - 600034.

2.The Principal Commissioner of Income Tax,

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Dr.ANITA SUMANTH,J.

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