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

% *Date of Decision: 19.09.2023*

\+ **W.P.(C) 16462/2022**

BASIC CLOTHING PRIVATE LIMITED ..... Petitioner

Through: Mr Ruchesh Sinha, Adv.

versus

ITO, WARD 4 (1), DELHI & ORS. ..... Respondents

Through: Mr Shubhendu Bhattacharya, Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition concerns Assessment Year (AY) 2014-15.

2. The notice in this petition was issued on 30.11.2022, which was made returnable on 17.02.2023.

2.1 *Via* the said order, the respondents/revenue were granted two weeks to file a counter-affidavit in the matter.

2.2 In the interregnum, a direction was issued that there will be a stay on the continuation of the reassessment proceedings triggered against the petitioner/assessee *via* the impugned notice dated 29.07.2022, issued under Section 148 of the Income Tax Act, 1961 [in short, "Act"].

3. On 17.02.2023, once again a request was made on behalf of the respondents/revenue for grant of time to file a counter-affidavit in the

matter.

3.1 The request was acceded to and further four weeks were granted to the respondents/revenue to file a counter-affidavit in the matter.

3.2 However, the interim order dated 30.11.2022 was made absolute and consequently, the interlocutory application i.e., CM Appl.51688/2022 was disposed of.

4. It against this backdrop that the matter was listed today i.e., on 19.09.2023.

5. We find that the respondents/revenue have not filed a counter-affidavit in the matter.

5.1 We see no reason to grant any further time.

6. The case of the petitioner/assessee falls in a very narrow compass.

7. The petitioner/assessee claims that there has been a change of opinion inasmuch as the allegations based on which the reassessment proceedings having been commenced were the subject matters of the assessment order dated 31.03.2022, passed under Section 147 read with Sections 144 and 144B of the Act.

7.1 It has, therefore, become relevant for us to note as to what exactly were the allegations made *qua* the petitioner/assessee before the order dated 31.03.2022 was passed.

7.2 The clue with regard to the same is provided in the notice dated 16.12.2021, issued under Section 142(1) of the Act.

7.3 For convenience, the relevant part of the Annexure appended to the said notice is extracted hereafter:

> *"1. Detailed note on nature of business during the period 01-04-2013 to 31-03-2014.*

2. Furnish the bank statement of all banks relating to the period 01-04-2013 to 31-03-2014.

3. The Department has the following transaction information that has been made during F.Y. 2013-14 in your case.

S. No.	PAN	NAME	FY	VALUE	DATE
1.	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	5000000	09-10-2013
2.	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	2500000	09-10-2013
3.	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	2500000	10-10-2013
4.	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	2500000	14-10-2013
5.	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	2500000	15-10-2013
6.	AAECC9830H	Nirvaza Enterprises Pvt Ltd,	2013-14	5000000	20-03-2014
7.	AAECC9830H	Nirvaza Enterprises Pvt Ltd,	2013-14	3000000	29-10-2013
8.	AAECC9830H	Nirvaza Enterprises Pvt Ltd,	2013-14	4500000	30-10-2013

Please explain each of the above transactions with proper supporting evidence."

8. The record shows that the petitioner/assessee had filed a reply to the said notice dated 16.12.2021, issued under Section 142(1) of the Act as well as the Show Cause Notice (SCN) dated 27.03.2022, proposing variation in the income.

8.1 The reply of the petitioner/assessee is dated 28.03.2022.

9. It is also not disputed that since the petitioner/assessee had sought personal hearing, the same was granted by the Assessing Officer (AO).

9.1 It is only thereafter that the AO passed the aforementioned assessment order dated 31.03.2022, under Section 147 read with Sections 144 and 144B of the Act wherein, he made the following observations:

> *"The income declared in the ITR of the assessee is accepted as assessed income. Assessment is completed under Section 144/147 read with Section 144B of the Income-tax Act, 1961. Credit is given for prepaid taxes. Demand notice and copy of order are being issued to the assessee."*

10. It is thereafter that the respondents/revenue sought to take advantage of the new regime which had kicked in by virtue of the Finance Act, 2021, by issuing a notice dated 02.06.2022, under Section 148A(b) of the Act.

10.1 A perusal of this notice would show that the AO referred to the notice dated 31.03.2021, issued under Section 148 of the Act under the old regime.

10.2 It appears that the trigger for issuing the notice dated 02.06.2022 was the judgment of the Supreme Court rendered in ***Union of India vs. Ashish Agarwal*** (2022) SCC Online SC 543.

11. Evidently, the AO missed the fact that the assessment proceedings already stood concluded on 31.03.2022, with regard to various aspects emanating from the petitioner/assessee's return of income, including the aspects which were the subject matter of the notice dated 02.06.2022, issued under Section 148A(b) of the Act.

12. Notwithstanding the aforesaid, the petitioner/assessee filed its response dated 06.06.2022 to the said notice.

12.1 In the response, the petitioner/assessee made an attempt to persuade the AO not to continue with the reassessment proceedings as they had been the subject matter of the earlier assessment order dated 31.03.2022.

12.2 The AO, however, was not persuaded. This resulted in the AO passing the impugned order dated 29.07.2022, under Section 148A(d) of the Act.

12.3 It is relevant, therefore, to refer to what is embedded in the said order as this would clearly indicate as to whether or not the submissions advanced before us on behalf of the petitioner/assessee that it is a case of change of opinion is correct.

13. For easy reference, the relevant part of the said order is extracted hereafter:

"The assessee company has filed its return income amounting to Rs.4199340/- for A.Y.2014-15.
Further, no regular assessment was made in this case.
In this case, following information was received on INSIGHT portal :
Information has been uploaded on insight portal. On going through the said information in the case the assessee has taken/received accommodation entry from Kanhaiya Impex Pvt Ltd (accommodation entry provider) operated by Himanshu Verma amounting to Rs.27000000/- in considering FY as below:-

SN	Source PAN	Source PAN Name	Information FY	Information Type	Information Value	Information Date	Remarks
1	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	Others	5000000	09-10-2013	Accommodation Entry
2	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	Others	2500000	09-10-2013	Accommodation Entry
3	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	Others	2500000	10-10-2013	Accommodation Entry
4	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	Others	2000000	14-10-2013	Accommodation Entry
5	AAOCS5245C	Kanhaiya Impex Pvt. Ltd.	2013-14	Others	2500000	15-10-2013	Accommodation Entry
6	AAECC9830H	Nirvaza Enterprises Pvt. Ltd.	2013-14	Others	5000000	20-03-2014	Accommodation Entry
7	AAECC9830H	Nirvaza Enterprises Pvt. Ltd.	2013-14	Others	3000000	29-10-2013	Accommodation Entry

8	AAECC9830H	Nirvaza Enterprises Pvt. Ltd.	2013-14	Others	4500000	30-10-2013	Accommodation Entry

In view of the above, notice u/s 148 was issued to the assessee on 31.03.2021 after obtaining approval from the Competent Authority on 30.03.2021 but delivered after 31.03.2021.
Further, in compliance to the judgment dated 04.05.2022 of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs Ashish Agarwal (Civil Appeal No.300/2022), the assessee was provided with the information material relied upon by this office which suggests that income for the relevant year has escaped assessment and was given an opportunity to file its response .
The assessee was provided with the information/material relied upon by this office letter dated 02.06.2022 to furnish reply within two weeks i.e. by 16.06.2022 regarding why reassessment u/s 147 of the I.T. Act shall not be made in its case on the basis of information which suggests that income chargeable to tax has escaped assessment in this case.
In response, the assessee submitted his response dated 06.06.2022 in which the following has been mentioned:
1. No proceedings u/s 148A may be made because order u/s 147 has already been passed on the merits of the case by National Faceless Assessment Centre on 31/03/2022.
The reply of the assessee is considered but not found tenable, it is found in the dissemination note provided that Shri Himanshu Verma is in the business of providing accommodation entries . During the FY assessee has received accommodation entries of Rs.2,70,00000/- from Kanhaiya Impex Pvt Ltd operated by Shri Himanshu Verma.
Assessment u/s 147 has already been made on returned income of assessee dated 29/03/2022 on the basis of earlier notice issued under sect ion 148 of the income Tax Act, 1961. As the notice in this case was served to the assessee after the 31.03.2021. As per judgment dated 04.05.2022 of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs Ashish Agarwal (Civil Appeal No. 3005/2022) all notices under section 148 have been quashed which were served to the assessee on 01.04.2021 to 30.06.2021. Therefore, order u/s 147 dated 29/03/2022 done in this case also become non-est.
Therefore, the proceedings in the case re-initiated in view of decision of Hon'ble Supreme Court.
Accordingly, in compliance to the judgment, the assessee was given an opportunity to file its response as per amended Financial Act, 2021. Therefore, the said amount is liable to be treated as income of the assessee.
It is also evident from the information available with the Assessing Officer that the income chargeable to tax for this year, which has escaped

assessment, is more than Rs.50 Lakhs and is represented in the form of assets (accommodation entry in the form of share application money/advance to various companies and received back cash against such entries resulting in accumulation of cash which is an asset)
In view of the above, it emerges that the income to the extent of Rs.2,70,00,000/- has escaped assessment. Hence, the case of M/s BASIC CLOTHING PRIVATE LIMITED (PAN:AAECM0177D), A.Y. 2014-15 is a fit case for issuance of notice u/s 148 as per amended Finance Act, 2021.
This order is issued with the prior approval of Ld. Pr. Chief Commissioner of Income-Tax, Delhi."

14. Clearly, a perusal of the aforesaid extract of the assessment order and the extract of the notice issued under Section 142(1) of the Act would show that the same set of allegations were made against the petitioner/assessee, which were the subject matters of the assessment order dated 31.03.2022.

15. Therefore, in our view, as submitted by Mr Ruchesh Sinha, who appears on behalf of the petitioner/assessee, there has been a change of opinion.

16. The stand taken by Mr Shubhendu Bhattacharya, learned standing counsel, who appears on behalf of the respondents/revenue, that under the new regime the AO could in effect reopen the assessment proceedings by traversing
the same path and enquire into the same issues which were subject matter of the earlier assessment proceeding, is not tenable in law.

16.1 In that regard, the new regime has not veered away from the well-established principle that the re-assessment proceedings cannot be triggered *qua* aspects *vis-a-vis* which the AO has already formed an opinion.

17. Thus, for the foregoing reasons, we are inclined to allow the writ petition.

18. Accordingly, the notice dated 02.06.2022 issued under Section

148A(b), the impugned order dated 29.07.2022 passed under Section 148A(d) and the consequent notice of even date i.e., 29.07.2022 issued under Section 148 of the Act are set aside.

19. The writ petition is disposed of, in the aforesaid terms.

20. Parties shall act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 19, 2023/pmc