IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.53 of 2022 (O&M)
Date of Decision: 18.07.2023

Amit Jindal HUF ... Petitioner

Versus

Central Board of Direct Taxes
and others ... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Pankaj Jain, Sr. Advocate with
Mr. Divya Suri, Advocate and
Ms. Sameeksha Gupta, Advocate,
for the petitioner.

Mr. Vaibhav Gupta, Junior Standing Counsel,
for the respondents.

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MANISHA BATRA, J.

1. The present petition has been filed under Article 226 of the Constitution by the petitioner who is proprietor of firm Amit & Company, making prayer for issuing a writ of certiorari for quashing the notice dated 30.03.2021 issued under Section 148 of Income Tax Act, 1961 (For short "the Act") (Annexure P-5) and order dated 24.11.2021 (Annexure P-11) whereby the objections raised by the petitioner as to the notice Annexure P-5 were rejected by the respondents, and also for staying the operation of the order Annexure P-11.

2. The facts leading to filing of this petition are that the petitioner-assessee who deals in the business of trading in rice bran has been regularly filing income tax returns since the year 2008. For the assessment year (A.Y.) 2014-15, he had filed return on 30.11.2014 thereby declaring the total annual income of the firm as Rs.4,73,010/-. On 30.03.2021, the respondent issued notice (Anneuxre P-5) under Section

148 of the Act thereby proposing to initiate re-assessment proceedings on the ground that genuineness of the expenses booked against the purchases made by the petitioner from M/s Natural Sales Enterprises (its acronym "**M/s NSE**") were doubted by the department and the purchases to the tune of Rs.1,40,05,667/- were to be treated as escaped income. The petitioner was informed that **Sh. Avinash** who was proprietor of M/s NSE had recorded a statement that his firm was not engaged in any actual business activity and was only issuing bogus invoices and providing accommodation entries to various firms. The petitioner after receiving the reasons recorded by the respondents for re-opening, filed objections (Annexure P-1). However, the said objections were rejected vide order dated 24.11.2021. Feeling aggrieved, the petitioner has filed this petition challenging the notice Annexure P-5 and order Annexure P-11 on the grounds that the abovesaid Sh. Avinash had not made any statement before the respondents that his firm had issued bogus bills to the petitioner; nor he had disclosed the name of the firm of the petitioner as the entity to whom bogus bills had been issued; that the respondent did not give sufficient opportunity to the petitioner to cross-examine Sh. Avinash; that no tangible material forming basis for the belief that income of the petitioner had escaped assessment had been brought on record and no reasons for formation of belief for re-assessment had been mentioned in the notice; that the principles of natural justice were violated as fishing/roving inquiry was made in the garb of re-assessment proceedings and that there was no omission or failure on the part of the petitioner to disclose fully and truly all material facts. Accordingly, prayer had been made for issuing writ of certiorari.

3. The respondents filed reply through respondent No.3 submitting

therein that while framing assessment of income of firm of Sh. Avinash for the A.Y. 2014-15, it was revealed that the details available in its balance sheet and trading account were suspicious. He was required to explain those transactions. He recorded a statement on 12.12.2016 disclosing therein that though he had got M/s NSE registered for trading of rice bran but infact no actual business was conducted by making purchases and sales and he was instrumental in providing accommodation entries only to different firms. He disclosed the names of ten such firms. The documents pertaining to his firm were impounded which included 'sales ledger' pertaining to the period from 01.04.2013 to 31.03.2014 and the entries made therein revealed that sales had also been booked in the name of the firm of the petitioner during the months of September and October 2013. It was submitted that as Sh. Avinash had already disclosed that the concerned persons to whom accommodation entries were provided, used to withdraw the cash deposited in the name of his firm through blank cheques which were issued by himself (Sh. Avinash) in the name of self and handed over to such persons and as it was evident from the record of the banker of M/s NSE that the credit received in its account from different firms including the firm of the petitioner, had been followed by debits in the shape "cash withdrawals" on the date of credit itself, therefore, it was clear that the petitioner was also involved in availing accommodation entries. Since the petitioner had failed to disclose fully and truly all material facts necessary for his assessment, therefore, notice under Section 148 of the Act, was issued against him. The objections raised by him were duly considered and were rejected. While controverting the various pleas as taken in the petition, the dismissal of the same had been prayed for.

4. We have heard learned counsel for the petitioner and learned Standing Counsel for the respondents at length and have gone through the record.

5. Initiating the arguments, learned counsel for the petitioner submitted that the impugned notice dated 30.03.2021 and order rejecting the objections filed by the petitioner dated 29.11.2021 were both liable to be quashed as the impugned notice suffered from jurisdictional defect. The re-assessment proceedings were initiated after expiry of period of five years from the relevant A.Y. 2014-15 and were barred by time. The assessing officer had neither any reason to believe nor any tangible material had been proved on record to show that any income of the petitioner chargeable to tax for the relevant year had escaped assessment. The re-assessment proceedings were based on subsequent change of opinion on the part of the assessing officer which was not permissible. There was no omission or failure on the part of the petitioner to materially and truly disclose the facts. The petitioner was entitled to invoke the writ jurisdiction of the Court as the assessing officer had acted without jurisdiction and had violated the principles of natural justice. No opportunity to cross-examine the proprietor of M/s NSE had been given to the petitioner and, therefore, it was urged that the petitioner deserved to be granted the reliefs as prayed for.

6. Per contra, learned Standing counsel for the revenue submitted that the writ petition was not maintainable as efficacious and alternative remedy in the form of appeal was very much available to the petitioner. The challenge to the impugned notice and order dated 24.11.2021 was totally misconceived. A prima facie opinion regarding an escapement of income

was sufficient while examining the re-opening of assessment and the same did not need to be established with conclusive proof of evidence. While framing assessment in the case of M/s NSE, tangible material had come on record to prove that the petitioner was engaged in receiving accommodation entries from the said firm which was not engaged in conducting any actual business activity and this was done to cause loss to the revenue. The assessing officer did not have the occasion to deal with this issue earlier while conducting scrutiny assessment for the A.Y. 2014-15. All the conditions requisite for re-opening the assessment were existing at the time of issuance of impugned notice which was issued after seeking approval from the competent authority and there was no procedural lapse or deviation. The reasons recorded did not lack any validity. With these submissions, it was urged that the petition was not maintainable and was liable to be dismissed.

7. The assessee having challenged the notice of re-assessment and order of rejection of objections filed by him to the said notice before the assessing officer, in proceedings under Article 226 of the Constitution and the revenue having taken objection as to maintainability of the writ petition, therefore, we would firstly deal with the scope of interference in the matter before proceeding further. Undisputedly, in proceedings for re-opening of assessment taken by the revenue, it is open to the assessee to contend before the assessing officer that the re-opening is not sustainable. The orders passed by the assessing officer for re-opening are also open to challenge along with the orders passed on merits, by way of appeal to the Commissioner of Income Tax (Appeals), and thereafter, to the Tribunal and if a substantial question of law arises in that case, by way of an appeal before this Court.

Thus, efficacious alternative remedy in this regard has obviously been provided under the Act itself. However, the well settled proposition of law is that the writ jurisdiction to interdict a proceeding under Section 148 of the Act seeking to re-open an assessment can still certainly be exercised when the same is clearly without jurisdiction, whenever there is palpable injustice or the proceedings leading to disposal of the objections are in breach of natural justice and in such circumstances, notwithstanding the availability of an alternative remedy, a notice under Section 148 of the Act can be challenged by filing a writ. Reference in this regard can be made to **Parixit Industries (P.) Ltd. v. Assistant Commissioner of Income-tax (OSD) Circle-5**, (2012) 20 taxmann.com 750 (Gujarat), wherein the High Court of Gujarat had observed that High Court exercising jurisdiction under Article 226 of the Constitution has power to set aside a notice issued under Section 147/148 of the Act, if condition precedent to the exercise of such jurisdiction does not exist. Bearing this position of law in mind, we propose to consider the case before us.

8. The impugned notice has been issued against the petitioner under Section 148 of the Act. Section 147 of the Act is also relevant for the purpose as per which, if an assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any particular assessment year, he may subject to provisions of Sections 148 to 153, assess or reassess such income. The proviso to this section says that no action shall be taken under Section 147 of the Act after the expiry of four years from the end of relevant assessment year, unless any income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to make a return, or to disclose fully and truly all material facts necessary for his

assessment, for that assessment year. The right to take action under Section 147 is subject to following conditions:-

> (i) The Income Tax Officer should have reason to believe that the income chargeable to tax has escaped proper assessment.
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> (ii) He should have reason to believe that such escapement was by reason of omission or failure on the part of an assessee to disclose fully and truly all material facts for his assessment for that assessment year.
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> (iii) He must issue a notice under Section 148 calling for a return of income within the time limit prescribed in Section 149.
>
> (iv) He must, before issuing such a notice, record his reason for doing so.

9. In this case, the impugned notice under Section 148 of the Act for A.Y. 2014-15 had been issued against the petitioner on 30.03.2021 i.e. obviously beyond a period of four years. As per proviso to Section 147, such notice could be issued even after expiry of four years if there was failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment for that year. The claim of the petitioner is that all the facts relevant to assessment had been disclosed by him at the time of filing return for the relevant assessment year and there was no concealment on his part. No doubt, the well settled proposition of law is that the assessee is under a duty or obligation to disclose basic and primary facts relevant to the assessment and it is for the assessing officer to make further inquiries. Simultaneously, so far as the formation of belief by assessing officer at the stage of initiating action for re-assessment is concerned, the same is within the realm of subjective satisfaction and the Court has only to see whether

there was prima facie some material on the basis of which the department could re-open the case. The sufficiency or correctness of the material is not a thing to be considered at that stage. In this regard, reference can be made to the case reported as **Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.**, (2007) 291 ITR 500 (SC), wherein the Hon'ble Supreme Court while dealing with the scope and effect of Section 147 observed that this section authorizes and permits the assessing officer to assess or re-assess income chargeable to tax, if he has reason to believe that income for any assessment year has escaped assessment. It was held that the word "reason" in the phrase "reason to believe" would mean cause or justification. If the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that income has escaped assessment. The expression could not be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. The function of the assessing officer is to administer the statute with solicitude for the public exchequer within an inbuilt idea of fairness to taxpayers. Reliance can also be placed upon **Central Provinces Manganese Ore Co. Ltd. v. ITO, Nagpur**, (1991) 191 ITR 662, wherein it was observed by Hon'ble Supreme Court that at the stage of issuing notice under Section 147 (a) (as the provision stood at the relevant time), the only question was whether there was relevant material on which a reasonable person could form the requisite belief. Whether the materials would conclusively prove the escapement, was not the concern at that stage. This was so because the formation of belief by assessing officer was within the realm of subjective satisfaction. Similar observations were made in **Raymond Woollen Mills Ltd. v. Income Tax Officer and others**, (1999) 236 ITR 34 and **Income-Tax Officer, Calcutta v. Selected Dalurband Coal Pvt. Ltd.**, (1996) 217 ITR 597 (SC).

10. In view of the position of law as discussed above, the questions that arise for consideration are that whether there was true and full disclosure of all material facts on the part of the assessee at the time of filing of the return for relevant assessment year or whether the assessing officer had sufficient reason to believe that there was any escapement of income by reason of omission or failure on the part of the assessee to disclose all material facts? It may be mentioned here that failure on the part of an assessee to disclose all facts which are material, relevant and germane for the purpose of assessment is sine qua non for the purpose of re-opening the assessment and burden is of course upon the assessee to disclose the same. In this case, undisputedly, the petitioner-assessee has disclosed in its books of account for the relevant assessment year, the transaction of purchases being made from M/s NSE and invoices etc. had also been shown. According to the petitioner, all the facts which were primarily required to be disclosed by his firm had been so disclosed. However, according to the respondents while conducting assessment of M/s NSE for the A.Y. 2014-15, it was revealed that the said firm was providing bogus accommodation entries to several firms including the firm of the petitioner and was not proved to be engaged in any actual business activity. Whereas, the rival claim of the petitioner is that this fact was not revealed at all either from the statement of Sh. Avinash recorded during the course of the said proceedings nor the name of firm of the petitioner had found mentioned in his statement

and a wrong observation was made by the assessing officer in this regard. On going through Annexure P-2 which is copy of statement of Sh. Avinash as recorded by the assessing officer on 12.12.2016, undoubtedly, it is revealed that he had neither taken the name of the petitioner himself or of his firm as the person/entity to whom accommodation entries were provided by his firm. However, the respondents also placed reliance upon Annexure R-2 which is copy of statement of account of banker of M/s NSE and which shows transfers of different amounts of money by the firm of the petitioner during the relevant assessment year and especially during the months of October and November, 2013 to M/s NSE. The respondents also placed on record Annexure R-1 copy of sales register/ledger of M/s NSE during the period from 01.04.2013 to 31.03.2014 showing sales in favour of the firm of the petitioner during the months of September and October, 2013. The genuineness of these documents had not been questioned by the petitioner. From these documents, it is explicit that M/s NSE had maintained account regarding sale of rice bran etc. to the petitioner during the relevant year. In the circumstance, when Sh. Avinash proprietor of M/s NSE had given a categoric statement before the assessing officer that his firm was not involved in any actual business activity and was providing bogus entries of sale/purchase to different firms, it was quite reasonable for the assessing officer to presume that the entries qua sale of rice bran etc. shown to be made in the sales register of M/s NSE to the petitioner were also bogus entries and, therefore, in our considered opinion, the information furnished by the petitioner at the time of original assessment had itself been found to be controverted on the basis of subsequent information received by the revenue while framing assessment of M/s NSE and the formation of belief by the assessing officer that income chargeable to tax had escaped assessment on the basis of inquiries conducted during the course of assessment of M/s NSE was reasonable one. Therefore, the objection raised by the petitioner as to the impugned notice dated 30.03.2021 on the ground that there was no reasonable formation of belief on the part of assessee must fall in our opinion. In this regard, we draw reliance from **M/s Aaspas Multimedia Limited v. Deputy Commissioner of Income Tax, Circle-1 (1)**, (2017) 83 Taxmann.com 82.

11. Further, with regard to the point that there was omission or failure on the part of the assessee to fully and truly disclose all material facts, the argument as raised by the petitioner was that the transaction of purchase of rice bran etc. from M/s NSE was duly reflected in its books of account which was produced at the time of original proceedings and, therefore, there could not be stated to be any concealment on his part. Though this argument appears to be quite attractive but is not acceptable due to the reason the proprietor of M/s NSE himself accepted that his firm was not involved in any actual business activity at all which prima facie proved that the transactions so reflected in books of account were bogus. Though a feeble argument had been raised to the effect that no opportunity to cross-examine the said Sh. Avinash had been given to the petitioner, however, there is nothing on record to suggest that any specific prayer had been made by the petitioner to allow him to cross-examine Sh. Avinash at the time when the proceedings on impugned notice were conducted. Sh. Avinash had also recorded in his statement that he used to issue cheques in the name of

self and those cheques were handed over to the firms to whom accommodation entries were provided by him and those firms used to withdraw the money transferred in the account of his firm by cash on the basis of such cheques. From a perusal of Annexure R-2, it becomes clear that the transfers/credits made in the account of M/s NSE were immediately withdrawn by way of issuance of cheques and, therefore, the statement so made by Sh. Avinash finds support from the statement of bank account of M/s NSE. The assessing officer was only required to have prima facie some material on record with him on the basis of which the case could be re-opened and sufficiency and correctness of the material was not a thing to be considered at the stage of re-opening the assessment. In view of the fact that the transaction of purchases being made by the petitioner from M/s NSE had been found to be bogus one on the basis of subsequent information, the mere disclosure of the same at the time of original assessment proceedings could not be considered to be disclosure of "true" and "full" facts and, therefore, in our opinion, the assessing officer certainly had jurisdiction to re-open the concluded assessment. In this regard, we place reliance upon **Phool Chand Bajrang Lal v. Income Tax Officer**, AIR 1993 SC 2390, wherein it was observed by Hon'ble Supreme Court that the acquiring of fresh information, specific in nature and reliable in character, relating to the concluded assessment, which went to expose the falsity of the statement made by the assessee at the time of original assessment was different from drawing fresh inference from the same facts and material which were available with the Income Tax Officer at the time of original assessment proceedings and if the transaction conducted at the time of original proceedings itself is found to be bogus subsequently, its disclosure would not amount to disclosure of true and material facts. Accordingly, the argument raised by learned counsel for the petitioner on this point is liable to be rejected.

12. As per the discussion made above to the effect that it was proved on record that the assessing officer had reason to believe that income chargeable to tax has escaped proper assessment and such escapement was by reason of omission or failure on the part of the petitioner to disclose fully and truly all material facts at the time of filing return and framing assessment for the relevant assessment year, we have no hesitation to observe that the proviso to Section 147 of the Act would come into operation and, therefore, the impugned notice which was issued after expiry of period of four years from the end of relevant assessment year cannot be considered to be without jurisdiction or time barred nor the same can be interdicted on jurisdictional issue and accordingly, no interference is called for at the hands of this Court in this petition under Article 226 of the Constitution of India as no palpable injustice is proved to have been caused to the petitioner nor any principle of natural justice is proved to have been violated. Resultantly, the petition stands dismissed. No order as to costs.

13. All miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI) **JUDGE**	**(MANISHA BATRA)** **JUDGE**

18.07.2023
manju

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No