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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2501 OF 2024

Aditya Vijay Mirchandani ...Petitioner

Versus

The Income Tax Officer Ward 24-1-1 Parel Mumbai …Respondent

Mr. Madhur Agarwal with Mr. Jas Sanghavi, Mr. Fenil Bhatt, Mr. Bhushan Kanchan i/b. PDS Legal, for the Petitioner.
Mr. Suresh Kumar with Dr. Dhanalakshmi Iyer, for the Respondent.

CORAM: **G. S. KULKARNI & SOMASEKHAR SUNDARESAN, JJ.**

DATE **24 JUNE 2024**

P.C.

1. The challenge in this petition is to an order dated 15 April 2023 passed under Section 148A(d) of the Income Tax Act,1961 (for short "**the Act**") alleging that a "notional profit" of Rs.12.88 crores has escaped assessment in connection with the Financial Year 2015-16.

2. The position taken by the Revenue is based on a report received internally from Indian Audit & Account Department, enclosing the

information received pursuant to an order passed by the Securities and Exchange Board of India ("**SEBI**") on an *ex parte* ad-interim basis, in connection with a preferential allotment of shares by a listed company Kamalakshi Finance Corporation Ltd. ("**KFCL**").

3. It is undisputed that the allotment was effected on 17 February 2014 and the petitioner was allotted 2,00,000 equity shares of KFCL at a price of Rs.13/- each. As it transpired, the market price of the share went up to Rs.659/- some time in January, 2015. A notice came to be issued to the petitioner on 30 March 2023 asking the Petitioner to show cause as to why it should not be held that there has been income escaping assessment during the Financial Year 2015-16 to the extent of the difference between the allotment price of Rs.13/- and the market price of Rs.659/-, necessitating re-assessment of the returns filed for that year.

4. On 10 April 2023, the petitioner replied to the notice dated 30 March 2023. The Petitioner asserted that the shares that had been allotted on 17 February 2014, had not been sold at all in 2015-16. Consequently, there was no question of taxable income in the form of any capital gain. The Petitioner enclosed his demat account statement to show holdings as of 31 March 2016,

to show that the 2,00,000 shares of KFCL (renamed later as Prismx Global Ventures Ltd.) had not been sold during 2015-16.

5. We find that the Impugned Order does not deal with the submission at all. Instead, it proceeds to hold that since the market price during the Financial Year 2015-16 had gone upto to over Rs.650/- per share, notionally it could be said that the Petitioner had gained Rs.12.88 crores.

6. We find from the reply filed by the Revenue before this Court that there is no controversy about the shares not having been sold in 2015-16, for capital gains to arise. We also find that the purported notional profit of Rs. 12.88 crores based on market price appreciation of KFCL shares is the only ground on which the re-assessment was proposed. Evidently, the shares had not been sold at all during the financial year for any taxable event to have occurred to bring any income from capital gains to tax.

7. We have also gone through the report received by the Revenue from Indian Audit & Account Department, which was the basis of proposing re-assessment on the premise that income had escaped assessment. The said report is essentially based on an *ex parte* ad-interim order passed by SEBI in

connection with the investigation of "penny stocks" being allotted on preferential allotment basis. After such allotment, the price of the shares would be manipulated upwards in the securities market and allottees would sell their shares and make a profit. Learned Counsel for the Revenue pointed out that the Petitioner's name is shown as an allottee of the shares.

8. In the matter in hand, it being clear that no sale of such shares had been effected in the Financial Year 2015-16, there is no question of incidence of income on account of any sale of KFCL shares, justifying a view that income in that year had escaped assessment. Besides, there is no other ground in the notice dated 30 March 2023 for proposing reassessment. Consequently, the very basis on which the Impugned Order passed under Section 148A(d) of the Act, stands undermined. Since the very basis of proposing re-assessment does not exist, as a matter of fact, nothing survives in the proposal to conduct re-assessment.

9. In these circumstances, the Writ Petition deserves to be allowed. There has been no application of mind to the facts of the case and the explicit and specific reply of the Petitioner and the documentary record that showed that no

sale had been effected in that year, leading to no income that could have arisen in that year.

10. In view of the foregoing reasons, there is no merit in the request of the Learned Counsel for the Revenue to remand the matter for a fresh consideration of the facts (instead of simply quashing the Impugned Order).

11. Therefore, the Impugned Order is hereby quashed and set aside. No order as to costs.

(SOMASEKHAR SUNDARESAN, J.) **(G. S. KULKARNI , J.)**