$~36 & 37

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

\+ W.P.(C) 10321/2022 & CM APPL. 29759/2022 (Stay)

MOHAN INTERNATIONAL .....Petitioner
Through: Mr. Gautam Jain & Mr. Manish Yadav, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Vipul Aggarwal, SSC. Mr. Prasanta Varma, SCGC with Ms. Richu, Mr. Manas Ranjan & Ms. Pragya Verma, Advs. for Resp./ UOI.

37

\+ W.P.(C) 12738/2022

M/S MOHAN INTERNATIONAL .....Petitioner
Through: Mr. Gautam Jain & Mr. Manish Yadav, Advs.

versus

UNION OF INDIA AND ANR .....Respondents
Through: Mr. Vipul Aggarwal, SSC. Mr. Arjun Mahajan, Mr. Apoorv Upmanya & Mr. Harsh Vashist, Advs. for Resp./ UOI.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

% **13.01.2025**

1. These two writ petitions impugn the assessments orders dated 29 March 2022 pertaining to **Assessment Years**[1] 2015-2016 and 2016-17. The assessments themselves were predicated upon certain

information made available to the respondents with respect to imports made by Mohan International, a partnership firm.

2. As the challenge mounted in both the writ petitions proceeds on similar lines, for the sake of brevity, we propose to notice the salient facts as they obtain in W.P.(C) 10321/2022.

3. The challenge essentially proceeds on the basis that the partnership firm had come to be dissolved some time in 2011 and in terms of which it changed into a proprietorship firm under the trade name 'Mohan International', of which the sole proprietor was Mr. Varun Jindal. The erstwhile partnership firm is stated to have been constituted some time in 2005 and had continued as such till its conversion into a sole proprietorship in terms noted hereinabove.

4. The respondents appear to have issued a notice under Section 148 of the **Income Tax Act, 1961**[2] dated 31 March 2021 in the name of the dissolved partnership requiring it to file a return and response. This was followed by notices under Section 142(1) of the Act and which too were drawn in the name of the dissolved partnership. A draft assessment order is stated to have been drawn on 25 March 2022 proposing additions of INR 2,19,36,265/- in the name of the dissolved firm for AY 2015-16.

5. The petitioner is stated to have filed a detailed response and submitted objections to the draft assessment order in which the following significant facts came to be disclosed. The petitioner apprised the respondent of the factum of dissolution of the partnership in terms of a Dissolution Deed dated 01 April 2011, a copy of the **Import-Exporter Code**[3] Certificate of the erstwhile partnership firm

---

[1] AYs
[2] Act
[3] IEC

as well as the amended and fresh IEC Certificate issued in the name of the proprietorship concerned. The material referred to above was duly provided for the consideration of the respondent. The aforesaid objections were also accompanied with applications made to banks for transfer of balances standing to the credit of the account of the erstwhile partnership to the proprietorship concern as well as acknowledgment of Return of Income of the proprietorship for AY 2015-16 along with the computation of income and audited balance sheets.

6. Despite the aforesaid disclosures being made, the respondents proceeded to frame an order of assessment for AY 2015-16 on 29 March 2022, making an addition of INR 2,19,36,265/- under Section 69 read with Section 115BBE the Act.

7. Learned counsel for the writ petitioner has taken us through the original IEC Certificate which was made out in the name of the partnership firm as well as the amended and fresh IEC Certificate which came to be issued in favour of the sole proprietorship. Our attention was also drawn to the separate and distinct **Permanent Account Number**[4] details which stood embodied in those certificates.

8. The reply which was submitted to the draft assessment order being of some significance is extracted hereinbelow:-

> "Dear Sir, As the assessment proceeding under income tax act was initiated for AY 2015-16, notices under section 142(1) were issued on dated 25-11-2021, 15-12-2021 and 24-12-2021. In response to the notices, it was submitted that the constitution of the firm M/s Mohan International, a partnership entity till 01-04-2011, was changed from partnership to proprietorship, from 01-04-2011 keeping the trade name same as earlier. Sh. Varun Kumar Jindal, who was also a partner in the partnership firm, is running M/s Mohan International, proprietorship firm (PAN AFZPJ8853Q), under the same name and style since then. Dissolution deed was

[4] PAN

also submitted and the same has been considered by the department. It has been claimed in the show cause notice that the firm had imported goods worth Rs. *2,19,36,265/-* during the AY 2015-16 by using Pan of the dissolved firm i.e. M/s Mohan International (PAN AALFM8756G). We strongly object the claim of the department and so, we reject the contention adopted by the department in the show cause notice. We are hereby submitting the following in support of our objection.

1. That as per the show cause notice, the department has agreed with the fact that the firm was dissolved from 01-4-2011. This is to submit that IEC Certificate of the partnership firm got changed to proprietorship and Pan of Sh. Varun Kumar Jindal was updated on IEC Certificate w.e.f. 28-7-2011. Copy of both the IEC Certificates are attached herewith.

2. That the firm has done all its business activities under the proprietorship since 01-04-2.011 and also done import of goods during course of business during the AY 2015-16. All the imports have been completed and executed under the PAN of Sh Varun Kumar Jindal prop. of *MIs* Mohan Intenational. All the import documents are containing same Pan. Copies of bill of entry are attached herewith along with detailed sheet showing all imports, duty payment, payment date, payment mode etc. during the year.

3. That the contention adopted by the department that the assessee had concealed the import of goods by using the PAN of dissolved firm is completely incorrect and we refute the same. This is to submit that all the purchases including imports have been reported in the books of accounts of M/s Mohan International, Prop. Firm. Same have been audited by the Chartered Accountant and audit report and return has been filed, hence, all the compliances have been accordingly. Submitting copy of Balance Sheet and ITR with computation of Mr. Varon Kumar Jindal to establish the bona fide intension and to state that all the transactions were done under the M/s Mohan International, proprietorship firm of Sh. Varun Kumar Jindal.

4. That it is submitted that bank account of *M/s* Mohan International partnership firm, was closed and all the funds were transferred to the newly openly account number of M/s Mohan International, proprietorship firm. Attaching copy of letter to bank to transfer funds from the bank account of partnership firm to the new account of proprietorship firm. So, considering the above facts we hereby deny the consideration of the department and request you to consider the submission given herewith and set aside the proceedings."

9. It was in the aforesaid backdrop that the petitioner contended that despite the respondents having been duly apprised of the

dissolution of the firm and of all imports having been made under the cover of the IEC Certificate held by the sole proprietorship, they have proceeded to pass a final order of assessment in complete ignorance of the aforesaid facts.

10. The **Assessing Officer**[5] in the assessment order passed has observed as follows: -

> "7. The contention of the assessee are not acceptable for the following reasons:
> 1. During the assessment proceedings for A.Y.2015·16 the firm has never filed any response to any of the notices issued u/s 142(1) from time to time. Thus, during the assessment proceedings for A.Y.2015·16 the fact was never informed that the firm was dissolved on 01.04.2011 nor any dissolution deed was filed.
> 2. The invoice value of the imported goods as per information available with the department is at Rs. 2,19,36,265/- whereas the purchases shown in the Profit & Loss A/c of Proprietorship concern M/s Mohan International is at Rs.2,89,70,400/-. Since the value of imported goods is different from each other it cannot be accepted that the goods so imported was imported by proprietorship concern. Therefore, the copies of bills of entry as filed by the assessee can not be relied upon.
> 3. Form the submissions of the firm it transpires, though the partnership firm was dissolved on paper but the assessee firm was continuously involved in importing the goods from fareign countries using Its PAN. Thus. the assessee has tried to avoid the tax implications under the garb of dissolution deed. It is very strange that if the assessee firm was dissolved then why the PAN (AALFM8756G) was intimated to the custom authorities while importing the goods. It is also worthwhile that at the time of dissolution of any partnership firm the assets and liabilities are distributed among the partners of the firm so dissolved. Thus, there was no capital remained with the dissolved firm. It transpires that the assessee firm has invested its undisclosed/concealed income to import the goods worth Rs.2,19,36,265/-. The assessee firm has stopped filing of return of income just to avoid the tax implications.
>
> 8. In view of above facts, it has been established that. though the assessee firm has been dissolved on paper but it is carrying on its business activities of importing goods from abroad by involving its concealed income. The assessee firm is involved in importing the goods from foreign countries using its PAN but has not filed its

[5] AO

return of income for A.Y.2015-16. Thus, the assessee has tried to avoid the tax Implications by not filing the ITR. It is also established that assessee firm has invested its undisclosed/concealed income to import the goods worth Rs.2,19,36,265/- from abroad. In view of above facts it has been established that the assessee is carrying on its business activities of importing goods from abroad by involving its concealed income. Therefore, an addition of Rs.2,19,36,265/- is made to the income of the assessee firm u/s 69 read with section 115BBE 01 of the Income Tax Act, 1961. The penalty proceedings shall be initiated u/s 274 read with section 271(1)(c) of the Income Tax Act, 1961 separately for concealment of income. Therefore, an addition of Rs.2,19,36,265/- is made to the income of the assessee firm. The penalty proceedings shall be Initiated u/s 274 read with section 271(1)(c) of the Income Tax Act, 1961 separately. (Addition: Rs.2,19,36,265/-)."

11. It is the aforesaid stand which is reiterated in the counter affidavit filed by the respondents in these proceedings. Additionally, the respondents also allude to Section 189 of the Act and which reads as follows: -

"**189. Firm dissolved or business discontinued.**

(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the Assessing Officer or the Joint Commissioner (Appeals) or the [***] Commissioner (Appeals) in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

[* * *] *[Explanation omitted by Act 18 of 1992, Section 68 (w.e.f. 1.4.1993).]*

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159."

12. Of significance, however, are the unequivocal assertions made by the writ petitioner in the rejoinder affidavit and which were neither questioned nor denied in the course of proceedings which unfolded before us. Suffice it to state that the petitioner has reiterated the factum of dissolution of the firm which came into effect on 01 April 2011 and the takeover of the entire business of the firm by the sole proprietorship. The petitioner has in unambiguous terms averred that all the imports were affected on the basis of the updated IEC Certificate along with the PAN of Mr. Varun Jindal, the sole proprietor.

13. Of significance are the following disclosures which are thereafter made in paragraphs 6 and 11 and which are extracted hereunder: -

"6. It is submitted that on 17. 10.2015 Petitioner concern filed its ITR for A.Y 2015- 16 declaring an income of Rs. 10,46,050/-. (See Annexure P-4 of the present writ petition at page 51-70 for True copy of the original return of income filed on 17.10.2015 alongwith audited financial statements). It is submitted that on 31.03.202 1, a notice u/s 148 of the Act was issued by the Respondent No.3 in the name of the dissolved partnership firm of the Petitioner having PA No. AALFM8756G initiating reassessment proceedings against petitioner for A.Y 2015-16. It is submitted that assessment u/s 148 was being reopened on the basis of the purported information received by Income Tax Department from the DGFT reflecting PAN number of the non-existent partnership firm i.e AALFM8756G in the purported information showing that the said dissolved partnership firm was allegedly involved in importing goods using its PAN No. AALFM8756G and had invested its undisclosed/concealed income to import goods worth Rs.2,19,36,265/-. (See Annexure P-17 of the present writ

> petition at page 121-123 for True copy of the purported information received by learned Sr. Standing Counsel through mail dated 28.05.2022 in F.No. ITO ward *36(1)/2022-23* dated 28.05.2022 alongwith email communication from ITO ward-36(1), Delhi). It is submitted that on 29.03.2022, the Respondent arbitrarily passed the impugned assessment order u/s 1471144 r.w.s 144B of the Income Tax Act, 1961 for A.Y 2015-16 thereby making an addition of Rs.2,19,36 ,265/- to the income of the dissolved partnership firm u/s 69 r.w.s I 15BBE of the Act.
>
> xxxx xxxx xxxx
>
> 11. It is submitted that the Respondent while passing the assessment order has failed to consider that the impugned transactions has already been assessed in the hands of the Petitioner i.e the proprietorship concern having PAN No. AFZPJ8853Q, which is also evident from the bill of entries, It is further pertinent to note that PAN No reflecting on Bills of entry in respect of impugned transactions is of petitioner i.e. AFZPJ8853Q . (See Annexure P-13 of the present writ petition at page 101 -113 for true copy of Bills of Entry for Financial Year 2014-15 relevant to AY 2015-16). It is submitted that all the purchases including the imports have been reported in the books of accounts of the proprietorship concern which have been duly audited and audit reports and returns have been filed for the same."

14. The petitioner has also drawn our attention to the instructions which are stated to have been provided to learned counsel by the Income Tax Officer and which are also placed on our record. As would be evident from those instructions, the entire proceedings under Section 148 were based on information received and extracted from the CBEC- Export Import Summary Data. According to that Summary Data, the import was affected against a PAN which was held by and in the name of the erstwhile partnership firm.

15. However, and before us, the petitioner has placed on the record material details including a summary of bills [Annexure P-13] which would tend to indicate that the imports were in fact made against the IEC Code of the sole proprietorship.

16. The other significant aspect which weighs upon us are the averments made in Para 11 and where it is asserted that all purchases,

including the imports in question had been duly accounted for in the books of the proprietorship and which had been duly audited and audit reports and returns submitted. It was contended by the petitioner that once that income had been assessed in the hands of the proprietorship, the same could not have possibly been taxed all over again in the name of the dissolved partnership.

17. In our considered opinion, the aforesaid facts and which have clearly not been controverted by the respondents despite being placed on due notice, are sufficient to warrant quashing of the impugned orders of assessment.

18. While closing, it may be observed that the reliance placed on Section 189 is clearly misconceived. While, it is true that the provision enables the AO to make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, the respondents have abjectly failed to examine or consider the stand which was taken by the writ petitioner of all the imports in AYs 2015-16 and 2016-17 having been effected under the IEC Code of the proprietorship. All income and receipts pertaining to those imports are asserted to have been duly taxed in the hands of that proprietorship. The respondents have woefully failed to deny those assertions as made by the writ petitioner.

19. In any event, and once the material pertaining to the conversion of the firm into a proprietorship as well as the summary of imports had been placed, it was incumbent upon the respondents to have examined and evaluated the same. As we read the impugned orders of assessment, we find that there has been a clear failure on the part of the AO to deal with the same.

20. We, accordingly, and for all the aforesaid reasons, allow the instant writ petitions and quash the impugned orders of assessment dated 29 March 2022 for AYs 2015-16 and 2016-17.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 13, 2025/RW