



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

Judgement reserved on: 09.10.2023

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Judgement pronounced on: 17.11.2023

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W.P.(C) 10802/2018

SARASWATI PETROCHEM PVT. LTD.

..... Petitioner

Through: Ms Rano Jain, Advocate with Mr Venketesh Chaurasia, Ms Ipsita Gupta and Ms Renu Arora, Advocates.

versus

INCOME TAX OFFICER, WARD 22(3)

..... Respondent

Through: Mr Prashant Meharchandani, Sr. Standing Counsel with Mr Akshat Singh, Jr. Standing Counsel with Ms Ritika Vohra, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

RAJIV SHAKDHER, J.:

I. Prefatory facts:

1. This writ petition is directed against proceedings triggered *qua* the petitioner/assessee under Section 148 of the Income-tax Act, 1961 [hereafter referred to as “the Act”].

2. The record shows that the Assessing Officer (AO) initiated assessment/reassessment proceedings vis-à-vis the petitioner/assessee concerning Assessment Year (AY) 2011-12 via notice dated 31.03.2018,



issued under Section 148 of the Act [hereafter referred to as the “impugned notice”].

3. For adjudication of the instant writ action, the following broad facts are required to be noticed.

4. The petitioner/assessee filed its Return on Income (ROI) concerning the AY mentioned above on 01.07.2011. This ROI was processed under Section 143(1) of the Act.

5. Six years and nine months after the ROI for AY 2011-12 was filed, the petitioner/assessee was, as indicated above, served with the impugned notice by the AO. The impugned notice was premised on the Assessing Officer’s (AO) belief, based on the reasons he recorded [although not communicated with the said notice], that income, otherwise chargeable to tax in AY 2011-12, had escaped assessment.

6. The petitioner/assessee was, thus, *via* the impugned notice, called upon to file an ROI in the prescribed form for the AY in issue within thirty (30) days.

7. The petitioner/assessee complied with the direction issued to it and, accordingly, filed the ROI on 05.04.2018, which declared the same income that had been disclosed while filing the original ROI on 01.07.2011.

8. Since the AO had failed to furnish the document containing ‘reason to believe’, which formed the basis for triggering reassessment proceedings against the petitioner/assessee, a request in that regard was made on 05.04.2018. The request made by the petitioner/assessee was followed by two reminders dated 01.06.2018 and 15.06.2018.



9. The AO, on 26.06.2018, finally responded to the request made and furnished a copy of the document in which 'reason to believe' had been recorded.

10. This propelled the petitioner/assessee to file its objections dated 08.09.2018.

11. The AO disposed of the objections on 24.09.2018. The dismissal of the objections via order dated 24.09.2018 constrained the petitioner/assessee to take recourse to the instant writ action.

11.1 Notice in the writ petition was issued on 09.10.2018. While issuing notice in this writ petition, the court restrained the respondent/revenue from passing final orders in the reassessment proceedings during the pendency of the writ petition.

12. The said interim order was made absolute, *albeit* during the pendency of the writ petition, on 08.02.2023.

II. Submissions on behalf of Counsel:

13. Ms Rano Jain advanced arguments on behalf of the petitioner/assessee, assisted by Mr Venkatesh Chaurasia, while on behalf of the respondent/revenue, submissions were advanced by Mr Prashant Meharchandani.

14. Ms Jain made the following submissions:

- (i) Information based on which the AO formed 'reason to believe' that income otherwise chargeable to tax had escaped assessment had not been furnished by him to the petitioner/assessee. The 'reason to believe,' as recorded by the



AO, alludes to the communication dated 12.03.2018 received from the Income Tax Officer (Nahan) and an FIR and chargesheet filed by the Central Bureau of Investigation (CBI), which included the names of the Directors of the petitioner/assessee, i.e., Krishan Kumar Bansal, Chhabil Das Bansal, and Surender Pal Bansal. Neither the communication dated 12.03.2018 nor the FIR and chargesheet have been furnished to the petitioner/assessee.

- (ii) It is a case of 'borrowed satisfaction'. The AO needed to independently verify the information and the material that had reached him.
- (iii) The facts recorded in the document containing 'reason to believe' do not have a nexus with the AY in issue. A close perusal of the details given in the document containing 'reason to believe' would show that the petitioner/assessee had received monies in two bank accounts maintained with the Pitampura and Pushpanjali Enclave branches of HDFC Bank during the periods spanning between 22.06.2009 and 08.12.2009 and 05.01.2010 and 18.02.2010 respectively. These periods concern the Financial Year (FY) 2009-10 [AY 2010-11] and not the period in issue, i.e., FY 2010-11 and AY 2011-12.
- (iv) The AO has not applied his mind. In the first tabular chart in the document containing the 'reason to believe', the RTGS receipt in the petitioner's/assessee's Pitampura bank account, against the date 08.12.2009, entry 15, shows that the amount ostensibly



received was Rs. 1,95,00,000/- while the cumulative balance of entries 1 to 15 is also shown as Rs. 1,95,00,000/-.

- (v) A perusal of paragraph 3.2 of the ‘reason to believe’, recorded by the AO, would show that while he concluded that there had been an increase in the ‘source of funds’ amounting to Rs. 61,87,061/- received against share capital, security premium, share application money, and long-term unsecured loans in the AY in issue, i.e., AY 2011-12, in comparison to the preceding AY, i.e., AY 2010-11, there is nothing to show that he had, with him, tangible evidence that would have him believe that ‘income chargeable to tax had escaped assessment’. The *sine qua non* for triggering the assessment proceedings is not a ‘reason to suspect’ but a ‘reason to believe’ that income chargeable to tax has escaped assessment. That reassessment proceedings have been triggered based on mere suspicion is evident from the following observations made by the AO in Paragraph 3.2 of the document containing ‘reason to believe’, wherein, in the context of the transfer of funds to a bank account of the petitioner/assessee, the AO notes, “...*may be in the guise of Share Capital, including Share Premium, bogus sales to M/s Para Impex Chem, or Long term loans or all...*”.
- (vi) The assertion that one of the bank accounts was not disclosed by the petitioner/assessee in the original ROI is incorrect. In the document containing ‘reason to believe’, the AO alludes to the account bearing no. 0711290000020 maintained with the Pushpanjali branch of HDFC bank, which, according to him,



had not been disclosed by the petitioner/assessee while filing its ROI. However, a perusal of the ROI, along with the balance sheet appended thereto, would show that a disclosure of the aforementioned bank account was made.

- (vii) There is nothing to suggest that the petitioner/assessee had any hand in depositing cash in the bank account of the entity going by the name Para Impex Chem, which was then transmitted to the subject bank accounts of the petitioner/assessee. In other words, no material was available with the AO suggesting that the money received by the petitioner/assessee *via* RTGS in the two accounts maintained with HDFC Bank represented its undisclosed income.

15. Mr Meharchandani's submissions can be broadly paraphrased as follows:

- (i) The petitioner/assessee had received cumulative amounts of Rs. 1,95,00,000/- and 15,20,000/- in the two bank accounts maintained with HDFC Bank from Para Impex Chem.
- (ii) A comparison of the ROIs filed for AY 2010-11 and 2011-12 would show that there had been an increase in the 'source of funds' in the AY in issue, i.e., AY 2011-12, to the extent of Rs. 61,87,061/-. The information received by ITO (Nahan)/ADIT(Inv)/Unit-4(2), New Delhi revealed that the petitioner/assessee was frequently disclosing its undisclosed income in the form of share capital, share application money, share premium, and long-term unsecured loans by routing it through third parties.



- (iii) Upon receipt of the information, the AO made enquiries and, thereafter, addressed a letter dated 20.03.2018 to the petitioner/assessee, calling upon it to furnish documents and information adverted to therein by 26.03.2018. Amongst others, the petitioner/assessee was asked to explain and provide details of financial transactions held during FY 2010-11 with Mr Ram Singh, proprietor of Para Impex Chem. As the petitioner/assessee did not respond to the communication dated 20.03.2018, the AO had no option but to trigger reassessment proceedings against the petitioner/assessee by issuing the impugned notice.
- (iv) The commencement of the reassessment proceeding is aligned with the provisions of Sections 147 and 148 of the Act and the law stated by the courts in that behalf.

III. Analysis and Reasons:

16. Having heard the submissions made by learned counsel for the parties and perused the record, the following undisputed facts have come to the fore:

- (i) Cash deposits were found in the accounts maintained by Para Impex Chem [whose proprietor was one Mr Ram Singh] with ICICI Bank, from which monies were remitted, *via* RTGS, to two bank accounts maintained by the petitioner/assessee with HDFC bank.



- (ii) In the account bearing number 01582320002572 [hereafter referred to as the “first bank account”] maintained with the New Delhi Pitampura branch of the HDFC bank, the petitioner/assessee, between 22.06.2009 and 08.12.2009, received a cumulative amount of Rs. 1,95,00,000/-.
- (iii) Likewise, in the account bearing number 07112790000020 [hereafter referred to as the “second bank account”], which the petitioner/assessee maintained with the Pushpanjali Enclave New Delhi branch of the HDFC bank, the cumulative amount received was Rs. 15,20,000/-, in the periods spanning between 05.01.2010 and 18.02.2010.
- (iv) A comparison of the amounts shown against share capital, security premium, share application money, and long-term unsecured loans for AY 2010-11 and 2011-12 would indicate that a cumulative increase in the source of funds had taken place to the extent of Rs. 61,87,061/-.
- (v) The petitioner/assessee refuted the assertion that it had received the notice dated 20.03.2018 before the issuance of the impugned notice. A perusal of the notice dated 20.03.2018, when compared with the ROI submitted for AY 2011-12, would show that the address given in the notice dated 20.03.2018 was incomplete.
- (vi) The income declared in the original ROI dated 01.07.2011 and the subsequent ROI filed pursuant to the issuance of the impugned notice remained the same. The petitioner/assessee had declared an income of Rs. 9,60,199/- [Rs. 9,60,200/-] in



both ROIs. Although, the original return was processed under Section 143(1) of the Act.

- (vii) The AO had not furnished either a copy of the letter dated 12.03.2018 received from the ITO (Nahan) or the copy of the intimation received from the ADIT(Inv)/Unit-4(2), New Delhi along with the document containing the 'reason to believe'. Likewise, the AO did not supply copies of the FIR and chargesheet while furnishing the document containing the 'reason to believe'.

17. It is against the backdrop of these facts that one must arrive at a conclusion as to whether the AO had triggered the reassessment proceedings in accordance with well-established principles enunciated by the courts.

17.1 The first and foremost principle of law, to which the AO must be wedded, is the obligation cast on him to furnish material and information that helped him to form a belief that income, otherwise chargeable to tax, had escaped assessment. Admittedly, the AO had in his possession a letter dated 12.03.2018 addressed to him by ITO (Nahan), which in turn contained the intimation supplied by ADIT (Inv)/Unit-4(2). It appears that the information furnished suggested that cash deposits had been made in the account bearing no. 083005000211 maintained with the ICICI bank by Ram Singh, the proprietor of Para Impex Chem, out of which monies were remitted via RTGS to the two bank accounts of the petitioner/assessee maintained with HDFC Bank. Neither the letter nor the intimation of the ADIT(Inv)/Unit-4(2), New Delhi was furnished to the petitioner/assessee.

17.2 Although the petitioner/assessee has also flagged the issue that copies of the FIR and the chargesheet filed by CBI were not furnished to it, we do



not lay much store by this assertion made in the behalf as, in the ordinary course, this information would have been made available to the petitioner/assessee, as it is not disputed by it that the names of its directors were included in the list of accused. That said, as indicated above, the petitioner/assessee was entitled to receive copies or relevant extracts from the letter dated 12.03.2018 and the intimation of the ADIT (Inv)/Unit-4(2).

17.3 Furthermore, the AO could have only considered the information concerning the period in issue, FY 2010-11 (AY 2011-12). However, the remittances received via RTGS from Para Impex Chem in the two bank accounts maintained by the petitioner/assessee with the HDFC Bank concerned the preceding period, i.e., FY 2009-10 (AY 2010-11). The AO was also unaware of the 'nature' of the deposits in the two HDFC banks received by the petitioner/assessee, which is evident from the following observations made by him: "*...may be in the guise of Share Capital, including Share Premium, bogus sales to M/s Para Impex Chem, or Long term loans or all...*".

17.4 Lastly, the mere increase in the source of funds from the previous AY amounting to Rs. 61,87,061/- in the form of share capital, security premium, share application money, and long-term unsecured loans without corroborating evidence, in itself, cannot be the basis of the belief that income, otherwise chargeable to tax, had escaped assessment.

17.5 It is evident that the AO had, perhaps, no tangible material available with him to form a belief that income, otherwise chargeable to tax, had escaped assessment. The phraseology used by the AO reveals that he 'suspected' that income chargeable to tax had escaped assessment. Therefore, according to us, this approach of the AO breached the other well-



established principle of law that suspicion and conjecture cannot form the basis for triggering reassessment proceedings *qua* an assessee.

18. In our view, the AO did not employ diligence while triggering the reassessment proceedings against the petitioner/assessee. It appears that because AO realized that the information received by him from ITO (Nahan) *via* letter dated 12.03.2018 concerned the preceding period, he attempted to commence reassessment proceedings under Section 147/148 of the Act by simply comparing the ‘source of funds’ reflected under various heads in the balance sheets for the preceding AY and the AY in issue. Furthermore, that there was a gap in the enquiry is evident from the following. First, the respondent/revenue emphasized the fact that information was sought from the petitioner/assessee *via* notice dated 20.03.2018 before it issued the impugned notice on 31.03.2018. The notice dated 20.03.2018 could not have reached the petitioner/assessee [and nothing to the contrary has been placed on record by the respondent/revenue] as concededly, it did not bear the complete address of the petitioner/assessee. Second, the AO did not even have the list of shareholders of the petitioner/assessee, as indicated in the ‘reason to believe’.

19. We are of the opinion that the AO did not have the tangible material on record that could have persuaded him to form a belief that income, otherwise chargeable to tax, had escaped assessment. The AO did not carry forward the enquiry process once he had received communication from ITO (Nahan). As noticed above, the AO did not furnish either the letter dated 12.03.2018 received from ITO (Nahan) or the relevant intimation received from the ADIT(Inv)/Unit-4(2) New Delhi, along with the document containing ‘reason to believe.’ Had the AO furnished the documents, he



would have been able to reach a firmer conclusion that crossed the threshold of suspicion and conjecture.

IV. Conclusion:

20. Thus, for the foregoing reasons, we are inclined to quash the impugned notice issued to the petitioner/assessee under Section 148 of the Act.

21. It is ordered accordingly.

22. The writ petition is disposed of in the aforesaid terms.

23. Parties will, however, bear their respective costs.

**(RAJIV SHAKDHER)
JUDGE**

**(GIRISH KATHPALIA)
JUDGE**

NOVEMBER 17, 2023 / tr