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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 31.01.2023**

+ **W.P.(C) 882/2023 and CM APPL. 3450/2023**
W.P.(C) 883/2023 and CM APPL. 3452/2023
W.P.(C) 907/2023 and CM APPL. 3496/2023

SWAROVSKI INDIA PRIVATE LIMITED (FORMERLY KNOWN
AS SWAROPEARL INDIA PRIVATE LIMITED)Petitioner

Through: Mr Ajay Vohra, Sr. Advocate with
Mr Aniket D. Agrawal and Mr
AbhisekSinghvi, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX Respondent

Through: Mr Sunil Agarwal, Sr. Standing
Counsel with Mr Utkarsh Tiwari,
Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. The above-captioned writ petitions came up for hearing for the first time on 24.01.2023, when after hearing the counsel for the parties, which included Mr Ajay Vohra, learned senior counsel appearing on behalf of the petitioner and Mr Sunil Agarwal, learned senior standing counsel appearing on behalf of the respondents/revenue, the broad grievance of the petitioner was noted.

2. We had asked Mr Agarwal to return with instructions, given what we had recorded in our order dated 24.01.2023. It was made clear, that if instructions were received to resist the writ petition, counter-affidavit(s) would be filed in the matter.

2.1 Mr Agarwal has returned with instructions.

3. Before we proceed further, it would be helpful to extract the relevant parts of our order dated 24.01.2023:

“2. The aforementioned writ petitions concern Assessment Year (AY) 2015-16 [WP(C) 882/2023], AY 2016-17 [WP(C) 883/2023] and AY 2017-18 [WP(C) 907/2023].

3. Mr Ajay Vohra, learned senior counsel, who appears on behalf of the petitioner/assessee, says that the petitioner/assessee was incorporated on 11.10.1996, at which point in time, it went by the name Swaroparl India Pvt. Ltd. [in short, “Swaroparl”].

3.1 It is stated by Mr Vohra that accordingly, at that juncture, Swaroparl was allocated AABCS4767J. as PAN.

4. We are informed that in 2000, a change in the name of Swaroparl was brought out and accordingly, the petitioner/assessee’s name changed to Swarovski India Pvt. Ltd.

5. Pursuant to the change in name, the petitioner/assessee was allocated AAGCS4052D as its new PAN.

6. Mr Vohra says that the respondents/revenue have been issuing notices and, it appears, initiated reassessment proceedings against the petitioner/assessee by taking recourse to the old PAN. The submission is that since the old PAN did not exist, the petitioner/assessee had no information that proceedings were being carried out against it.

6.1 Mr Vohra, in support of his plea that the old PAN was not in existence, drew our attention to the screenshot appended on page 177 of the case file.

7. The record shows that for the AYs in issue, a demand amounting to Rs. 3,04,62,78,055/- has been raised qua the petitioner/assessee. The details of this demand are set forth in a communication dated 03.01.2023, addressed by the petitioner/assessee to the Assistant Commissioner of Income Tax [in short, “ACIT”].

7.1 For the sake of convenience, the said details, as provided by the

petitioner/assessee, are extracted hereafter:

S. No	AY	Demand section	Date of order	Demand outstanding (in INR)
1	2015-16	147	29/03/2022	80,23,75,140
2	2015-16	271F	28/09/2022	5,000
3	2015-16	271(1)(b)	25/09/2022	10,000
4	2015-16	271(1)(c)	26/09/2022	30,74,23,463
5	2016-17	147	29/03/2022	93,41,86,200
6	2016-17	271(1)(b)	25/09/2022	10,000
7	2016-17	271F	28/09/2022	5,000
8	2016-17	271(1)(c)	26/09/2022	39,25,15,222
9	2017-18	147	30/03/2022	60,97,33,030
10	2017-18	272A(1)(d)	25/09/2022	10,000
11	2017-18	271F	28/09/2022	5,000
Total				3,04,62,78,055

8. Mr Sunil Agrawal, learned senior standing counsel, who appears on behalf of the respondent/revenue, seeks accommodation to obtain instructions.

9. Accordingly, list the matter on 31.01.2023.

10. In case instructions are received to resist the writ petitions, counter-affidavit(s) will be filed before the next date of hearing.

11. In the meanwhile, no precipitate action will be taken against the petitioner/assessee.”

4. The prayers made in the three writ petitions are more or less identical. The reliefs sought are *vis-à-vis* the notices dated 30.03.2021 issued under Section 148 of the Income Tax Act, 1961 [in short, “the Act”] i.e., under the old regime and the consequent assessment orders, as also the notice of demand and penalty orders.

5. For the sake of convenience, the prayers made in each of the writ petitions are extracted hereafter:

“In W.P.(C) 882/2023

a) issue a writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing of:

(I) the notice dated 30.03.2021 issued under section 148 of the Income Tax Act, 1961 ('the Act');

(II) the assessment order dated 29.03.2022 passed under section 147 / 144 along with consequential notice of demand of even date issued under section 156 of the Act;

(III) the order dated 25.09.2022 imposing penalty under section 271(1)(b) of the Act;

(IV) the order dated 26.09.2022 imposing penalty under section 271(1)(c) of the Act;

(V) the order dated 28.09.2022 imposing penalty under section 271F of the Act;

in the case of the petitioner for assessment year 2015-16 and all proceedings / actions consequent thereto, including, but not limited to, the recovery notice dated 28.12.2022.

b) grant ad-interim ex-parte relief in terms of prayer (a) above staying the effect and operation of the impugned assessment order dated 29.03.2022 passed under section 147 r.w.s. 144, and all actions/proceedings consequent thereto, including, but not limited to, the notice of demand under section 156 and the orders imposing penalty under sections 271(1)(b), 271(1)(c) and 271F of the Act, as well as the recovery notice dated 28.12.2022 issued by the Respondent in the case of the Petitioner for assessment year 2015-16, during pendency of the present petition.

In W.P.(C) 883/2023

a) issue a writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing of:

(I) the notice dated 30.03.2021 issued under section 148 of the Income Tax Act, 1961 ('the Act');

(II) the assessment order dated 29.03.2022 passed under section 147 / 144 along with consequential notice of demand of even date issued under section 156 of the Act;

(III) the order dated 25.09.2022 imposing penalty under section 271(1)(b) of the Act;

(IV) the order dated 26.09.2022 imposing penalty under section 271(1)(c) of the Act;

(V) the order dated 28.09.2022 imposing penalty under section 271F of the Act;

in the case of the petitioner for assessment year 2016-17 and all proceedings / actions consequent thereto, including, but not limited to, the recovery notice dated 28.12.2022.

b) grant ad-interim ex-parte relief in terms of prayer (a) above staying the effect and operation of the impugned assessment order dated 29.03.2022

passed under section 147 r.w.s. 144, and all actions/ proceedings consequent thereto, including, but not limited to, the notice of demand under section 156 and the orders imposing penalty under sections 271(1)(b), 271(1)(c) and 271F of the Act, as well as the recovery notice dated 28.12.2022 issued by the Respondent in the case of the Petitioner for assessment year 2016-17, during pendency of the present petition.

In W.P.(C) 907/2023

a) issue a writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing of:

(I) the notice dated 30.03.2021 issued under section 148 of the Income Tax Act, 1961 ('the Act');

(II) the assessment order dated 30.03.2022 passed under section 147 / 144 along with consequential notice of demand of even date issued under section 156 of the Act;

(III) the order dated 25.09.2022 imposing penalty under section 272A(1)(d) of the Act;

(IV) the order dated 28.09.2022 imposing penalty under section 271F of the Act;

in the case of the petitioner for assessment year 2017-18 and all proceedings / actions consequent thereto, including, but not limited to, the recovery notice dated 28.12.2022.

b) grant ad-interim ex-parte relief in terms of prayer (a) above staying the effect and operation of the impugned assessment order dated 30.03.2022 passed under section 147 r.w.s. 144, and all actions/ proceedings consequent thereto, including, but not limited to, the notice of demand under section 156 and the orders imposing penalty under sections 272A(1)(d) and 271F of the Act, as well as the recovery notice dated 28.12.2022 issued by the Respondent in the case of the Petitioner for assessment year 2017-18, during pendency of the present petition."

6. Insofar as Mr Agarwal is concerned, his instructions, broadly, appear to indicate, that the Assessing Officer (AO) was not able to reconcile the discrepancy between the amounts said to have escaped taxation in each of the AYs involved, in view of the fact that the assessee did not participate in the proceedings.

6.1 The instructions, which were placed before us by way of a hardcopy, set out three tables for each of the AYs, which allude to the discrepancies, which according to the Assessing Officer were apparent from a perusal of

the respective writ petitions. For the sake of convenience, the information, compiled in a tabular chart, is set forth hereafter:

A.Y. 2015-16

As per the Respondent	As per reported financial results of the Petitioner		
Amount of income alleged to have escaped assessment on account of Import-Export transactions	Free on Board (FOB) value of Exports undertaken during the year [A]	Cost. Insurance and Freight (CII) value of Imports [B]	Total of FOB value of Exports and CIF value of imports
Rs.90,44,52,673	Rs.23,55,18,958	Rs. 68,06,34,963	Rs.98,61,53,921

A.Y.2016-17

As per the Respondent	As per reported financial results of the Petitioner		
Amount of income alleged to have escaped assessment on account of Import-Export transactions	Free on Board (FOB) value of Exports undertaken during the year [A]	Cost. Insurance and Freight (CII) value of Imports [B]	Total of FOB value of Exports and CIF value of imports
Rs.113,41,74,820	Rs.32,85,74,548	Rs.80,21,02,319	Rs.113,06,76,903

A.Y. 2017-18:

As per the Respondent	As per reported financial results of the Petitioner
Amount of income alleged to have escaped assessment on account of Export transactions	Free on Board (FOB) value of Exports undertaken during the year
Rs.37,05,62,687	Rs. 32,75,95,770

7. We may note, that the gravamen of respondent/revenue's assertion *qua* the petitioner is, that it continued to carry out export under the old PAN. This assertion has been strongly refuted by Mr Vohra, who appears on behalf of the petitioner.

8. Mr Vohra has attempted to demonstrate, that the export transactions undertaken by the petitioner, post allocation of the new PAN, were registered under the said PAN, and were duly incorporated in the returns filed, as well as the books of accounts concerning the AYs in issue.

9. This apart, Mr Vohra has said, that the proceedings for reassessment are severely flawed, for the reason that the Section 148 notices were not served on the petitioner.

10. It is also Mr Vohra's contention, that in any event, the proceedings are time barred.

11. We may note, that insofar as information given in the table concerning AY 2017-2018 is concerned, Mr Vohra has pointed out, that because of a typographical error, the figure noted in the table as Rs.32,75,95,770/- should be read as Rs.36,75,95,770/-.

11.1 In this context, he has drawn our attention to page 192 [in W.P.(C) 907/2023], which denotes the financial statements and the information contained in paragraph 28(e).

12. Mr Agarwal contests each of the submissions made on behalf of the petitioner.

13. As noted above, what emerges, is that the Assessing Officer, in any event, has not able to crystallize, what according to him is the exact amount of income, which was chargeable to tax, and had escaped assessment.

14. In these circumstances, the best way forward, in our view, would be to give an opportunity to the petitioner to file objections to the notices issued under Section 148 [i.e., under the old regime] in line with the decision of the Supreme Court in **GKN Driveshafts (India) Ltd. v. Income Tax Officer** (2003) 259 ITR 19 (SC). As required under the said decision, the Assessing

Officer will deal with the objections, and pass a speaking order.

15. In these circumstances, the assessment orders, as well as the penalty orders, referred to in paragraph 7.1 of this Court's order dated 24.01.2023 are set aside.

16. The petitioner will file objections to the notices dated 30.03.2021 issued under Section 148 of the Act [i.e., under the old regime] within the next six weeks.

17. The Assessing Officer will accord personal hearing to the authorized representative of the petitioner, whereupon he/she will pass a speaking order.

17.1 A copy of the order passed will be furnished to the petitioner.

17.2 In case the petitioner is aggrieved by the outcome of the order, it will have liberty to take recourse to an appropriate remedy, *albeit*, as per law.

18. Needless to add, if the Assessing Officer has any information or material available with him, the same will be furnished to the petitioner, so that the petitioner has an opportunity to respond to the same. This step should be taken prior to inviting the petitioner to file its objections in the matter.

19. The Assessing Officer will carry out the aforementioned exercise within six weeks of the objections being filed.

20. Mr Vohra also concedes, that since recourse has now been taken to the old regime, the petitioner will not take the stand hereafter, that the new reassessment regime is applicable to it.

20.1 The statement of Mr Vohra is taken on record.

21. The writ petitions are disposed of in the aforesaid terms. Pending applications shall stand closed.
22. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 31, 2023 / tr

Click here to check corrigendum, if any

