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

+ **W.P.(C) 13030/2019**

VEDANTA LIMITED

.....Petitioner

Through: Mr. Sachit Jolly, Ms. Disha Jham, Ms. Soumya Singh, Mr. Rishabh Malhotra, Mr. Devansh Jain & Mr. Raghav Dutt, Advs.

versus

**ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE 26(1) & ANR.**

.....Respondents

Through: Mr. Shlok Chandra, SSC with Ms. Madhvi Shukla, Ms. Priya & Mr. Sudharshan Roy, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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29.07.2024

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

“a) A Writ, Order or Direction in the nature of Certiorari quashing the impugned notice dated 30.03.2019 issued under Section 148 of the Act and all proceedings initiated pursuant thereto;

b) A Writ, Order or Direction in the nature of mandamus or an order prohibiting the Respondent from framing assessment against the petitioner under Section 147/148 of the Act;

c) Ad-interim prayer in terms of (a) and/or (b) above;

d) pass any other order(s) as this Hon'ble Court may deem to be fit and more appropriate in the facts and circumstances of the case.”

2. The challenge is to the reassessment action initiated pursuant to a notice dated 30 March 2019 and pertains to **Assessment Year¹**

¹ A.Y.



2012-13. The notice under Section 148 of the **Income Tax Act, 1961**² alludes to the following facts.

3. The respondents take note of the Return of Income which was filed by the petitioner for A.Y. 2012-13 on 27 November 2012. The **Assessing Officer**³ appears to have taken note of a letter dated 05 March 2019 received from the Department of Mines and Geology of the State of Karnataka, carrying information in respect of iron ore mines e-auctioned during the **Financial Year**⁴ 2011-12. The auctions were settled in favour of the petitioner and as per the information and reports received by the respondents the bid money amounting to INR 167,75,60,000/- deposited. The respondents, however, took note of the petitioner having disclosed iron ore sales at INR 160,93,69,636/-. It is on the aforesaid basis that they appear to have formed the opinion that there was a non-disclosure of income amounting to INR 6,81,90,364/-.

4. This becomes apparent from a reading of the following paragraphs forming part of the notice under Section 148 of the Act:-

“2. Brief details of information collected/received by the AO:

2.1 I have perused and analyzed the information available with this office. The following facts emerged from the inputs which are mentioned above:-

(i) A letter dated 05.03.2019 received from JDIT(I&CI), C.R.BUILDING, Annexe, 5thFloor, Queen's Road, Bengaluru-560001 vide F. No. 12(b)/JDIT(I&CI)/MINING/2018-19/16 alongwith enclosures has been received. The relevant contents of the letter which constitute information as under:

“a) As per the report forwarded to this office a verification was carried out by (I&CI) officers. As per the report, it was carried on data received from department of mines and geology. As per the information received the details of iron ore e auction during F.Y. 2011-12 is as follows:-

² Act

³ AO

⁴ F.Y.



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3. Analysis of information collected/ received:

3.1 As per the information collected following details can be very well seen. A letter u/s 133(6) was issued to assessee Vedanta Ltd.(earlier known as Sesa Goa Ltd.). The Iron Ore of the assessee was E-auctioned by the Monitoring Committee during FY 2011-12. The E-auction receipts are at Rs.167,75,60,000/-.

2/9/2011 has appointed Central Empowered Committee(CEC) to oversee E-auction of Iron Ore from Karnataka. The CEC in turn has formed a Monitoring Committee to carry out the order of the Supreme Court. In this backdrop the details of the Iron Ore E-auctioned by the Monitoring Committee was obtained.

(2) As per the details furnished by the Department of Mines & Geology, the E-auction receipts pertaining to the assessee for FY 2011-12 are at Rs.167,75,60,000/-. The auction wise receipts are as per the Annexure-I enclosed to this report.

(3) Letter dated 21/02/2019 was issued to the assessee calling for details of Iron Ore E-auctioned during FY 2011-12, details of sales shown in the Income-tax return, nature of sale shown and party wise sales effected in respect of Iron Ore. The assessee has filed the details called for.

(4) The assessee company filed their submission vide letter dated 07.02.2019. The assessee has shown Iron Ore E-auctioned sales of Rs.160,93,69,636/- during the F.Y. relevant to A.Y.2012-13.

Outcome of the Case: Since the assessee has shown Iron Ore E-auctioned during F.Y.2011-12 AT Rs.160,93,69,636/-, which is less than the information received i.e. Rs.167,75,60,000/-, the information is to be sent to assessing officer for taking remedial measure in this case.

4. Enquiries made by the AO as sequel to information collected/ received:

In this case, the information received by (I&CI) office through external sources or external department. Such the information has received externally, this is not a case of internal examination. The information has been received from department of Mines and Geology. The department of mines and geology has clearly mentioned that it has got total receipts of Rs.167,75,60,000/- and therefore this information has been received by department of external agency. Further, enquiry has also been conducted by Income Tax Department and it has been found that total Iron Ore e auctioned sales has been of Rs.160,93,93,639/-. Therefore, assessee has undisclosed income detected is Rs.6,81,90,364/-. Further, notice u/s 133(6) is issued to assessee on 22.03.2019 which is being reproduced below:-



“In this connection, you are required to furnish the following details/ documents:

(a) Furnish a short note on the business activities carried out by your company/firm.

(b) Furnish copy of account of Vedanta Ltd. (earlier known as Sesa Goa Ltd.) for the period 01.04.2011 to 31.03.2012; as per your books duly certified by you. Furnish complete narration of each entry.

(c) Balance sheet, Profit and Loss Account, reason for not filing of return.

(d) As per details available in this office the case was already assessed for F.Y. 2011-12 u/s 143(3), however in light of information received in this office you are being given opportunity to submit all the details with respect to transactions done by you w.r.t total iron ore e-auction F.Y. 2011-12. You are also being given opportunity to submit all the proofs as submitted by you during assessment proceedings related to A.Y. 2012-13 with respect to transaction done by you in iron ore sale. You are also required to submit all the necessary documents/confirmation which could determine genuinity and credibility of such transactions. Also you are required to submit as to how decision was taken to auction these iron ores alongwith documentary proof, if any available with you. Also furnish copy as to how much receipts did department of mines and geology get after auctioning of these ores. The details are mentioned below:-

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Therefore a comprehensive notice u/s 133(6) has been provided to assessee. The assessee was also asked to submit all the documents to submitted by assessee during assessment proceedings with regard to these information. The assessee replied as follows:-

"Similar information already called by ADIT(C&IC)-2, Bangalore, we filed all details required and copy of the same enclosed for your ready reference,"

Thus assessee has submitted the same reply as submitted to ADIT(C&IC)-2, Bangalore, And the same letter with findings done by office of (C&IC)-2, Bangalore has been forwarded to this office, Further, assessee has also not complied clearly with point D notice u/s 133(6).

The point D notice u/s 133(6) is being reproduced below:-

As per details available in this office the case was already assessed for F.Y. 2011-12 u/s 143(3), however in light of information received in this office you are being given opportunity to submit all the details with respect to transactions done by you w.r.t. total iron



ore e-auction F.Y. 2011-12. You are also being given opportunity to submit all the proofs as submitted by you during assessment proceedings related to A.Y. 2012-13 with respect to transaction done by you in iron ore sale. You are also required to submit all the necessary documents/confirmation which could determine genuinity and credibility of such transactions, Also you are required to submit as to how decision was taken to auction these iron ores alongwith documentary proof, if any available with you. Also furnish copy as to how much receipts did department of mines and geology get after auctioning of these ores. The details are mentioned below:-

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Thus, sufficient opportunity was given to assessee to produce all the documents as was submitted during assessment proceedings. However assessee has not replied concretely w.r.t. this questionnaire. Further, complete details of iron ore auctioned was given to assessee. However assessee submitted the previous reply only which was submitted by assessee before ADIT(C&IC)-2, Bangalore.

Therefore, The reply of assessee is considered and not acceptable as (C&IC)-2, Bangalore has forwarded the information after analysing submission made by assessee previously.

5. Findings:

5.1 From the above it is evident that the source of such of income of Rs. 6,81,90,364/-seems to be not assessed and brought to tax in the total income of the assessee for the relevant period and vitiated the provisions of section 139 of the IT Act,1961. This is to be considered as fresh information as the same has not been considered duly in assessment order previously because this is the new information that has been provided by department of geology & mines which is a different department altogether.”

5. It is the aforesaid information which forms the basis for commencement of the reassessment action. Before proceeding to consider the challenge which stood raised on merits, it would be appropriate to briefly notice the following salient facts.

6. The petitioner was originally known as Sesa Goa Limited and whose name was subsequently changed to Sesa Sterlite Limited. It is stated to be a company duly incorporated and engaged in the activity



of mining iron ore and non-ferrous metals as well as power generation.

7. On 26 August 2011, the Supreme Court while considering W.P.(C) 562/2009, imposed a ban on mining activities in various districts of Karnataka and also commanded the **Central Empowered Committee**⁵ to devise a methodology for sale and transportation of stock already mined by various licensees. The duty of selling the entire iron ore or stock mined and generated within Karnataka was thereafter entrusted to a Monitoring Committee, which was to undertake the sale and distribution thereof through the e-auction mode. This methodology was created in terms of an order dated 23 September 2011 passed by the Supreme Court in the aforementioned proceedings.

8. According to the admitted position which emanates from the notice issued by the respondents themselves, the petitioner appears to have participated in various e-auctions conducted by the Department of Mines and Geology and submitted bid amounts totalling INR 167,75,60,000/- in F.Y. 2011-12.

9. For the year in question, namely A.Y. 2012-13, the petitioner submitted a Return of Income on 27 November 2012, declaring its total income at INR 2248,58,57,710/-. A scheme of merger thereafter came to be sanctioned by both the High Courts of Bombay and Madras in terms of which Sterlite Industries (India) Limited, Madras Aluminium Company Limited and Sterlite Energy Limited amalgamated with the petitioner (at that time known as Sesa Goa Limited) coupled with a demerger of Vedanta Aluminium Limited. The appointed date under the merger scheme was prescribed to be

⁵ CEC



01 April 2011.

10. Pursuant to the aforesaid scheme coming to be accorded sanction by the High Courts of Bombay and Madras on 03 April 2013 and 25 July 2013 respectively, the petitioner filed revised audited financial statements on 21 March 2014. It becomes pertinent to note that during the course of assessment which ensued thereafter, a notice under Section 142(1) of the Act dated 08 March 2016 came to be issued requiring further information from the petitioner, including details of mine wise iron ore extracted or purchased as also the quantity exported and sold. This would be evident from a perusal of query number 7 which appears at pdf page no. 435 of our digital record.

11. In response to the aforesaid notice, the petitioner vide its communication of 18 March 2016 provided the required information as would be evident from its response comprised in Paragraphs 5, 6 and 7 and which are reproduced hereinbelow:-

“5. With respect to your query at Sr. No.7, the details of iron ore production, purchases, export/sales and stock of the Iron Ore Division is attached herewith as **Annexure 10**. The percentage of ferrous content in quantity Mined/Purchased/Exported/ Sold is in the range of below 54 Fe to 62 Fe grade.

6. With respect to your query at Sr. No.8, the Iron Ore Division has purchased Iron Ore from M/s Cosme Costa & Sons, Altinho, Mapusa Goa Quantity 2984521 WMT at Rs.317,38,54,135/- for exports.

7. With respect to your query at Sr. No.9, for the Iron Ore Division no commission was paid to any overseas agents for the sale of Iron Ore.”

12. The petitioner along with its reply also appears to have enclosed details which formed part of a letter addressed to the Regional Controller of Mines, Southern Region, Bangalore, in which details of iron ore extracted and sold were duly recorded. This would be evident



from the disclosures which appear at pdf page nos. 441 to 480 of our digital record. The aforesaid disclosures appear to have been duly accepted in the assessment order which ultimately came to be drawn on 27 February 2017.

13. Reverting then to the notice under Section 148, it is manifest that the e-auction bid amount of INR 167,75,60,000/- is what has been taken note of by the respondents as constituting the income of the petitioner for the relevant A.Y. It is the aforesaid premise which is assailed by Mr. Jolly, learned counsel appearing for the writ petitioner, who submits that the aforementioned sum was not the revenue earned by the petitioner-assessee from the sale of iron ore and other non-ferrous metals which may have been mined or extracted but the bid amount which was submitted to the Department of Mines and Geology for the purposes of acquiring the right to mine. According to Mr. Jolly, the figure of INR 160,93,69,639/- correctly represents the sales and revenue generated from mining activity and which had been duly disclosed by the petitioner. It is in the aforesaid backdrop that learned counsel contends that the assumption that a sum of INR 6,81,90,364/- constituted undisclosed income is thoroughly misconceived and the reassessment action thus liable to be quashed.

14. It becomes pertinent to note that despite the aforesaid aspect having been duly highlighted by the writ petitioner in its response to the original notice as well as in the present proceedings, the AO has continued to take the wholly untenable stand that INR 6,81,90,364/- constitutes income, the source of which is liable to be examined and reassessed.

15. As we peruse the contents of the reasons for reopening and which form a part of Annexure P-2 of our digital record, it is manifest



that the entire assumption of jurisdiction is based on a wholly erroneous view of the aforesaid amount constituting the income of the assessee. Regard must be had to the fact that the Department of Mines and Geology had merely provided to the AO the total amount paid by the petitioner for obtaining mining rights in the e-auctions which were conducted. The said amount clearly cannot be countenanced to be the income of the assessee for the relevant A.Y. The income of the assessee would only be that which was garnered from the sale of iron ore and other non-ferrous metals. The fact of INR 167,75,60,000/- representing the amounts paid by the petitioner for earning mining rights alone could not be disputed by Mr. Chandra, learned counsel appearing for the respondents.

16. In view of the aforesaid and in light of the wholly untenable stand which has been taken, we find ourselves unable to sustain the reassessment action.

17. The writ petition is accordingly allowed and the impugned notice dated 30 March 2019 under Section 148 is hereby quashed and set aside.

YASHWANT VARMA, J

TARA VITASTA GANJU, J

JULY 29, 2024/RW