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

\+ W.P.(C) 2131/2016

SUNDER SYSTEM PVT.LTD .....Petitioner

Through: Mr. Satyen Sethi and Mr. Arta Trana Panda, Advocates.

versus

ASSTT.COMMISSIONER OF INCOME TAX, & ANR. .....Respondents

Through: Mr. Shlok Chandra, SSC with Ms. Madhavi Shukla, Ms. Naincy Jain, JSCs and Mr. Madhav Gawri and Mr. Sushant Pandey, Advocates.

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

<u>O R D E R</u>

% **09.09.2024**

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

> "(a) a Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, Order or Direction under Article 226 of the Constitution of India calling for the records of the case quash, cancel and set aside the impugned notice dated 26.5.2015 (Annexure P-1) and the impugned order dated 18.1.2016 (Annexure P-2);
> (b) a Writ of Prohibition or a Writ in the nature of Prohibition or any other Writ, Order or Direction under Article 226 of the Constitution of India directing Respondent No.1 not to take any action in furtherance to the impugned notice dated 26.5.2015(Annexure P-1) and the impugned order dated 18.1.2016 (Annexure P-2) during the pendency of this petition;
> (c) a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, directing Respondent No.1 to withdraw and revoke the impugned notice dated 26.5.2015 (Annexure P-l) and the impugned order dated 18.1.2016 (Annexure P-2);

(d) To pass ad-interim orders in terms of prayer (b) above and;
(e) To grant the Petitioner such further or other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioner principally questions the reassessment action which has been initiated for Assessment Year ['**AY**'] 2009-10. For the year in question, the petitioner had furnished a Return of Income declaring a total income of INR 13,20,95,86/- and which included rental income of INR 6,83,29,005/- earned from Plot No. 6, Sector 127, Noida.

3. The assessment proceedings are stated to have been concluded under Section 143(3) of the Income Tax Act, 1961 ['**Act**'] and the income so declared accepted on 23 December 2011. It is thereafter that a notice under Section 148 of the Act came to be issued by the respondents on 26 March 2014.

4. From the reasons which were supplied to the petitioner, we find that the respondents have taken note of the following facts :-

"Information in the case of M/s. Sunder Systems Private Limited received in this office shows that during the course of assessment proceedings, in the case of Sh. Ravi Bhargav, it has been noticed by the ITO, Ward 35(3), New Delhi that an agreement for purchase / sale of land / property to the tune of Rs.3,14,47,200/- and Rs.1,57,23,800/- has been entered into by Shri Bhargava on behalf of the assessee company (supra) (Lessor) with M/s. Opera Solutions Management Consulting Services Private Limited (lessee). Since the ITS information based on AIR data had been received by ITO, Ward 35(3), New Delhi and subsequently has been supported by Sh. Ravi Bhargav during the course of assessment proceedings u/s148 of the Act. It clearly shows that the assessee company has made the above transaction out of its books.

Therefore, I have reason to believe that escaped assessment to the tune of Rs. 4,71,71,000/-for the assessment year 2009-10.

In view of Explanation 2(b) of section 147 of Income tax Act, 1961, I have reason to believe that Income amounting to RsA,71,71,000/- has escaped assessment for assessment year 2009-10."

5. As is manifest from the above, the allegation was of the petitioner having entered into an agreement for purchase/sale of land/ property to the tune of INR 3,14,47,200/- and INR 1,57,23,800/- with M/s Opera Solutions Management Consulting Services Private Limited. The respondents thus took the view that since the information had been received by the jurisdictional Assessing Officer [‘**AO**’] of the petitioner. and pursuant to certain material which was gathered in the course of assessing its authorised signatory Mr. Ravi Bhargav, it would appear that income chargeable to tax has escaped assessment.

6. While responding to the aforesaid notice, the petitioner furnished a detailed reply drawing the attention of the AO to the fact that the rental income which had been earned in AY 2009-10 had been duly disclosed in its Return of Income itself. The rental receipts are also stated to have been reflected in Form 26AS and relevant extracts whereof appear at page nos. 63 and 71 of our record.

7. However, those objections to the assumption of jurisdiction have ultimately come to be negated by the respondents, who have held as follows: -

> “I have gone through the contents filed pertaining to objections filed with reference to notice issued u/s 148 of the IT Act, in the above mentioned case for AY 2009-10. After the perusal of the information received from the concerned A.O., it was found that Sh. Ravi Bhargav submitted his letter dated 07.01.2014 to the respective A.O. in response to enquiry/investigation conducted on the basis IT:) data in his case and he categorically stated in his letter that these transactions were related to the M/s Sunder Systems Pvt. Ltd. I am providing the relevant letter of Sh. Ravi Bhargav alongwith the documentary evidences of such transactions for necessary action.
>
> In view of these facts, The Assessing officer had reason to believe on the basis of available records with him for A.Y. 2009-10. Therefore, the A.O. correctly issued notice u/s 148 of IT Act 1961

> by reason of jurisdiction over this case after the approval of Commissioner of Income Tax, Central-. II, New Delhi. Therefore, the preliminary objections raised for re-opening u/s 147/148 of IT Act are hereby disposed off."

8. As is manifest from the above, notwithstanding the categorical recital and disclosure made by the petitioner of the income which formed the subject matter of scrutiny being rental income, the respondents have failed to undertake any course correction even if that were permissible.

9. Undisputedly, the details of the lease arrangements have not been questioned during the course of proceedings of assessment undertaken. In respect of Mr. Ravi Bhargava, requisite details have also been duly provided by the petitioner itself while responding to the notice under Section 148 of the Act. It is thus manifest that the edifice of commencing reassessment was founded on an incorrect premise of a purchase transaction in an immovable property having been initiated and undertaken.

10. Regard must also be had to the fact that this was an assessment which had been completed in terms contemplated under Section 143(3) of the Act. It was, therefore, incumbent upon the respondents to establish in terms of Section 147 as it existed at the relevant time that the petitioner had failed to make a *"full and true disclosure"*. Even this allegation if it had weighed, would not have sustained in light of the disclosures which are provided for in the Return of Income as well as Form 26AS.

11. All of the above thus leads us to the inevitable conclusion that there has been an abject failure to apply factors which would have been pertinent for the purposes of formation of opinion. We accordingly find ourselves unable to sustain the impugned action.

12. The writ petition is accordingly allowed. The impugned notice dated 26 May 2015 referable to Section 148 of the Act and the impugned order dated 18 January 2016 are hereby quashed.

13. This order, however, shall be without prejudice to the rights of the respondents to adopt such remedies as may be otherwise permissible in law.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 9, 2024 /*vp*