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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 30.09.2024

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W.P.(C) 10070/2024 & CM APPL. 41223/2024**RAGHAV GARG**

.....Petitioner

Through: Mr. Anurag Rajput, Adv.

versus

INCOME TAX OFFICER WARD 35 (1) DELHIRespondent

Through: Mr. Vipul Agrawal, SSC, Mr. Gibran Naushad, JSC, Ms. Sakashi Shairwal, JSC and Mr. Gaurang Ranjan, Adv.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present writ petition impugning an order dated 12.04.2024 (hereafter *the impugned order*) passed under Section 148A (d) of the Income Tax Act, 1961 (hereafter *the Act*) pertaining to the assessment year (AY) 2020-2021.

2. The Assessing Officer (hereafter the *AO*) had issued a notice dated 30.03.2024 under Section 148A(b) of the Act proposing to reassess the income of the petitioner for the AY 2020-2021 and called upon the petitioner to show cause why a notice under Section 148 of the Act be not issued. The Annexure to the said notice indicates that the petitioner's



assessment for the AY 2020-2021 was sought to be reopened on account of information received from the investigation wing of tax department regarding two of the entities from whom the petitioner had availed the supplies. It was alleged that the petitioner had availed supplies worth ₹22,12,474/- from one M/s S.P. Trading and supplies of a value of ₹87,37,811/- from one M/s N.B. Agency during the previous year relevant to the AY 2020-2021. It was alleged that during the investigation, the said entities were found to be non-existent by the investigation wing. The relevant extract of the Annexure is set out below:-

“Information has been received in accordance with the Risk Management Strategy formulated by CBDT on Insight Portal under the head High Risk Transaction CRIU/VRU that the assessee during the F.Y. 2019-20 relevant to AY, 2020-21 has entered into the following suspicious transactions:

Information Source PAN	Information Source	Information Type	Information Description	Information Value (Rs.)
ACXFS9958A	S.P Trading	Others	Bogus purchase	22,12,474/-
AYDPN2775J	N B Agency	Others	Bogus Purchase	87,37,811/-
Total				1,09,50,285/-

2. As per records, the assessee, Shri Raghav Garg has filed return of income for the A.Y. 2020-21 declaring income of Rs 7,55,880/-. In this case, information was received from Investigation Wing that Shri. Raghav Garg had made bogus purchase of Rs. 22,12,474/- from M/s S.P Trading. and made bogus purchase of Rs. 87,37,811/- from M/s N.B. Agency during-FY, 2019-20 relevant to AY 2020-21. Summon was issued by the Investigation Wing to M/s S.P Trading and M/s N.B Agency. Also, as per inspector's report, M/s S.P Trading and M/s N.B Agency does not exist at Holding No. 155/1, 44/122 Daga Colony, Dum Dum, North 24, West Bengal 700074 and at 503, Barasat Road, North 24 PGS North-700110 respectively. In view of the above it was construed that M/s S.P Trading and M/s N.B Agency are paper entities with no



financial worth and are used for providing accommodation entries in the guise of invoice issuance Therefore, transactions made by the entities were sham transactions and all the sales made by the entity are bogus and all the sales proceeds in the hand of Shri Raghav Gargare actually bogus purchases. Therefore, it was concluded that Shri Raghav Garg has made bogus purchase to the tune of Rs. 1,09,50,285/- during the F.Y. 2019-20. The information available with this office under risk management strategy formulated by CBDT suggests that income to the tune of Rs 1,09,50,285/- chargeable to tax has escaped assessment in the case of assessee Shri Raghav Garg during the relevant assessment year. Considering the facts of the case and the nature of information received, enquiry u/s 148A(a) of the Act is not required in this case. Copy of case related information as downloaded from the Insight Portal in your case is also annexed herewith.”

3. The petitioner had responded to the said notice on 01.04.2024 and had enclosed copy of the invoices, E-way bill and lorry receipts as well as a copy bank statement in support of its contention that its purchases from the two named suppliers, M/s. S.P. Trading and M/s N.B. Agency, were genuine purchases. However, there was no material placed regarding the creditworthiness of the said entities or any other material to establish that they were in fact physically functioning at their given address.

4. The AO considered the petitioner’s response and had proceeded to issue the notice dated 12.04.2024 under Section 148 of the Act. The impugned order indicates that the AO had examined the petitioner’s response but did not find it persuasive to refrain from issuing a notice under Section 148 of the Act. The AO specifically noted the allegation that M/s S.P. Trading and N.B. Agency were paper entities and had no financial worth. According to the information with the AO, the said entities were providing accommodation entries in guise of supply of goods. Paragraph 4



of the impugned order is relevant and is set out below:-

“4. In response, the assessee filed reply submitting that he had purchased Cooper Scrap from M/s S P Trading and M/s N B Agency during the year under consideration. Reply of the assessee has duly been considered, however, it is not found tenable due to the fact that during the course of investigation it was found that M/s S.P Trading and M/s N.B Agency did not exist at the registered address M/s S.P Trading and M/s N.B Agency and they are paper entities with no financial worth and are used for providing accommodation entries in the guise of invoice issuance. Therefore, transactions made by the entities were sham transactions. Considering that the assessee has not given satisfactory reply/explanation, such transactions represent the undisclosed income of the assessee for the year under consideration. Moreover, this piece of information falls in the category as explained in Explanation 1(i) to Section 148 of the Act and suggests that income of Rs. 1,09,50,285/ chargeable to tax has escaped assessment. Thus, the assessee's case is covered under provisions of section 149(1) (a) of the Act, accordingly, it is concluded to be fit case for issuing notice u/s 148 of the Act for the A.Y. 2020-21.”

5. It is relevant to note that at this stage of reopening of assessment, it is not necessary for the AO to finally determine the controversy.

6. In *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.*: (2007) 291 ITR 502, the Supreme Court held as under:

“19. Section 147 authorises and permits the assessing officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word “reason” in the phrase “reason to believe” would mean cause or justification. If the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. The function of the assessing officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.



20. As observed by the Delhi High Court (*sic* the Supreme Court) in *Central Provinces Manganese Ore Co. Ltd. v. ITO* [1991] 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is “reason to believe”, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the assessing officer is within the realm of subjective satisfaction [see *ITO v. Selected Dalurband Coal Co. P. Ltd.* [1996] 217 ITR 597 (SC) ; *Raymond Woollen Mills Ltd. v. ITO* [1999] 236 ITR 34 (SC)].”

7. Although, the above decision was rendered in the context of Section 147 and Section 148 of the Act as were in force prior to 01.04.2021, however, the principle enunciated in the said decision is equally applicable post the amendment of Section 147 and 148 of the Act. The limited question to be addressed is whether the AO has grounds that suggest that the petitioner’s income has escaped assessment notwithstanding the petitioner’s response to the notice dated 30.03.2024.

8. As noted above, the principal allegation is that the petitioner had availed the accommodation entries from two above-named suppliers who were found to be non-existent by the investigation wing of the tax department. Clearly, the said information leads to the suggestion that the petitioner’s income for the relevant Assessment Year escaped assessment.

9. Although, the petitioner had produced documents in support of its claim that the purchases were genuine, however, it had not produced any other material to establish that the said two named entities (M/s S.P. Trading



and N.B. Agency) were creditworthy or were of any substance.

10. It is neither necessary nor apposite for this Court to proceed on an adjudicatory exercise regarding the allegations made in the notice as that is the matter which is to be considered by the AO in the reassessment proceedings. Suffice to say that the AO had sufficient grounds that suggest that assessee's income for the AY 2020-2021 has escaped assessment.

11. In view of the above, the present petition is dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

SEPTEMBER 30, 2024

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Click here to check corrigendum, if any