

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Income-tax Act, 1961

Judgment delivered on: 10.12.2008

WP(C) 8688/2008

JSRS UDYOG LIMITED and ANOTHER ... Petitioners

- Versus -

INCOME-TAX OFFICER ... Respondent

Advocates who appeared in this case :-

For the Petitioners : Mr C.S. Aggarwal, Sr Advocate with Mr Prakash Kumar

For the Respondent : Mr Sanjeev Sabharwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

BADAR DURREZ AHMED, J (ORAL)

1. By way of this writ petition, the petitioner seeks the quashing of the impugned notice dated 28.03.2008 under Section 148 of the Income-tax Act, 1961 (hereinafter referred to as "the said Act") as well as the order passed by the Assessing Officer on 28.11.2008 disposing of the objections to the initiation of re-assessment proceedings preferred by the petitioner / assessee.

2. We have heard the learned counsel for the parties. The facts are that the original assessment was framed under Section 143(3) of the said Act on 05.03.2003. In the course of the assessment proceedings, the Assessing Officer had raised certain queries, inter alia, with regard to the share application money received by the assessee from Solo-Mio Marketing Pvt Ltd. In response to the queries raised by the Assessing Officer, the assessee submitted a reply dated 10.02.2003. A copy of the said reply has been placed

as Annexure-4 at page 75 of the present paper book. On going through the said reply, we note that the petitioner had clearly disclosed the names and addresses of the directors of the assessee / petitioner company. The petitioner had also stated categorically that no loans had been accepted by it during the year under consideration and that there was an increase of Rs 64,75,000/- in the share capital of the company. It was also stated that all the share application money had come from companies which were duly registered under the Companies Act, 1956 and that each one of them was legal entity. It was also stated that the applicants had confirmed their investments through duly attested affidavits. Specifically, with regard to the investment made by Solo-Mio Marketing Pvt. Ltd, the petitioner gave the following response:- “2. NAME AND ADDRESS OF THE INVESTOR / SHARE HOLDER M/S SOLO-MIO MARKETING PRIVATE LIMITED, L-132, SHASTRI NAGAR, DELHI “ 110 052. NO. OF SHARES HELD 50,000 Equity Shares of Rs. 10 each. AMOUNT RECEIVED and MODE OF PAYMENT Rs.3,00,000/- Through Cheque No.436482 dated 12.03.2001 and Rs. 2,00,000/- Through Cheque No.436483 dated 12.03.2001 drawn on Bank of India, Parliament Street, New Delhi. SOURCE WHEREFROM THE APPLICANT HAD RECEIVED FUNDS The applicant had received back re-payment of Loan of Rs.3,00,000/- through Cheque No.459673 dated 11.03.2001, Rs. 5,00,000/- through Cheque No.459674 dated 12.03.2001, Rs. 2,00,000/- through Cheque No.459672 dated 07.03.2001 from M/s. Flowtech Air (P) Ltd., drawn on Canara Bank, South Extn. New Delhi, Rs. 90,000/- From M/s MJM Investments through Cheque No.444851 dated 09.03.2001 and Rs. 60,000/- from M/s. Nikki Drugs and Chemicals Pvt. Ltd., through Cheque No.317104 dated 09.03.2001 drawn on Bank of India, Bank Street, Karil Bagh, New Delhi -110 005. SUPPORTING EVIDENCE RELIED UPON 1. The applicant is a legal entity, a company duly incorporated under Indian Companies Act. 2. The Applicant is a regular Income Tax Assessee on P.A. No.AAACS9707P. [Thus the identity of the investor is established and known to the department.]

3. The Payment has been received through Banking Channels. [Copy of relevant extract of their Bank A/c is enclosed.]

4. The Applicant made investment after a due authority drawn from meeting of Board of Directors. (Copy of the same is enclosed.)

5. Certificate from the Debtors, who had re-paid the Loan to the Applicant / Investor is enclosed. This shows the source of credit entry in the Bank A/c of the Applicant / Investor out of which Application money was paid to the Assessee. 6. Affidavit by the Investor confirming these facts in is enclosed.”

3. We also note that the petitioner had also filed the affidavit of Mr K.K. Bansal, who was the director of M/s Solo-Mio Marketing Pvt. Ltd confirming that the said company had purchased 50,000 fully paid up equity shares of Rs 10 each of the petitioner company at par during the financial year which ended on 31.03.2001 and relevant to the assessment year 2001-02. The affidavit also disclosed that the payments towards the share application money were made through two separate cheques, details of which were given in the said affidavit. The PAN number of the investor company, i.e., Solo-Mio Marketing Pvt. Ltd was also clearly disclosed in the said affidavit. After having received this explanation and information from the assessee, the Assessing Officer framed the assessment order on 05.03.2003. In the assessment order itself, it was noted as under:- ““ The details and documentary evidence of share application money pending for allotment in the previous year have been filed alongwith documentary evidence from subscribers. It has been stated that funds available with the company has been advanced to various persons and the company has earned interest income of Rs. 7,44,691/- on such advances.”

4. The Assessing Officer issued the notice under Section 148 of the said Act on 28.03.2008 beyond the period of four years. As such, the proviso to Section 147 would become applicable. Under the proviso itself, it is necessary that before any action is initiated, it must be pointed out that the assessee had failed to make a true and full disclosure of all the material facts. In the reasons recorded in writing for re-opening the case under Section 148 of the said Act, there is no allegation that the petitioner did not make a full and true disclosure of all the material facts. In fact, in our view, the reasons recorded are quite general and vague as would be apparent from a plain reading of the same. The reasons recorded are as under:- “REASONS RECORDED IN WRITING FOR REOPENING THE CASE U/S 148 M/s JSRS Udyog Limited A.Y. 2001-02 Information has been received from the Investigation Wing of Income-tax Department, New Delhi regarding beneficiaries and operators of accommodation entries in Delhi. In the said information, it has been inter alia reported as under:- “Entries are broadly taken for two purposes 1. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc. 2. To inflate expenses in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.

The specific information provided by the Investigation Wing of Income-tax Department, New Delhi is enclosed as per Annexure. In view of the specific information received as above from Investigation Wing of Income-tax Department, New Delhi, I have sufficient reason to believe that the assessee company M/s JSRS Udyog Pvt. Limited has indulged in receiving accommodation entries and the total amount of payment received by the assessee company amounting to Rs.8,00,000/- is bogus and represents the undisclosed income / income from other sources of the assessee company, which has not been offered to tax by the assessee in its return filed. Accordingly, I have reason to believe that income of Rs.8,00,000/- has escaped assessment as the assessee company has understated its returned income for the AY 2001-02 by an amount of Rs.8,00,000/-. (Hemant Kumar) Income-Tax Officer Ward 4(1), New Delhi” “Annexure”

BENEFICIARY’S NAME	BENEFICIARY BANK NAME	BENEFICIARY BANK BRANCH	VALUE OF ENTRY	INSTRUMENT NO.	BY WHICH ENTRY TAKEN	DATE ON WHICH ENTRY TAKEN	NAME OF ACCOUNT HOLDER	OF ENTRY GIVING ACCOUNT	BANK FROM WHICH ENTRY GIVEN	BRANCH OF ENTRY GIVING BANK	A/C NO.	
JSRS UDYOG LTD	OBC	GHAZIABAD	300000	413946	11-Apr-00	SOLO-MIO	MARKETING P. LTD.	BOI	KAROL BAGH	11266	CD	
JSRS UDYOG LTD	OBC	GHAZIABAD	300000	436482	13-Mar-01	SOLO-MIO	MARKETING P. LTD.	BOI	BOI	KAROL BAGH	11266	CD
JSRS UDYOG LTD	OBC	GHAZIABAD	200000	436483	13-Mar-01	SOLO-MIO	MARKETING P. LTD.	BOI	KAROL BAGH	11266	CD	

5. It is apparent from the reasons recorded and the Annexure referred to therein that the entire issue revolves around three transactions. A payment of Rs 3 lakhs received in April, 2000 from Solo-Mio Marketing Pvt. Ltd and further payments of Rs 3 lakhs and Rs 2 lakhs received by the petitioner in March, 2001 from the same Solo-Mio Marketing Pvt. Ltd. In the objections filed by the petitioner to the said reasons, the petitioner had, inter alia, explained the same by stating that all the three amounts were received towards share application money. However, the amount of Rs 3 lakhs, which was received in April, 2000, pertains to the previous year. In the year in consideration, only two payments of Rs 3 lakhs and Rs 2 lakhs had been received from Solo-Mio Marketing Pvt. Ltd towards share application money in respect of the 50,000 equity shares referred to in the petitioner’s letter dated 10.02.2003 in response to the queries raised by the Assessing Officer in the course of the original assessment proceedings. According to

the petitioner, there had been a complete, full and true disclosure of all the material facts and the assessment was framed by the Assessing Officer after being fully satisfied with the details and documentary evidence with regard to share application money which had been submitted by the petitioner. It was contended that the initiation of re- assessment proceedings was nothing but mere change of opinion and, in any event, it was not permissible because the pre-condition of there being a lack of full and true disclosure on the part of the petitioner had not been satisfied.

6. The Assessing Officer did not agree with the objections raised by the petitioner and passed the following order on 28.11.2008:- “F.No.ITO/Ward 4(2)/2008-09/190 Office of the Income tax Officer, Ward 4(2), Room No.413A, C.R. Building, New Delhi Dated:- 28th November, 2008. The Principal Officer, M/s JSRS Udyog Ltd., H-3/41, Sector-18, Rohini, Delhi-110085. Sir, Sub:-Reply to your letter dated 24/11/2008 in respect of objections for validity of the initiation of proceedings u/s. 147 of I.T. Act for the Asstt. Year 2001- 02 “ regarding “ ----- Please refer to the above. In this connection, it is to inform you that original assessment in this case was completed u/s. 143(3) on 05/03/2003. Later on, in this case information from the Investigation Wing of the Income-tax Department, Jhandewalan, New Delhi was received that the assessee has indulged in receiving accommodation entries. The details of accommodation entries are given as under:- 1. Rs.3,00,000/- was received from M/s. Solo Mio Marketing Pvt. Ltd. Ch. No.413946 dated 11/04/2000 drawn on Bank of India, Karol Bagh, New Delhi Bank A/c. No.11266 CD which was deposited in the A/c. of M/s. JSRS Udyog Ltd. in O.B.C. Bank, Ghaziabad (UP). 2. Rs.3,00,000/- was received from M/s. Solo Mio Marketing Pvt. Ltd. Ch. No.436482 dated 13/03/2001 drawn on Bank of India, Karol Bagh, New Delhi Bank A/c. No.11266 CD which was deposited in the A/c. of M/s. JSRS Udyog Ltd. in O.B.C. Bank, Ghaziabad (UP). 3. Rs.2,00,000/- was received from M/s. Solo Mio Marketing Pvt. Ltd. Ch. No.436483 dated 13/03/2001 drawn on Bank of India, Karol Bagh, New Delhi Bank A/c. No.11266 CD which was deposited in the A/c. of M/s JSRS Udyog Ltd. in O.B.C. Bank, Ghaziabad (UP). During the course of investigation made by the Investigation Wing has found these entries are bogus / sham transactions and informed the concerned Assessing Officer for necessary action in the matter. Therefore, the Assessing Officer has reason to believe that the income chargeable to tax has escaped assessment as the assessee company has failed to disclose fully and truly all material facts necessary for assessment year 2001- 02. Under the circumstances, the Assessing Officer has initiated the proceedings u/s.

147/148 of the I.T. Act with the prior approval of the Commissioner of Income-tax, Delhi-II, New Delhi within the time prescribed under the provisions of section 149 read with section 151 of the I.T. Act, 1961. Therefore, your application vide letter dated 24/11/2008 objecting the validity of initiation of proceedings u/s. 147/148 of the I.T. Act is not acceptable and is hereby rejected. Yours faithfully, -Sd- (Suresh Mamtani)
Income-tax Officer, Ward-4(2), New Delhi.”

7. We are of the opinion that the said order has, first of all, not dealt with any of the objections raised by the petitioner. Secondly, the order is nothing but a repetition of what is given in the purported reasons. There is no indication of any specific information with regard to any accommodation entry being provided by the assessee / petitioner. Apart from merely saying that the receipts of the share application money were bogus and sham transactions, there is nothing indicated either in the reasons or in the impugned order dated 28.11.2008 to enable us to arrive at such a conclusion. In a recent decision in the case of Haryana Acrylic Manufacturing Company v. CIT [WP(C) 4074/2007 decided on 03.11.2008], in a somewhat similar circumstances, we had made the following observations:- “18. Viewed in this light, the proviso to section 147 of the said Act, carves out an exception from the main provisions of section 147. If a case were to fall within the proviso, whether or not it was covered under the main provisions of section 147 of the said Act would not be material. Once the exception carved out by the proviso came into play, the case would fall outside the ambit of section 147. 19. Examining the proviso [set out above], we find that no action can be taken under section 147 after the expiry of four years from the end of the relevant assessment year if the following conditions are satisfied: (a) an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year; and (b) unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee: (i) to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148; or (ii) to disclose fully and truly all material facts necessary for his assessment for that assessment year. Condition (a) is admittedly satisfied inasmuch as the original assessment was completed under section 143(3) of the said Act. Condition (b) deals with a special kind of escapement of income chargeable to tax. The escapement must arise out of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148. This is clearly not the case here because the petitioner did file the return. Since there

was no failure to make the return, the escapement of income cannot be attributed to such failure. This leaves us with the escapement of income chargeable to tax which arises out of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. If it is also found that the petitioner had disclosed fully and truly all material facts necessary for its assessment, then no action under section 147 could have been taken after the four year period indicated above. So, the key question is whether or not the petitioner had made a full and true disclosure of all material facts “ 20. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in Wel Intertrade Private Ltd (supra) we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania (supra) that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated 29.03.2004 under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated 02.03.2005 are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above.”

8. We feel that the present case is entirely covered by that decision. Consequently, we set aside the order dated 28.11.2008 and quash the impugned notice under Section 148 dated 28.03.2008. There shall be no order as to costs. This writ petition stands allowed as indicated above.

Sd/-
BADAR DURREZ AHMED, J

Sd/-
RAJIV SHAKDHER, J