IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.06.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.15541 of 2025
and
W.M.P.No.17578 of 2025

DRA Finance and Investments
rep. By its Authorized Signatory, V.Ravi. ...Petitioner

Vs.

1. The Union of India
   rep. by Revenue Secretary,
   North Block, New Delhi – 110 001.

2. The Assessment Unit,
   National Faceless Assessment Centre (NAFAC)
   Ministry of Finance,
   Income Tax Department, New Delhi -110 001. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records relating to the impugned order passed by the respondent in ITBA/AST/S/143(3)/2024-25/1075037676(1) for the AY 2023-24 dated 26.03.2025 and to quash the same and consequently, to direct the respondent to conduct fresh assessment proceedings after giving an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.T.Banusekar

For Respondents : Dr.B.Ramaswamy,
Senior Standing Counsel

Order

The challenge in this Writ Petition is to the order passed by the respondent dated 26.03.2025 and to quash the same and consequently, to direct the respondent to conduct fresh assessment proceedings after giving an opportunity of personal hearing to the petitioner.

2. Mr.T.Banusekar, the learned counsel appearing for the petitioner would submit that a show cause notice along with a draft assessment order dated 17.02.2025 was issued to the petitioner, thereby, proposing to make an addition of Rs.10,33,00,000/- as "unexplained income"; that the petitioner, on receipt of such notice, filed their replies dated 24.02.2025 and 06.03.2025 with all necessary documents to substantiate their stand that the said sum cannot be made as an addition, however, the second respondent passed the impugned assessment order dated 26.03.2025 confirming the additions proposed in the draft assessment order and subsequently, a notice under Section 156 of the Act was issued on the same day, raising a tax demand of Rs.9,99,09,978/-.

2.1 The learned counsel for the petitioner would submit that the petitioner, in response to the show cause notice, filed a detailed reply dated 24.02.2025 furnishing all details/documents as sought for by the respondent-Department, clearly stating that the loan of Rs.10,33,00,000/- was obtained from Partners of the Firm and other related parties to the Firm; that there was no circular transaction, as has been alleged in the show cause notice for the reason that as a prudent business activity, the petitioner replaced the existing loan with a new loan, as there was a request from the earlier lender to repay the same and merely because, the said loan was utilized to repay another loan, that does not oust the fact that the loan has not been utilized for the purpose of business, since, the entire investments were made out of loan funds and to prove the same, the petitioner also filed ROI for each of the lender, PAN, Audited Financial Statements, Ledger Confirmation, bank statements etc.. Therefore, it is contended by the learned counsel for the petitioner that when the petitioner has clearly explained the source of each of the loans obtained from the respective parties/partners along with relevant supporting documents, the second respondent, without taking into consideration of the same, passed the impugned order, which is nothing but a verbatim reproduction of the draft assessment order and hence, prays for setting aside the impugned order.

3. Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondents would submit that if it is the petitioner's contention that the said loan amount of Rs.10,33,00,000/- was borrowed from one Partner to repay the loan of another Partner and vice verse for the business purpose and that the said Partners were financially stable, then, such Partner would have directly taken the loan from another Partner and there was no necessity for such Partner to take the loan through the financial accounts of the petitioner's and this transaction was rightly suspected by the respondent-Department and accordingly, proceedings were initiated against the petitioner and the impugned order came to be passed by the second respondent, which is sustainable in law and requires no interference.

4. Heard Mr.T.Banusekar, learned counsel appearing for the petitioner and Dr.B.Ramaswamy, the learned Senior Standing Counsel for the respondents and perused the materials placed on record.

5. In the present case, the petitioner is a Subsidiary of DRA Adithya South City Projects Pvt. Ltd. The petitioner, being an assessee on the files of the respondent-Income Tax Department, filed their Return of Income (ROI) for the AY 2023-24 on 29.09.2023, declaring a total loss of income at Rs.2,18,11,903/-. The petitioner's case was selected for scrutiny by way of issuance of notice under Section 143 (2) of the IT Act followed by a questionare issued vide notice under Section 142 (1) of the Act dated 19.08.2024. Though the petitioner filed a reply dated 28.08.2024, providing all required details, show cause notice along with a draft assessment order dated 17.02.2025 was issued to the petitioner, thereby, proposing to make an addition of Rs.10,33,00,000/- as "unexplained income".

5.1 In the said show cause notice, the petitioner was specifically requested to explain, as to why, the aforesaid amount credited to their bank accounts under the guise of loan was never used for any specific business activity. The petitioner, on receipt of such show cause notice, filed their reply dated 24.02.2025 and 06.03.2025 with all necessary documents clearly setting out the facts that the said sum of Rs.10,33,00,000/- was obtained as loan from one of the Partners of the Firm and repaid to another Partner of the petitioner-Firm. It is further averred in the said reply that, when one party requires funds, the same has to be replaced by taking loan from another party, without disturbing the investments made and as a prudent business entity, the petitioner has replaced the existing loan with a new loan as there was a request from the lender to repay the same, and it cannot be stated that the said loan has not been utilized for the purpose of the business since the entire investment is made out of a loan funds and to prove the same, the petitioner also filed ROI for each of the lender, PAN, Audited Financial Statements, Ledger Confirmation, bank statements etc.,

5.2 Thus, from a reading of the impugned assessment order, it could be easily deduced as to what the respondent-Authority intends to say in the form of order is a suggestion, thereby, advising the petitioner and their

Partners to opt for a particular mode of transaction, that is to say, instead of borrowing a loan amount from one Partner and repaying the same to another Partner through the petitioner as an intermediary, the Partners could have entered into *inter se* loan transaction between themselves to avoid such intermediary transaction.

5.3 This Court would like to point that it is the volition of the Partners of the petitioner-Firm to decide as to whether they can borrow the loan from one Partner and return the same to another Partner or vice versa, it is for them to decide and such a decision cannot be questioned by the Assessing Officer nor the Assessing Officer can make a suggestion to the petitioner and their business Partners to opt in for particular mode of transaction. Further, the suggestion that was putforth by the respondent/Assessing Officer in the form of the impugned order would only pave a way of more troubles between the Partners and would form a basis for the respondent-Department to initiate another vexatious proceedings against those Partners as well.

5.4 Therefore, this Court is of the view that the methodology adopted by the petitioner and their partners is for the sake of replacing the existing loan with a new loan, and that such loan transaction (i.e borrowal of the loan amount from one partner and paid back to another Partner via. petitioner's financial accounts of the petitioner) could not be brought under the garb-re-assessment.

6. In the light of the aforesaid facts, this Court does not find any materials to hold that the transaction that took place between the petitioner and their Partners is a bogus transaction and not for the business purpose. Accordingly, this Court is inclined to pass the following orders/directions:-

i) The impugned order dated 26.03.2025 passed by the second respondent is set aside.

ii) Consequently, the matter is remitted back to the second respondent for re-consideration.

iii) The petitioner is directed to provide all the materials before the second respondent in the form of an additional reply, in which case, the second respondent, after taking into consideration of the said reply and documents shall issue a notice affording an opportunity of personal hearing to the petitioner and after hearing the petitioner, can decide the matter in accordance with law.

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2025

sd

Index : yes/no
Neutral Citation : yes/no

To

1. The Union of India
   rep. by Revenue Secretary,
   North Block, New Delhi – 110 001.

2. The Assessment Unit,
   National Faceless Assessment Centre (NAFAC)
   Ministry of Finance,
   Income Tax Department, New Delhi -110 001.

Krishnan Ramasamy,J.,

sd

W.P.No.15541 of 2025

26.06.2025