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

\+ W.P.(C) 2400/2022

SHERRY CLOTHING AND DESIGNS PVT LTD.....Petitioner

Through: Mr. T. M. Shivakumar, Ms. Kirti Kishore, Ms. Sanjana, Mr. S.V. Rateria and Ms. Ritu Singh, Advs.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI & ORS. .....Respondents

Through: Mr. Sunil Kumar Agarwal, Sr. Standing Counsel with Mr. Shivansh B. Pandya and Mr. Viplav Acharya, JSCs and Mr. Utkarsh Tiwari, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **19.09.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "1. Issue a writ of Certiorari or writ of mandamus or appropriate writ, direction or order
>
> a. setting aside the impugned notice u/s 148 of the Act dated 31.03.2021 issued by Respondent No.1 in the Petitioner's case for A.Y. 2017-18.
>
> b. Quashing the proceedings u/s 147 of the Act initiated vide the impugned notice dated 31.03.2021 issued u/S 148 of the Act.
>
> 2. Pass any other Order that this Hon'ble Court may deem fit and proper in the interest of equity, justice and fair play."

2. The challenge is with respect to a reassessment action that came

to be initiated for **Assessment Year**[1] 2017-18. The notice under Section 148 of the **Income Tax Act, 1961**[2] is dated 31 March 2021. Before us, it was not disputed that the same was duly served prior to the amended regime of reassessment having come into play by virtue of the provisions of Finance Act, 2021.

3. The respondents have proffered the following reasons underlying the formation of opinion that income of the petitioner had escaped assessment. Those reasons are extracted hereinbelow: -

> **"Reasons for issue of notice u/s 148 of the IT Act, 1961**
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> **Basic Details of the case:**
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> The assessee is a company which was incorporated on 12.02.2004 under the Company Act, 1956. The details of the directors of the assessee company are Kavita Mehra, Akul Mehra, Sanjeev Mehra, Manmohan Lal Verma, Shubh Mehra and Rachna Mehra.
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> The assessee has filed the return of income for the year under consideration on 29.10.2017 declaring income of Rs.3936207/-.
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> **1. Details of Information received**
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> Information was received through Insight Portal of the Income Tax Department, wherein it was informed a search operation was conducted in Bajrang Lal Periwal group. Statement of Sh. Khuswant Singh Rawat was recorded on oath during, the Search proceedings. Sh. Khuswant Singh Rawat was filing the ITRs of all family members, concerns, firms, and HUF of Bajrang Lal Periwal. Sh. Khuswant Singh Rawat has stated that numerous bank accounts were maintained and operated by Bajrang Lal Periwal group to route his unaccounted funds into BKR Capital Pvt Ltd in form of unsecured loans. BKR Capital Pvt Ltd is owned and run by Bajrang Lal Periwal. BKR Capital Pvt Ltd is a NBFC company dealing in providing loan and finance to various companies and persons. Further it was gathered that Mr. Vinod Gupta, a friend of Bajrang Lal Periwal is an entry operator and providing accommodation entrees to various firms, companies on commission basis.
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> The assessee company has also taken loan of Rs.6000000/- during FY 2016-17 from BKR Capial Pvt Ltd, owned and run by Bajrang Lal Periwal.

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[1] AY
[2] Act

1. Details of analysis of information received and material collected

I have independently examined the information of the department and after duly considering the same, the same has also been verified from the ITR filed by the Assessee.

4. It is worth discussing the following case laws which are relevant to the matter in hand. In the case of ***CIT v Nova Promoters &Finlease (P) Ltd (ITA No. 342 of 2011) dated 15.02.2012, the Hon'ble Delhi High Court***, which is the jurisdictional High Court, held that as long as there is a 'live link' between the material which was placed before the Assessing Officer at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held-

"We are aware of the legal position that at the stage of issuing the notice u/s 148, the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment".

Further, in the case of ***Rajesh Jhaveri Stock Brokers Pvt. Ltd. v. ACIT (2007) 291 ITR 500/161 Taxman 316 (Supreme Court)***.The Hon'ble Apex Court has held that:-

"All that is required for the Revenue to assume valid jurisdiction u/s 148 is the existence of cogent material that would lead a person of normal prudence, acting reasonably, to an honest belief as to the escapement of income from assessment."

Income Chargeable to tax escaping assessment

5. To conclude, <u>I have independently examined the entire gamut of facts and circumstances surrounding the case as also the material available on record and after due application of mind on the same as brought out above, I, therefore, reasons to believe that an income of Rs.6000000/- in the case of the assessee that was chargeable to tax under the provisions of Income Tax Act, 1961 has escaped assessment during the A.Y. 2017-18 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment.</u> Hence it is a fit case for initiation of proceedings in terms of clause (b) of Explanation 2 to Section 147 of I.T. Act 1961 so as to bring to tax the income escaping assessment to the tune of Rs.6000000/- and any other income which comes to my notice subsequently during the course of assessment proceedings. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 is reason to believe as recorded above.

6. In view of the above stated facts, I am satisfied that atleast an income exceeding Rs.1 lakh chargeable to tax has escaped assessment for the A.Y. 2017-18, within the meaning of section

147 of the Income Tax Act, 1961.

7. In this case, four years have not elapsed from the end of the assessment year under consideration, necessary sanction to issue notice u/s 148 of the Act is being obtained from the Addl. Commissioner of Income Tax, Range-22, New Delhi under the provisions of section 151(2) of the Income Tax Act, 1961 read with the Taxation and other laws (relaxation and amendment for certain provisions) Act, 2020.

Yours faithfully,

DEEPAK KUMAR

WARD 23(1), DELHI/"

4. When the writ petition was originally entertained, we had passed an interim order on 02 March 2022, in terms of which it was provided that while proceedings may go on, any order of assessment if framed, shall not be given effect to and shall be subject to the outcome of the writ petition.

5. As we view the allegations which are levelled, we find that it was the case of respondents that pursuant to a search conducted on the Bajrang Lal Periwal Group, information had come to light that the group entities were being used to channel unaccounted funds. The respondents also appear to have taken on record the statement of one Mr. Khushwant Singh Rawat who was stated to be filing the Income Tax Returns for all family members, concerns, firms as well as the **Hindu Undivided Family**[3] of Mr. Bajrang Lal Periwal. Mr. Rawat is recorded to have stated that the numerous bank accounts maintained and operated by the Bajrang Lal Periwal Group were used to route unaccounted funds into **BKR Capital Pvt. Ltd.**[4] in the form of unsecured loans. It is further alleged that BKR Capital was owned and run by Mr. Bajrang Lal Periwal and that it was a **Non-Banking**

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[3] HUF

[4] BKR Capital

Financial Company[5] engaged in providing loans and finance to various companies and persons. The respondents further allege that Mr. Vinod Gupta, a friend of Mr. Bajrang Lal Periwal, was an entry operator providing accommodation entries to various firms/companies on a commission basis.

6. Since the petitioner was the recipient of a loan of INR 60,00,000/- during **Financial Year**[6] 2016-17 from BKR Capital, which was owned and run by Mr. Bajrang Lal Periwal, the respondents appear to have formed the opinion that the income liable to tax in the hands of the assessee would have escaped assessment.

7. In the course of the assessment exercise which was undertaken, the petitioner furnished a detailed reply dated 07 March 2022. It had made due disclosures of the various bank accounts which were operated by it in FY 2016-17. It also admitted to receiving an unsecured loan of INR 60,00,000/- from BKR Capital in the year in question.

8. It, however, asserts that the aforesaid amount was borrowed at an annual interest rate of 9% and was also repaid in due course of time. The petitioner also placed the confirmation letters from BKR Capital, the ledger accounts of the loan in question, Form 16A evidencing the deduction of tax under Section 194A of the Act as well as the transaction trail with respect to receipts and payments made to BKR Capital for the consideration of the **Assessing Officer**[7].

9. What was, however, conceded was that the aforesaid loan was inadvertently shown in the audited balance sheets as loans received from Directors as opposed to an unsecured loan received from an

[5] NBFC
[6] FY
[7] AO

independent entity.

10. In our considered opinion, the aforesaid mischaracterisation of the loan would really be of little consequence once it is found that the credit facilities stood duly repaid, albeit in FY 2018-19.

11. We are principally concerned with the reasons which came to be recorded for the purposes of initiating reassessment. As would be evident from the reasons which were assigned and appear to have weighed upon the AO, it is apparent that the solitary allegation levelled against the writ petitioner was of a receipt of INR 60,00,000/- from BKR Capital. The notice for reassessment is not based on any allegation of the aforesaid receipt being an accommodation entry which was obtained by the writ petitioner or that the same was merely a book entry obtained on payment of commission. Undisputedly, the audited Balance Sheet did capture details with respect to the loan which had been received. The petitioner is also not placed under an allegation of there having been a failure to have disclosed the receipt of that loan. It is also not the case of the respondents that the characterisation of the loan as one received from Directors has resulted in an additional tax burden having been avoided.

12. In view of the aforesaid, it becomes manifest that the reasons fail to place or build a foundation which could be said to be supportive of an opinion that could have been legitimately harboured that income liable to tax had escaped assessment. We consequently find ourselves unable to sustain the reassessment action.

13. The writ petition shall thus stand allowed. The impugned notice dated 31 March 2021 is hereby quashed. In terms of the interim order dated 02 March 2022 which had been passed when the writ petition was originally entertained, and in light of the reasons that have been

assigned hereinabove, the order of assessment would meet a similar fate.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 19, 2024/*ns*