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

% **Judgment reserved on: 22 January, 2024**
**Judgment pronounced on: 20 March, 2024**

\+ W.P.(C) 8614/2016

SEEMA GUPTA ..... Petitioner
Through: Mr. Sumit Lalchandani and Mr. Tarun Chanana, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr. Shlok Chandra, Sr. SC with Ms. Madhavi Shukla and Ms. Priya Sarkar, Jr. SC along with Mr. Ujjawal Jain, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**JUDGMENT**

**YASHWANT VARMA, J.**

1. This writ petition seeks quashing of proceedings for re-assessment drawn pursuant to the powers conferred under Section 148 of the **Income Tax Act, 1961**[1] and assails the notice dated 31 March 2016 issued under Section 148 of the Act as also the order dated 25 July 2016 issued by the respondent. The writ petitioner also additionally assails the notice dated 10 June 2016 issued under Section 143(2) of the Act and the notice dated 01 August 2016 issued under Section 142(1) of the Act.

[1] Act

2. The record would reflect that when the writ petition was originally entertained, we had by an order dated 26 September 2016 restrained the **Assessing Officer**[2] from completing the assessment proceedings. It is that interim order which had continued on the writ petition till date.

3. On 07 August 2023, the Court upon hearing preliminary submissions of the parties had passed the following order:

> "**1.** Mr Sumit Lalchandani, learned counsel for the petitioner, informs us that this is a case where two sets of reasons have been recorded.
> **2.** In this behalf, Mr Lalchandani has drawn our attention to Annexure P-7, which is appended on page 47 of the case file, which, according to him, is the first set of reasons.
> **3.** Insofar as second set of reasons are concerned, our attention is drawn to Annexure R-6 which is appended to the affidavit filed on behalf of the respondent/revenue pursuant to an order dated 05.01.2018 issued by the court. [See pdf page 125 of the case file].
> **4.** Mr Shlok Chandra, learned senior standing counsel, who appears on behalf of respondent/revenue, says that he would like to file written submissions in the matter. Leave in this behalf is granted.
> **5.** List the matter on 10.10.2023."

4. It appears that the principal contention of the petitioner was a perceived distinction in the recordal of reasons for initiating proceedings under Section 148 of the Act as appearing upon a reading of a copy of which was supplied to the petitioner and the proforma for recording reasons to initiate proceedings under Section 148 of the Act which existed on the record of the respondent. It is this aspect which was highlighted by Mr. Lalchandani, learned counsel appearing for the writ petitioner during the course of his oral submissions.

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[2] AO

5. According to the writ petitioner, the reasons recorded for selection of the petitioner's case for reassessment under Section 148 of the Act and as provided to the petitioner, read as follows:

> "PAN:AAIPG5271B
> A.Y. 2009-10
>
> An Information via e-mail was received from ADIT(lnv.) , Unit-1(3), Ahmedabad vide letter no. AD IT(lnv) 1(3)/AHD/CCM/Dissemination /e-mail/l5-16 dated 17.03.2016 in respect of Client Code Modification, dissemination of beneficiary clients who have taken contrived losses and shifted out profits during the F.Y. 2008-09 to 2011-12.
>
> The Ahmedabad Investigation Directorate, as an institution response to orchestrated misuse for client code modification for tax evasion, carried out coordinated limited purpose surveys u/s 133A of the Income Tax Act, 1961 at the premise of 12 brokers and few of their clients across India on 23.03.2015. After considering the contention of brokers, it was concluded by the ADIT that CCM has been used as a tool for tax evasion and only settled trades have been considered to arrive at the beneficiaries.
>
> As per information received in this case, it is seen that the assessee during the F.Y. 2008-09 has profit shifted out of Rs. 20,29,332/- and losses shifted in of Rs. 3,98,825/- resulting in net reduction in income of Rs. 16,30,506/ through Client Code Modification.
>
> In view of the above, approval of the Id. Principal Commissioner of Income Tax, Delhi -14,New Delhi to issue notice u/s 148 of the IT Act 1961, in this case is solicited."

6. Pursuant to our order dated 05 January 2018, the respondent also brought on record the proforma maintained by it for the purposes of recordal of reasons in order to initiate proceedings under Section 148 of the Act. The said proforma is extracted hereunder:

> **"PERFORMA FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S 147/148 & FOR OBTAINING THE APPROVAL OF THE PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-14, NEW DELHI**

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|---|---|---|
| 1. | Name and address of the assessee | Seema Gupta<br>9, East Avenue Road,<br>East Punjabi Bagh,<br>Delhi – 110023. |
| 2. | PNR/GIR No. | AAIPG5271B |
| 3. | Status | Individual |
| 4. | District/Ward/Range | Circle-41(1), Delhi |
| 5. | Assessment Year in respect of which it is proposed to issue notice u/s 148 | 2009-10 |
| 6. | The quantum of income which has escaped assessment | 16,30,506/- |
| 7. | Whether the provisions of section 147(a) or 147(b) or 147(c) are applicable or both sections are applicable | Section 147(b) |
| 8. | Whether the assessment is proposed to be made for the first time, if the reply is in the affirmative, please state: | Yes |
| a. | Whether any voluntary return has already been filed and | Yes |
| b. | If so, the dates of filing the said return | 29/09/2009 |
| 9. | If the answer to item 8 is in the negative, please state | N.A. |
| a. | The Income originally assessed | N.A. |
| b. | Whether it is a case of under assessment at too low a rate, assessment of which has been made, the subject of excessive relief or allowing loss or depreciation; | N.A. |
| 10. | Whether the provision of Section 150(1) is applicable. If the reply is in the affirmative, the relevant facts may be stated against item no. 10 and it may also be brought out that provisions of section 150(2) would not stand in the way of initiating proceeding under Section 147. | N.A. |

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| 10. | Reasons for the belief that income has escaped assessment. | Information via e-mail was received from ADIT (Inv.) , Unit-1(3), Ahmedabad vide letter no. ADIT (Inv)1(3)/AHD/CCM/Dissemination/ email/ 15-16 dated 17.03.2016 in respect of Client Code Modification, dissemination of beneficiary clients who have taken contrived losses and shifted out profits during the F.Y. 2008-09 to 2011-12.<br><br>The Ahmedabad Investigation Directorate, as an institution response to orchestrated misuse for client code modification for tax evasion, carried out coordinated limited purpose surveys u/s 133A of the Income Tax Act, 1961 at the premise of 12 brokers and few of their clients across India on 23.03.2015. After considering the contention of brokers, it was concluded by the ADIT that CCM has been used as a tool for tax evasion and only settled trades have been considered to arrive at the beneficiaries.<br><br>As per information received, it is seen that the assessee during the F.Y. 2008-09 has profit shifted out of Rs. 20,29,332/- and losses shifted in of Rs. 3,98,825/- resulting in net reduction in income of Rs. 16,30,506/ through Client Code Modification. |

In view of the above precise information received from ADIT, I have reasons to believe that income of assessee has escaped assessment.

Keeping in view of the above facts, it is requested that necessary approval u/s 151(1) may kindly be accorded for initiating proceedings u/s 148 of the Income Tax Act, 1961 in order to book income which had escaped assessment.

Date: 23.03.2016

**Assistant Commissioner of Income Tax**
**Circle-41(1), New Delhi**

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| 11. | Whether the Pr. Commissioner of Income Tax is satisfied on the reasons recorded by the A.O that it is a fit case for the issue of notice under section 148 of the Income Tax Act, 1961 | Yes, I'm satisfied with the reasons recorded. |

Pr. Commissioner of Income Tax
Delhi – 14, New Delhi"

7. Thereafter, and pursuant to the directions issued by us on 28 May 2018, an additional affidavit also came to be filed by the respondent setting out details with respect to the dispatch of the proforma for recording reasons for initiating proceedings under Section 148 of the Act as also the steps taken and culminating in the issuance of the Section 148 notice.

8. The difference and disparity between the information provided to the petitioner and the reasons as existing on the record of the respondent were sought to be highlighted by Mr. Lalchandani who drew our attention to the following tabular statement:

| **"Information/ email pursuant to which reasons were recorded (Annexure R-2) at page 102 of the case file** | **Reasons recorded supplied to Petitioner (Annexure P-7) at Page 47 of Case File** | **Reasons recorded filed by Respondent in pursuant to the High Court order dated 05.01.2018 (Annexure R-6) at page 125 of Case File.** |
|---|---|---|
| 3 The Ahmedabad Investigation Directorate, as an institutional response to the orchestrated | An Information via e-mail was received from ADIT(lnv.), Unit- 1(3), Ahmedabad vide letter | Information via e-mail was received from ADIT(lnv.), Unit- 1(3), Ahmedabad vide letter no. ADIT(lnv) |

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| misuse for client code modification for tax evasion, carried out coordinated limited purpose surveys u/s 133A of the Income Tax Act, 1961 at the premises of 12 brokers and few of their clients across India on 23.03.20I5.<br>4 ......After *analysis of data received from NSE* and after considering the contention of brokers, it is concluded by the ADIT that CCM has been used as a tool for tax evasion. The genuine contentions of brokers have been duly addressed in the Survey Report. Only settled trades have been considered to arrive at the beneficiaries. | no. ADIT(lnv) 1(3)/AHD/CCM/Dissemination /e-mail/l5-16 dated 17.03.2016 in respect of Client Code Modification, dissemination of beneficiary clients who have taken contrived losses and shifted out profits during the F.Y. 2008-09 to 2011-12.<br><br>The Ahmedabad Investigation Directorate, as an institution response to orchestrated misuse for client code modification for tax evasion, carried out coordinated limited purpose surveys u/s 133A of the Income Tax Act, 1961 at the premise of 12 brokers and few of their clients across India on 23.03.2015. After considering the contention of brokers, it was concluded by the ADIT that CCM has been used as a tool for tax evasion and only settled trades have been considered to arrive at the beneficiaries.<br><br>As per information received ***in this case***, it is seen that the assessee during the F.Y. 2008-09 has profit shifted out of Rs. 20,29,332/- and | 1(3)/AHD/CCM/Dissemination /e-mail/l5-16 dated 17.03.2016 in respect of Client Code Modification, dissemination of beneficiary clients who have taken contrived losses and shifted out profits during the F.Y. 2008-09 to 2011-12.<br><br>The Ahmedabad Investigation Directorate, as an institution response to orchestrated misuse for client code modification for tax evasion, carried out coordinated limited purpose surveys u/s 133A of the Income Tax Act, 1961 at the premise of 12 brokers and few of their clients across India on 23.03.2015. After considering the contention of brokers, it was concluded by the ADIT that CCM has been used as a tool for tax evasion and only settled trades have been considered to arrive at the beneficiaries.<br><br>As per information received, it is seen that the assessee during the F.Y. 2008-09 has profit shifted out of Rs. 20,29,332/- and losses shifted in of Rs. 3,98,825/- resulting in net reduction in income of Rs. 16,30,506/ through Client Code Modification. |

| | | |
|---|---|---|
| | losses shifted in of Rs. 3,98,825/- resulting in net reduction in income of Rs. 16,30,506/ through Client Code Modification.<br><br>***In view of the above, approval of the Id. Principal Commissioner of Income Tax, Delhi - 14,New Delhi to issue notice u/s 148 of the IT Act 1961, in this case is solicited.***<br><br>***(Undated)*** | ***In view of the above precise information received from ADIT, I have reasons to believe that income of assessee has escaped assessment.***<br><br>***Keeping in view of the above facts, it is requested that necessary approval u/s 151(1) may kindly be accorded for initiating proceedings u/s 148 of the Income Tax Act, 1961 in order to book income which had escaped assessment.***<br><br>Date: 23.03.2016 |

9. As would be evident from the above, the information which triggered the initiation of action was based upon an information received via email from the **Ahmedabad Investigation Directorate**[3]. The aforesaid report alluded to certain conclusions prima facie arrived at by that Directorate on analysis of data received from the National Stock Exchange, and on the basis whereof the Directorate opined that the **Client Code Modification**[4] system had been used as a tool for tax evasion. Upon receipt of the aforesaid report, the AO while apprising the petitioner of the reasons which warranted re-assessment being undertaken, referred to the report of the Directorate and alluded to an '*orchestrated misuse*' of CCM with a motive to evade tax. It also referred to a coordinated limited purpose survey undertaken under Section 133A of the Act at the premises of twelve brokers as well as

[3] Directorate
[4] CCM

their clients across India in March 2015. On the basis thereof, the AO formed the opinion that the petitioner had during Financial Year 2008-09 shifted out profit of a sum of INR 20,29,332/- and shifted in losses amounting to INR 3,98,825/-, thereby resulting in a net reduction of income of INR 16,30,506/- through misuse of CCM.

10. The recordal of facts and reasons in the proforma would clearly indicate that information was identically transcribed on the record of the respondent as well. In our considered opinion, the minor discrepancies in the language employed by the respondent, and as it stands reflected in the reasons provided to the petitioner, and that which exists on the record, would clearly not justify us interfering with the impugned notice and the order impugned for reasons which follow. As would be evident from a perusal of the reasons which were supplied to the petitioner, there is a clear and unequivocal expression of opinion of the AO with respect to the material on the basis of which reassessment was sought to be commenced. The proforma also alludes to the same material and record. There is thus no variation or difference in the foundational material on the basis of which the AO came to form the opinion that income has likely to have escaped assessment. What needs to be emphasized while dealing with challenges like the present is that we would not countenance two separate and distinct set of reasons being maintained by the respondent for commencement of reassessment. The reasons which are conveyed to the assessee must be the same as those which exist on the record. A minor variation in the language in which that information is conveyed to the assessee would not constitute a justifiable ground to interfere with the reassessment power.

11. Annexure P-7 which is a copy of the reasons supplied to the petitioner clearly tallies with Annexure R-6 which appears on our record except for the proforma additionally referring to the information being the basis for the AO having reason to believe that income of the assessee had escaped assessment. The aforesaid minor difference would in our considered opinion consequently have no conceivable impact on the validity of the proceedings.

12. In this backdrop, we also observe that the decision of our Court in **Haryana Acrylic Manufacturing Company v. Commissioner of Income Tax**[5], as relied upon by Mr. Lalchandani, would not apply in the facts of the present case, since in that case the reasons supplied to the petitioner were substantially different from the reasons recorded in the proforma form for initiating proceedings under Section 148 of the Act. Further, in that case, the reasons supplied to the petitioner also failed to disclose the allegation of the petitioner failing to disclose true and material facts for assessment which was the basis for initiating proceedings under Section 148 of the Act. Those facts clearly distinguish the judgment in *Haryana Acrylic* from the facts of the present case.

13. Similarly, we find that the decision of our Court in **Sabh Infrastructure Ltd v. Assistant Commissioner of Income Tax**[6] as also of the Bombay High Court in **Hindustan Lever Ltd v. RB Wadkar**[7] would be inapplicable in the facts of our case, since both

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[5] Neutral citation - 2008:DHC:2967-DB
[6] 2017 SCC Online Del 10863
[7] 2004 SCC Online Bom 154

those decisions related to the requirement of sufficient reasons being recorded by the AO before initiating proceedings under Section 148.

14. In the facts of the present case, the AO in its reasons recorded and supplied to the petitioner has explicitly recorded the allegation, basis which reassessment under Section 148 is sought to be initiated against the petitioner. Therefore, the decisions in *Sabh Infrastructure Ltd* and *Hindustan Lever Ltd*, as relied upon by the petitioner would not apply in the facts of the present case.

15. Accordingly, and in view of the above, we find no merit in the challenge as raised. The writ petition fails and shall stand dismissed. Consequently, we see no reason to set aside the impugned Section 148 notice dated 31 March 2016 or the impugned order dated 25 July 2016, the Section 143(2) notice dated 10 June 2016 as also the Section 142(1) notice dated 01 August 2016. However, all contentions of the petitioner assessee on merits are kept open to be urged in the course of the assessment proceedings.

**YASHWANT VARMA, J**

**PURUSHAINDRA KUMAR KAURAV, J**

**MARCH 20, 2024/**kk