IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Writ Petition No.913/2015
With
Stay Application No.780/2015

M/s Dhadda Exports having its registered address at 1387, Ganesh Bhawan, Partanion-ka-Rasta, Johari Bazar, Jaipur through its partner and authorized signatory Shri Vimal Chand Dhadda Vs. Income Tax Officer, Ward 1 (1), Jaipur having its address at New Central Revenue Building, Statute Circle, C-Scheme, Jaipur and Another

Date of Order ::: 09.02.2015

Present
Hon'ble Mr. Justice Mohammad Rafiq

Shri Siddharth Ranka, counsel for petitioner-assessee
Shri Anuroop Singhi and
Shri Saurabh Jain, counsel for respondents

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//Reportable//

By the Court:-

This writ petition has been filed by petitioner-assessee - M/s Dhadda Exports, Jaipur, which is a partnership firm, challenging notice dated 27.03.2014 issued to it under Section 148 of the Income Tax Act, 1961 and order dated 15.01.2015 passed by respondent no.2 Income Tax Officer, Ward 1(2), Jaipur, by which its objections filed thereagainst were rejected. Petitioner-assessee filed its return for assessment year 2007-08 on 29.10.2007 declaring income of Rs.1,86,790/- and paid the due tax thereon as per the provisions of the Income Tax Act, 1961 (for short, 'the IT Act').

Aforesaid return filed by petitioner-assessee was selected for scrutiny assessment and notices under Section 142(1) and 143(2) were issued on 26.09.2008. The Income Tax Officer, after detailed scrutiny and verification, passed an order dated 06.11.2009 under Section 143(3) of the IT Act. Petitioner-assessee challenged aforesaid order before the Commissioner of Income Tax (Appeals), Jaipur-I, Jaipur, who allowed the same in part after making trading addition of Rs.21,28,203/- made by Income Tax Officer and disallowed the prior period expense of Rs.31,712/-, which was of two entires; first was of legal expenses of Rs.11,550/- and second was of interest charges of Rs.20,162/-. Thus, total income was assessed at Rs.23,46,710/-. Direction was given to issue demand notice and challan. The Income Tax Officer was also directed to recalculate the consequential interest.

Thereafter, respondent no.1 - Income Tax Officer, Ward 1(1), Jaipur, issued notice under Section 148 of the IT Act to petitioner-assessee on 27.03.2014 proposing to assess/reassess income for assessment year 2007-08. Petitioner-assessee submitted reply to said notice on 12.04.2014 to the respondent no.1 ITO followed by reminder dated 09.09.2014, 13.10.2014, 10.11.2014 and 09.12.2014. Therein the petitioner-assessee demanded copy of reasons recorded for initiation of proceedings under Section 148 of the IT Act. The respondent no.2 ITO, vide letter dated 16.12.2014, provided

copy of reasons recorded for initiation of proceedings to petitioner-assessee, who, thereafter, submitted an application on 18.12.2014 under Right to Information Act requesting to provide copy of sanction-note received under Section 151 of the IT Act before issuing notice under Section 148. Petitioner-assessee then submitted detailed objection on 02.01.2015 pointing out various infirmities and illegalities in issuing impugned notice under Section 148 of the IT Act, recording reasons and obtaining sanction. Respondent no.2 ITO, vide letter dated 02.01.2015, provided copy of sanction obtained from Joint Commissioner of Income Tax, Range-1, Jaipur, vide letter dated 27.03.2014. Petitioner-assessee submitted objection against notice under Section 148 of the IT Act, which has been rejected by impugned order dated 15.01.2015.

Shri Siddharth Ranka, learned counsel appearing for petitioner-assessee, submitted that there was no failure on the part of petitioner-assessee to disclose fully and truly all material, primary and relevant facts necessary for assessment for assessment year 2007-08. There was no valid reason to believe with the respondents that any income chargeable to Tax has escaped assessment within the meaning of Section 147 of the IT Act. Reasons have been supplied to petitioner-assessee after 31.03.2014, which is beyond limitation period prescribed under Section 149(1)(b). Entire process

has thus been rendered invalid as held by Delhi High Court in Haryana Acrylic Mfg. Co. Vs. CIT – 308 ITR 38 (Del.).

Learned counsel submitted that notice issued under Section 148 of the IT Act was to be preceded by a sanction duly obtained from Chief Commissioner/Commissioner of Income Tax as per provisions of Section 151 (1) of the IT Act, whereas, in present case, such sanction has been obtained from Joint Commissioner of Income Tax. Entire proceedings thus stood vitiated for want of competence. Learned counsel in support of this argument has relied on judgments in Reliable Finhold Limited Vs. Union of India – (2014) 369 ITR 419 (Allahabad), CIT Vs. H.M. Constructions – (2014) 366 ITR 277 (Karnataka), Dr. Shashi Kant Garg Vs. CIT – (2006) 285 ITR 158 (Allahabad), and East India Hotels Limited Vs. DCIT – (1993) 204 ITR 435 (Calcutta).

It is argued that no reasons have been mentioned, which shows that sanction has b een accorded in a mechanical manner and without any application of mind and without perusal of entire material, which is against the settled principles. There is even otherwise no allegation of respondent that there was any failure on the part of petitioner-assessee to disclose fully and truly all material, primary and relevant facts necessary for assessment. The assessing officer in the original assessment stage considered all the material

evidence and documents submitted by petitioner-assessee and after due verification and satisfaction passed detailed assessment order under Section 143(3) of the IT Act. Thus, there was no basis with respondent ITO to issue notice under Section 148 of the IT Act.

Learned counsel argued that respondent ITO supplied reason to petitioner-assessee and sought to justify the order rejecting the objections submitted by petitioner-assessee to notice under Section 148 of the IT Act, vide the order dated 15.01.2015, and has alternatively maintained that required sanction from Commissioner of the Income Tax Department was not taken due to oversight because assessment of petitioner-assessee has already been completed under Section 143(3) of the IT Act and mistake was committed inadvertently and is curable by virtue of Section 292B of the IT Act. Learned counsel has cited judgment of the Delhi High Court in CIT Vs. SPL's Siddhartha Limited - 2012 (345) ITR 223 (Del.) and argued that this kind of irregularity is not curable with reference to Section 292B of the IT Act.

Per contra, Shri Anuroop Singhi, learned counsel for revenue, opposed the writ petition and submitted that a notice under Section 148 read with Section 147 of the IT Act was duly issued to petitioner-assessee after recording due reasons for the same in relation to assessment year 2007-08 on 27.03.2014 and same was served upon petitioner-

assessee on 28.03.2014. Reasons recorded for initiation of reassessment proceedings were duly provided to petitioner on 16.12.2014. Proceedings were rightly initiated against petitioner-assessee because there was undisclosed income to the tune of Rs.51,54,120/- which was of bogus purchases/ accommodation entries shown by petitioner-assessee and deserved to be reassessed. Respondent no.2 ITO, by detailed order dated 15.01.2015, considered all objections raised by petitioner-assessee and found them without any substance and devoid of merit, and consequently after giving due reasons and justifications rejected the objections. It is apparent from aforesaid order dated 15.01.2015 and the reasons recorded for initiating reassessment proceedings and also from the order rejecting the objections and from the information received by the Income Tax Department during search and survey proceedings carried out by them, that petitioner-assessee has been involved in obtaining bogus purchase bills and accommodation entries to deflate its profit and to show fictitious expenses. Relying on judgment of the Supreme Court in Rajesh Jhaveri Stock Brokers Private Limited – (2007) 291 ITR 500 (SC), it was argued that expression “reason to believe” in Section 147 of the IT Act would mean “cause or justification to know” and if the assessing officer has cause or justification to know or suppose that income has escaped assessment, he can be said to have reason to believe that

income has escaped assessment.

Whether or not the relied material would conclusively prove the escapement is not required to be seen at the stage of issuance of notice. This is so because formation of belief by the assssing officer is within the realm of subjective satisfaction. Writ petition against show cause-notice should not be entertained because the petitioner-assessee has remedy of appeal, if and when the assessment order is passed, as argued by the learned counsel for revenue.

Admittedly, in the present case the dispute pertains to assessment year 2007-08. The notice under Section 148 of the IT Act has been issued to the petitioner-assessee beyond expiry of four years after the end of the relevant assessment year. Proviso to Section 151 (1) of the IT Act in this connection stipulated at the relevant time that no such notice itself be issued after the of four years from the end of the relevant assessment year unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid that it is a fit case for the issue of such notice. Subsequently by amendment inserted by the Finance (NO.2) Act, 2014 with effect from 01.06.2013 the Principal Chief Commissioner and Principal Commissioner, apart from Chief Commissioner and Commissioner, have also been inserted as the competent authority to grant such sanction. However, sanction letter dated

27.03.2014, which Income Tax Officer has relied and supplied to the petitioner-assessee, vide communication dated 02.01.2015, has been issued by Joint Commissioner, Income Tax, Range-I, Jaipur.

Dealing with similar controversy, Allahabad High Court in Reliable Finhold Limited, supra, has held that where assessment was sought to be reopened beyond the period of four years of the end of the relevant assessment year and if the assessee objected that since original order of assessment was made under Section 143(3), no notice could have been issued without sanction of Chief Commissioner or the Commissioner. The assessee was supplied information under Right to Information Act that no such sanction was obtained. The writ petition was allowed by the Allahabad High Court holding that the proviso to sub-section (1) of Section 151 was attracted. It was held that entire exercise of reopening of assessment under Section 148 has failed to meet the basic jurisdictional requirement under the proviso to sub-section (1) of Section 151 since under the proviso, no notice can be issued except on the satisfaction of the Commissioner or as the case may be, the Chief Commissioner and admittedly there was no such satisfaction in the case of the assessee. Karnataka High Court in CIT Vs. H.M. Constructions, supra, similarly held that reopening of assessment to be barred in law as the prior approval of the Commissioner has not been obtained in accordance

with proviso to Section 151. Allahabad High Court in Dr. Shashi Kant Garg Vs. Commissioner of Income-tax, Muzffar nagar, supra, has also taken a similar view holding that if assessment has been made under Section 143(3) or Section 147, and proceedings for reassessment are to be initiated after period of four years, then notice can be issued only after Chief Commissioner or Commissioner, as the case may be, has recorded his satisfaction and given his sanction for issuance of notice as provided under proviso to sub-section (1) of Section 151. Calcutta High Court in East India Hotels Limited Vs. Deputy Commissioner of Income-tax, supra, also similarly held that even if assessing officer records reasons for issuance of notice under Section 148, sanction of Chief Commissioner or Commissioner is necessary in case such notice is issued after expiry of four years from end of relevant assessment years.

The objection to show cause-notice under Section 148 of the IT Act has been rejected by the Income Tax Officer by impugned order dated 15.01.2015 citing, apart from various reasons, also the reason that required sanction of Commissioner of Income Tax was not taken due to oversight that assessment of the assessee firm had already been completed under Section 143(3). It was stated that mistake was committed inadvertently and is curable by recourse to Section 292B of the IT Act. That plea is liable to be rejected because when specific provision has been inserted to the proviso to

Section 151 (1), as a prerequisite condition for issuance of notice, namely, sanction of the Commissioner or the Chief Commissioner, the assessing officer cannot find escape route for not doing so by relying on Section 292B. The Delhi High Court in CIT Vs. SPL's Siddhartha Limited, has while holding that when a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and satisfaction so recorded should be 'independent' and not 'borrowed' or 'dictated' satisfaction, rejected contention of the revenue that obtaining approval from the authority other than the one who was competent to grant such approval, was mere irregularity committed by the Income Tax Officer. And that it was rectifiable under Section 292B of the IT Act cannot be accepted as such irregularity is not curable under Section 292B.

In the opinion of this court also, resort to Section 292B of the IT Act cannot be made to validate an action, which has been rendered illegal due to breach of mandatory condition of the sanction on satisfaction of Chief Commissioner or Commissioner under proviso to sub-section (1) of Section 151. This is an inherent lacunae affecting the very correctness of the notice under Section 148 and is such which is not curable by recourse to Section 292B of the IT Act.

In view of above discussion, present writ petition succeeds and is allowed. The impugned notice dated 27.03.2014 (Annexure-4) and order dated 15.01.2015 (Annexure-10) are quashed and set aside. This also disposes of stay application.

(Mohammad Rafiq) J.

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All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Giriraj Prasad Jaiman
PS-cum-JW