IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

240 **CWP No.709 of 2022 (O&M)**
Date of decision: 25.04.2023

MAX FINANCIAL SERVICES LIMITED **.... Petitioner**

Versus

DEPUTY COMMISSIONER OF INCOME TAX CIRECLE 1 JALANDHAR **.... Respondent**

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

Present : Ms. Radhika Suri, Sr. Advocate with
Mr. Abhinav Narang, Advocate for the petitioner.

Ms. Gauri Neo Rampal, Sr. Standing Counsel
for the respondent.

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RITU BAHRI, J. (oral)

1. This petition has been filed seeking quashing of the notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 (Annexure P-1) and the order dated 23.11.2021 (Annexure P-7) whereby, objections filed to the reasons recorded under Section 148 of the Income Tax Act, 1961 have been dismissed.

2. The brief facts of the present case are that the petitioner-assessee is a company incorporated on 24.02.1988 under the Companies Act, 1956 having its registered office at Bhai Mohan Singh Nagar, Railmajra, Tehsil Balachaur, Nawanshar, Punjab engaged in the business of manufacturing and sale of BOPP metalized films, BOPP unmetalized films, thermal lamination and leather finishing foil. The petitioner-assessee filed its return of income for assessment year 2014-15 on 29.11.2014 declaring a loss of Rs.37,64,79,263/-.

The case of the assessee was selected for scrutiny and the notice under Section 143(2) & 142(1) of the Income Tax Act, 1961 was issued.

3. The assessment proceedings were completed under Section 143(3) of the Income Tax Act, 1961 vide order dated 16.12.2016 at nil income after making a disallowance of Rs.4,63,75,270/- under Section 36(1)(iii) of the returned income. The petitioner-assessee filed an appeal against the assessment order dated 16.12.2016 before CIT(A) who allowed the appeal of the assessee against which the department filed an appeal before the Income Tax Appellate Tribunal which also passed an order in favour of the petitioner.

4. Thereafter, the respondent issued notice dated 31.03.2021 (Annexure P-1) i.e. after a gap of 4 years for the assessment year 2014-15 under Section 147/148 of the Act for re-assessing the income of the petitioner-assessee. In response thereto, the petitioner filed a return on 30.04.2021 and also filed a letter dated 31.05.2021 (Annexure P-2) under protest for providing the copy of reasons recorded for re-opening the case of the petitioner-assessee and also the copy of sanction letter for re-opening the case of the assessee after a gap of four years duly approved by the Principal CIT, Jalandhar.

5. The respondent issued a notice dated 19.05.2021 (Annexure P-3) under Section 143(2) of the Income Tax Act, 1961 in which, for the first time, reproduced the reasons for re-opening the case of the petitioner- assessee. The respondent never provided a separate copy of reasons recorded and also the sanction letter duly approved by the Principal CIT for re-assessing the case of the petitioner-assessee. In response to above said notice, petitioner filed objections on 05.07.2021(Annexure P-4) to the Assistant Commissioner of Income Tax, Jalandhar wherein it had been submitted that there was no reason

for re-opening the case of the petitioner as the petitioner purchased the property in Panchsheel Park at New Delhi in assessment year 2015-16 after making the full & final payment and further purchased the stamp paper in assessment year 2015-16 itself that is why the petitioner-assessee showed the part payment made in assessment year 2014-15 as Capital Work In Progress (for short "CWIP") in the balance sheet. Further, during scrutiny assessment, the assessee had disclosed all the relevant facts and provided balance sheet, account statements, books of accounts etc. to the Assessing Officer (AO) from which it became clear that the assessee had fully and truly disclosed all relevant facts to the AO, however, the AO never raised any query during the assessment proceedings, and suddenly after a gap of four years, issued notice on the basis of information received from insight portal and also had not provided the information of the same to the petitioner and without conducting any independent inquiry, re-opened the case of the petitioner-assessee. The petitioner-assessee also filed a reply dated 01.11.2021 before the Deputy Commissioner of Income Tax. Copy of the reply dated 01.11.2021 and copy of the e-mail showing the attachment are annexed as Annexures P-5 & P-6, respectively.

6. The respondent after considering the objections/reply and the submissions of the petitioner-assessee, dismissed the objections filed by the petitioner-assessee vide order dated 23.11.2021 (Annexure P-7). It is submitted that the respondent ignored the fact that the petitioner actually purchased the property in assessment year 2015-16 and not in assessment year 2014-15. The petitioner in assessment year 2015-16 showed the property as asset in the balance sheet. Further the respondent never provided the copy of sanction

letter for re-opening the case duly approved and further ignored the fact that the petitioner-assessee had provided all the relevant documents, books of accounts, balance sheet, profit & loss account, ledger etc. to the AO during scrutiny assessment which clearly shows that the petitioner-assessee disclosed all facts, however, the AO never raised any query for the same and suddenly re-opened the case of the petitioner after a gap of 4 years on the basis of information received from the insight portal i.e borrowed satisfaction without conducting any independent enquiry and further had not provided the source of same to the petitioner-assessee against the settled law which clearly says that it is the duty of the AO to provide the source of everything mentioned in the reasons for re-opening.

7. In the present case, as per the interim order dated 14.02.2022, proceedings initiated vide the above said notices were stayed.

8. Learned counsel for the petitioner-assessee has argued that the property was purchased in the assessment year 2015-16 and the petitioner-assessee had shown all the part payments as CWIP in the balance sheet and had not claimed the property as asset. When full and final payment was made, the property was shown in the assessment year 2015-16 as asset in the balance sheet and this fact is evident from the sale deed dated 21.06.2019 (Annexure P-8). The assessee had shown the part payment for purchase of the property as CWIP in the balance sheet and further submitted all the books of accounts, balance sheet, profit & loss account, ledger etc. to the AO during scrutiny assessment, however, the AO made disallowance only on account of Section 36(1)(iii) of the Act. Once the property had been purchased by making full and final payment in the year 2015-16 and it was shown in the balance sheet of the year 2015-16, no case is made out to re-open the assessment of income for the assessment year 2015-16 as has been done in the present case.

9. On notice of this petition, written statement by way of affidavit of Joint Commissioner, Income Tax (OSD), Circle-1, Jalandhar, has been filed on 11.05.2022, wherein it is stated that in the year 2015 erstwhile Max India (PAN AABCM1204G) was renamed as Max Financial Services Limited. Prior to this, M/s Max Financial Services Limited was having its registered office at Balachaur, Nawan Shahar. Post approval of the scheme of arrangement by the Punjab and Haryana High Court vide Petition No.57 of 2015, some business of erstwhile Max India (PAN AABCM1204G) got demerged into two entities i.e. Max Ventures and Taurus Ventures (AAFCT2098H) whereas remaining business was continued with erstwhile Max India (AABCM1204G).

10. As per the approved scheme of 2015, investments made by erstwhile Max India (now Max Financial AABCM1204G) in Neeman which formed part of the "Health and allied activities business" / "Allied Health and Associated Activities Business" shall be part of Taurus Ventures (later on renamed as Max India with PAN AAFCT2098H).

11. Further, in a subsequent scheme of arrangement approved by the NCLT, Mumbai in 2020, the businesses of Max India, erstwhile Taurus Ventures (PAN AAFCT2098H) got demerged whereby the "Health and Allied Activities Business" / "Allied Health and Associated Activities Business" and related litigation got merged with Advaita Allied Health Services Limited with PAN AARCA8316K. This company Advaita was later on renamed as Max India (PAN AARCA8316K).

12. As a result of above schemes, the litigation with respect to investments made by MAX Financial (AABCM1204G) in Neeman BV (part of "Health and Allied Activities Business"/"Allied Health and Associated Activities Business") got vested in Max India (AARCA8316K).

13. The additions made in the case of Max Financial Services relate to the business of allied health and associated activities, the litigation thereto, in view of the above mentioned schemes is being carried on by and in the name of Max India. The petitioner-assessee (erstwhile M/s Max India Limited) has showed nil investment in ITR filed for A.Y.2014-15 (Annexure R-1) and the company showed no addition to the fixed assets in its reply dated 04.11.2016 for the A.Y. 2014-15 (Annexure R-2).

14. As per assessment order dated 16.12.2016 (Annexure R-3) for the assessment year 2014-15, disallowance of Rs.4,63,75,270/- was made under Section 36(1)(iii) of the Income Tax Act, 1961.

15. The appeal of the assessee was allowed by the Ld. Commissioner of Income Tax (Appeals)-1, Jalandhar vide order dated 28.12.2017 (Annexure R-4). The department preferred an appeal before the ITAT, Amritsar which was dismissed vide order dated 24.09.2021 (Annexure R-5). The information was received on the insight portal of ITBA systems of the department *qua* the petitioner-assessee for the assessment year 2014-15 on 27.03.2021 in support of the order dated 23.11.2021 (Annexure R-6).

16. The respondent came to know about the investments made towards purchase of immovable property for the first time vide Annexure R-6 regarding transaction of land property in South Delhi (Rs.10 crore & above) for the assessment year 2014-15 as shared by the Sub-Registrar, South Delhi.

Thereafter, a proposal was sent to the Addl. Commissioner of Income Tax, Range-1, Jalandhar on 29.03.2021 and the notice was served upon the assessee under Section 147/148 of the Act on 31.03.2021 and also vide e-mail dated 31.03.2021, reasons were supplied to the assessee vide DIN & Document. An approval was also granted by the Competent Authority i.e. Pr. Commissioner of Income Tax on 31.03.2021 (Annexure R-8).

17. They have also placed on record the e-mail dated 31.03.2021 (Annexure R-9) and have explained that as per Section 149(1)(b) of the Act, in case the income so escaped is more than Rs.1 lakh, a notice has to be given within 6 years from the end of relevant assessment year 2014-15 and the information *qua* petitioner-assessee was put on portal on ITBA systems on 27.03.2021 and immediately thereafter, notice under Section 147/148 was issued on 31.03.2021, within limitation.

18. The petitioner has shown NIL investment in ITR filed for assessment year 2014-15 (Annexure R-1) and nothing was shown by the petitioner in additions to fixed assets in its reply dated 04.11.2016 (Annexure R-2) which was filed during the course of assessment proceedings. The petitioner has made part payment in the year 2014-15 and final payment was in the year 2015-16 and during the entire assessment proceedings, the petitioner did not state about the fact of purchasing the immovable property at Panchsheel Park, New Delhi i.e. House No.31 which has a transaction value of Rs.24.50 crores. In this backdrop, the proceedings under Section 147/148 of the Act have rightly been initiated.

19. On 15.03.2023, the counsel for the petitioner informed that petitioner after purchasing the property in Panchsheel Park, New Delhi in June

2014 and after making the entire payments, sale deed was reflected in its return for the year 2015-16 and the return filed by the petitioner had been accepted by the revenue. The case was adjourned so that the respondent will get written instructions from the concerned authority as to whether the return filed for the year 2015-16 has been accepted.

20. A short affidavit dated 21.04.2023 filed on behalf of the respondent is taken on record, as per which, the assessing company has filed its return for the assessment year 2015-16 at an income of Rs.2,73,40,34,290/-. The case of the assessee-company was selected for scrutiny and on 08.12.2017 the scrutiny was completed at an income of Rs.2,73,57,91,585/- and the re-assessment for the year 2015-16 was completed after scrutiny on 25.01.2021 at an income of Rs.3,46,40,46,243/- and disallowance of Rs.65,79,70,844/-. It is further stated that proceedings have been initiated under Section 263 of the Income Tax Act, 1961 by Ld. PCIT-1, Jalandhar on 25.02.2020 while setting aside the orders passed by the assessing authority after scrutiny and the matter was remanded back to pass a fresh order on the following issues:-

a) Allowability of depreciation and other expenses as business expenditure and their purpose for earning revenue from operations and other income.
b) Basis of computation of loss from sale of unquoted investment or Rs.4037.19 lakhs;
c) Allowability of expenditure incurred on corporate guarantee given on behalf of a sister concern as business deduction;
d) Basis of valuation of various assets sold in slump sale to Max Specialty Films Ltd.
e) Rent received from letting out of a property to the employee taxable as ‘income from house property’ vis-à-vis ‘business

income' offered by the assessee in the return of income and consequential claim of depreciation thereon.

f) Basis of valuation of unquoted current investment sole during the year to a sister concern.

21. The assessee has filed an appeal before the Tribunal, Amritsar against the order dated 25.02.2020 passed under Section 263 by the Ld. PCIT-1, Jalandhar. The Tribunal at Amritsar vide its order dated 31.03.2021 has upheld only on the limited issue relating to non-examination of loss returned on the sale of shares of Neeman BV Ltd.. After that on 25.01.2021, the assessment proceedings under Section 143(3) read with Section 144B of the Act were completed by the Faceless Assessment Unit (AU) on 27.09.2021 at an income of Rs.3,46,40,46,243/- by making disallowance of Rs.65,79,70,844/- and Rs.7,02,83,813 respectively on account of loss of shares of M/s Neeman Medical International under the head of LTCG & STCG.

22. In paragraph 4, it has been clarified again that the assessee had shown investment in property (cost of building given on operating lease) at Rs.2,731.65 Lakhs during the financial year 2014-15 relevant to the assessment year 2015-16 under the head 'Non-current Investment' (Note-11) in the financial statements of the Company.

23. After going through the aforesaid affidavit, it has been clarified that with respect to the assessment order for the year 2015-16, the assessment proceedings have been completed now vide order dated 27.09.2021 and no adverse order with respect to the investment made as per the sale deed (Annexure P-8) has been passed.

24. Since, the income tax for the year 2015-16 has also undergone the process of revision and the claim of petitioner with respect to the investment made on the cost of investment in the property has been accepted, no case is made out to re-open the assessment proceedings of the year 2014-15 on the same ground.

25. Keeping in view the fact that for the income tax return for the year 2014-15, there was no concealment of income made by the assessee relating to investment in property at Panchsheel Park, New Delhi, the present writ petition is allowed and impugned notice dated 31.03.2021 (Annexure P-1) and order dated 23.11.2021 (Annexure P-7) are set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
25.04.2023 **JUDGE**
Jyoti-IV

Whether speaking/reasoned: Yes/No.
Whether reportable : Yes/No