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

\+ W.P.(C) 13050/2018

SATYA PRAKASH GUPTA .....Petitioner

Through: Mr. Shiv Garg, Mr. Imran Khan, Ms. Jahanvi Garg, Advs.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX & ORS. .....Respondent

Through: Mr. Vipul Agrawal, SSC along with Ms. Sakshi, Mr. Gibran Naushad, Advs.
Mr. Rajesh Kumar, SPC with Mr. Rahul Kumar Sharma, Adv. for UOI.

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

**O R D E R**

**%** **17.09.2024**

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

> "i) To issue appropriate writ, direction and/or orders under the facts and circumstances of the case.
>
> ii) To quash the notice under section 148 dated 31/03/2017 issued by the Respondent No. 3 to the Petitioner for AY 2010-11.
>
> iii) To award cost of the petition in favour of the petitioner and against the respondents.
>
> iv) To pass any other or further relief which this Hon'ble Court may deem fit and proper in favour of the petitioner and against the respondents"

2. The challenge is to the initiation of reassessment action for

**Assessment Year**[1] 2010-11. The reassessment is based on the following reasons which came to be recorded by the Assessing Officer:-

"**Sub: Proposal/reasons for reopening of assessment u/ s 147 of the IT Act, 1961**

1. A search and seizure action u/s 132 was conducted on the residential and office premises of Mr. Satya Prakash Gupta, Mr. Shishir Gupta (son-in-law of Sh. Satya Prakash Gupta), Mr. Atul Gupta (son of Sh. Satya Prakash Gupta) and their associates on 26.12.2016.

2. Around 2005, Mr. Satya Prakash Gupta was appointed as the **agent of Cartiere Miliani Fabriano (CMF) of the Fedrigoni Group**, in India. for this purpose, he established another proprietary concern M/s Sterling security System and set up its office in Noida SEZ. During FY 2006-07 to FY 2010-11, Mr. Satya Prakash Gupta had **only one client- M/s Fedrigoni S.p.A.** and received more than Rs.70 crore on which no tax has been paid as he claimed exemption u/s 10AA under the garb of export of services. During the course of examination, it was found that services rendered (if any) related to contracts in India and were being provided in India and thus, the commission received was taxable in India.

3. During the search, a copy of an **agreement dated 25.09.2006**, signed between M/s Cartiere Miliani Fabriano S.p.A (subsidiary of M/s Fedrigoni S.p.A) and Mr. Satya Prakash Gupta (Proprietor- M/s Sterling Security System) for supply of security papers and bank note papers to Government Authorities was seized. The said agreement established that Mr. Satya Prakash Gupta was an agent of CMF. The relevant points of the agreement are reproduced below:

*2.1 The ASSOCIATED undertakes to provide CARTIERE with the **assistance and collaboration for the participation to the Possible Tenders** and the carrying out of the Supplies in particulars under taking:*

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[1] AY

*a) to collaborate with CARTIERE to* ***manage its relationships and contacts with potential Concerned Buyers in South Asia****; to assist CARTIERE in* ***providing/completing Possible Tenders details****; to help CARTIERE to submit* ***Possible Tenders documents;*** *to assist CARTIERE* ***in completing Visa documentation and solutions for eventual inspections performed by its representatives on the manufacturing process****;*

*b) to collaborate with CARTIERE to fulfill eventual shipment procedure of the products fixed by concerned Buyers;*

*c) to ensure assistance to CARTIERE for* ***any*** *delivery* ***requirement coming from Concerned Buyers as communicated to CARTIERE with appropriate notice,*** *and to ensure that the relevant production schedule is arranged;*

*d) to assist CARTIERE in all the information related to the execution of the Supplies, including any major change in the delivery schedule (including the ones of the other suppliers} which may affect CARTIERE delivery schedule;*

*e) to join up with CARTIERE'S officers any time CARTIERE will request it to meet Concerned Buyers' representatives.*

*It is hereby agreed that the above services* ***shall be performed by the ASSOCIATED exclusively out of the territories of India, even for possible Supplies in favor of Indian Concerned Buyers****, in offices of CARTIERE'S Group located out of such territories and in consultation with the officers of other Business Associates of CARTIERE.*

*3.1 For each Supply in South Asia in relation to which the ASSOCIATED provides his assistance to CARTIERE according to the terms and conditions of this Agreement, CARTIERE undertakes to assign to the ASSOCIATED (pursuant to Article 2554 of the Civil code) the right to receive a percentage (hereinafter, the "Shared Profits") of the net margin paid to CARTIER by the Concerned Buyers (hereinafter. the "Net Margin").*

*The percentage of the Net Margin to be paid for each Supply shall be agreed upon between the Parties from time to time, taking into account the importance and profitability of the Supply, the activity carried out by the ASSOCIATED, costs borne by CARTIERE, etc.*

***The Parties in this case however undertakes by now that the percentage of the Shares Profits shall be 41% of the Net Margin or a guaranteed amount of 14% of the payment received.*** *This percentage is valid for supplies made till 31st December, 2007.*

*3.2 **Net Margin** shall be calculated as follows (and according to the scheme -hereby attached sub "1" that is to be considered just an example):*

*i) Part of the Turnover effectively collected in the relevant period by CARTIERE from South Asia for each Supply (the meaning of "Relevant Period" is defined under following article 4 of this Agreement): less*

*ii) Costs incurred by CARTIERE for the carrying out of the part of such Supply effectively paid in the relevant period by the Concerned Buyer to CARTIERE, and in particular:*

- *Variable manufacturing costs (such as, by way of example, raw materials and ancillary materials, direct production labour, security costs, packaging, energy specific maintenance, maintenance materials, etc::*

- *Industrial overheads (operative lenses, general maintenance costs, cleaning wastes disposal, etc.)*

- *Variable distribution costs, (transports, broker fees. licenses, etc)*

- *General overheads (allocation of general broker's fee, I.S., Travelling expenses, administration personnel costs, insurance, etc): less*

*iii) Any other amount that for any reason should be due by CARTIERE to the Concerned Buyer in relation to the carrying out of the relevant Supply (such as, by way of example, return items, compensation, damages, quality claims, etc.).*

4. Further, **another document dated 20,12.2007** signed between Mr. Eligio Ballabio, Director- Commercial, For M/s Fedrigoni S.p.A and Mr. Satya Prakash Gupta, For M/s Sterling Security System, was filed by Mr. Satya Prakash Gupta with the subject "*Confirmation & modification of our AGREEMENT OF ASSOCIATION IN JOINT ACCOUNT dated September 25th, 2006*", which **extended the validity of the agreement to 31.12.2012** and fixed the **percentage of the shared profits at 41% of the Net Margin. (Annexure B)**

5. As submitted by Mr. Satya Prakash Gupta, he assisted M/s Fedrigoni with contracts issued by M/s Bharitya Reserve Bank Note Mudran Private Limited (BRBNMPL) - a subsidiary of RBI, for supply of currency paper and security thread.

6. It has been found that during FY 2009- 2010 (relevant to AY 2010-2011), M/s Fedrigoni S.p.A received Rs. 109.59 crores from M/s BRBNMPL as payment for supply of currency paper. It is to be noted that even though the Agreement talks about contracts in South Asia in his statement recorded u/s 132(4) during the course of the Search. Mr. Satya Prakash Gupta stated that during the period 2006-2014, he had only one client - CMF. Thus, the entire payment of Rs. 12,91,51,125/- received from CMF was for his services as an agent of CMF in India and such services have been rendered in India for obtaining contracts relating to Currency paper.

7. In his return of income for AY 2010-11, Mr. Satya Prakash Gupta has claimed Travelling Expenses including foreign travel of Rs. 27,45,191/-.

Article 5 of the aforementioned agreement states that "Travel/ other expenses to Europe shall be paid separately to the ASSOCIATED". Thus, all the expenditure on official foreign travel would have related only to M/s Fedrigoni S.p.A and would have been separately paid to Mr. Satya Prakash Gupta. Hence, income chargeable to tax which has been escaped by claiming excessive expenses on part of assessee.

Assessee is an individual, filed income tax return for the AY 2010-11 declaring Nil income on 07.10.2010. Original Assessment in this case was completed u/s 143(3) of IT act, 1961 at Rs. l,82,43,840/-. Assessee has declared two concern M/s Sterling Security Systems and M/s Sterling Exports, M/s Sterling Security System is operating in SEZ area and is engaged in providing Profession business services. The assessee has claimed deduction u/s 10AA of the IT Act, 1961 for this concern M/ s Sterling Export is engaged in export of Chemicals where the assessee has incurred loss which was adjusted against remaining income of SEZ unit. It is failure on part of assessee to disclose fully and truly all material. facts necessary for his assessment for A.Y. 20l0-11. ln AY 20i0-11, Mr. Satya Prakash Gupta has shown a turnover of Rs.12;91,51,125/- and a net profit of Rs. 8,04,71,209/-. The entire amount has been claimed as exempt u/s 10AA.

In view of above, I have reason to believe that this income earned by Mr. Satya Prakash Gupta for rendering services to M/s Fedrigoni S.p.A has escaped assessment as the assessee failed to disclose fully and truly all material facts necessary for his assessment, for AY 2010-2011. Further, he has understated his income and claimed excessive claim of expenditure and deduction u/s 10AA. In light of the above, the case is being referred for reopening for A Y 2010 - 2011 to determine the correct income and bring it to tax."

3. It is the case of the writ petitioner that its agreement with **M/s Cartiere Milani Fabriano**[2] and **M/s Sterling Security System** [3] which is situate in the **Special Economic Zone**[4], Noida was one which was duly disclosed and placed in the course of the assessment proceedings which were undertaken not only for impugned AY 2010-11 but also for assessments pertaining to AYs' 2007-08, 2008-09 and 2009-10. It is further asserted that since the original assessment had been made under Section 143(3) of the **Income Tax Act, 1961**[5], there exists no justification for the respondents to seek reopening or initiate reassessment in the absence of any allegation of a full and true disclosure having not been made by the assessee.

4. We, however, find from the record that the decision to commence reassessment appears to have been founded on the statements which came to be recorded under Section 132(4) in the course of the search which was undertaken on the assessee on 26 December 2016. It is in the course of the recordal of those statements that it came to light that the petitioner was in fact engaged in rendering services which were utilized in India and thus not liable to the exemptions contemplated under Section 10AA.

5. In view of the aforesaid and since this aspect has not been established to have been duly examined or evaluated in the course of the original assessment, we find no justification to entertain the challenge. The writ petition consequently fails and shall stand dismissed.

6. This order, however, shall be without prejudice to the rights and

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[2] CMF
[3] SSA
[4] SEZ
[5] Act

contentions of respective parties on merits which shall be open to be addressed in the course of the reassessment action.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**SEPTEMBER 17, 2024/neha**