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**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P. (C) No.14369 of 2019**

**M/s. AMBER, Bhubaneswar** .... **Petitioner**  
Mr. Sandeep Kumar Jena, Advocate

**-Versus-**

**The Deputy Commissioner of** .... **Opposite Parties**  
**Income Tax, Circle-2(1) & Others**  
Mr. Radheshyam Chimanka, Advocate

**CORAM:**  
**THE CHIEF JUSTICE**  
**JUSTICE SAVITRI RATHO**

**ORDER**  
**05.07.2021**

**Order No.**

**Dr. S. Muralidhar, CJ.**

12. 1. This matter is taken up by video conferencing mode.
2. This writ petition is directed against the Notice dated 29<sup>th</sup> March, 2019 issued by the Deputy Commissioner of Income Tax, Circle-2(1), Cuttack (Opp. Party No.1), to the Petitioner under Section 147 of the Income Tax Act, 1961 (the 'Act') proposing re-assessment for the Assessment Year (AY) 2012-13. The Petitioner also challenges the order dated 26<sup>th</sup> June, 2019 passed by Opp. Party No.1 rejecting the Petitioner's objection to the reopening of the assessment and the consequential notice dated 26<sup>th</sup> July, 2019 issued under Section 142(1) of the Act, calling for accounts, documents, etc. in connection with the re-assessment proceedings for the aforementioned AY 2012-13.

3. The background facts are that the Petitioner filed income tax returns for the AY 2012-13 electronically on 28<sup>th</sup> September, 2012 disclosing a total income of Rs.34,80,490/-. The Petitioner's tax returns were subjected to scrutiny under CASS, for which statutory notices under Sections 143(2) and 142(1) of the Act were issued to it by the Assessing Officer (AO). An assessment order was passed under Section 143(3) of the Act on 15<sup>th</sup> November, 2014 by the AO purportedly being satisfied with the genuineness of the transactions and documents, etc. disclosed by the Petitioner.

4. Being aggrieved by certain disallowances of expenses in the aforementioned assessment order, the Petitioner filed a statutory appeal before the Commissioner of Income Tax (Appeals) [CIT (A)], which came to be disposed of on 23<sup>rd</sup> February, 2017 by the learned CIT (A), Cuttack.

5. Thereafter, the impugned notice under Section 147 of the Act was issued to the Petitioner by Opposite Party No.1 on 29<sup>th</sup> March 2019, pursuant to which the Petitioner sought the reasons for such reopening. The Petitioner filed the same return pursuant to the above notice.

6. After the reasons for reopening were communicated on 17<sup>th</sup> May, 2019, the Petitioner filed objections on 18<sup>th</sup> June, 2019. On 26<sup>th</sup> June, 2019, Opposite Party No.1 rejected the objections of the Petitioner and on 26<sup>th</sup> July, 2019 issued a notice under

Section 142(1) of the Act, seeking further details from the Petitioner.

7. At that stage the present writ petition was filed by the Petitioner, in which notice was issued on 13<sup>th</sup> November 2019, and in the interim it was directed that the re-assessment proceedings may continue but no final order shall be passed without leave of the Court.

8. Pursuant to the notice issued, Opposite Party Nos.1 and 2 filed their reply on 25<sup>th</sup> February, 2020 and the Petitioner filed a rejoinder thereto.

9. Mr. Sandeep Kumar Jena, learned counsel for the Petitioner submitted that the reopening was based on a mere change of opinion of Opposite Party No.1 and, therefore, was bad in law. He placed reliance on the decision of the Delhi High Court in *Principal Commissioner of Income-Tax v. Meenakshi Overseas Pvt. Ltd.*, [2017] 395 ITR 677 (Del) and of the Bombay High Court in *The Pr. Commissioner of Income Tax-5 v. M/s. Shodiman Investments Pvt. Ltd.* (2020) 422 ITR 339 (Bom).

10. It was further submitted that, in similar circumstances the reopening of assessment was quashed by the Bombay High Court in *GKN Sinter Metals Ltd. v. Ramapriya Raghavan (Ms)*, ACIT (2015) 371 ITR 225 (Bom.) and the Gujarat High Court in *Rajendra Suganchand Shah v. Assistant Commissioner of Income Tax*, (2019) 417 ITR 583 (Guj). In sum, Mr. Jena,

learned counsel for the Petitioner submitted that, the reasons for which the assessment is sought to be reopened have already been considered in detail by the AO in the original assessment order. Reference was also made to the decision of the Delhi High Court in ***Signature Hotels P. Ltd. v. Income Tax Officer (2011) 338 ITR 51 (Del)***.

11. Appearing on the behalf of the Income Tax Department, Mr. Radheshyam Chimanka, learned counsel submitted that the objections of the Petitioner have been considered in sufficient detail by the Opposite Party No.1 and have been rightly rejected. He submitted that the requirement of law, as explained by the Supreme Court in the case of ***GKN Driveshafts (India) Ltd. v. ITO, 259 ITR 19 (SC)***, stood completely satisfied. He further placed reliance on the decision in ***Honda Siel Power Products Ltd. v. Deputy Commissioner of Income-tax [2013] 340 ITR 64 (SC)*** to justify the reopening of the assessment after four years, on account of failure of the Petitioner to make a full and true disclosure of all the facts within its knowledge at the relevant time. Reliance is also placed on the decisions in ***Raymond Woolen Mills Ltd. v. ITO (1999) 236 ITR 34 (SC)***, ***Rajesh Jhaveri Stock Brokers Pvt. Ltd. v. ITO (2007) 291 ITR 500 (SC)*** and ***ITO v. Purushottam Das Bangur (1997) 224 ITR 362 (SC)***.

12. The above submissions have been considered. The reasons for reopening of the assessment, as disclosed by the Department in its communication dated 17<sup>th</sup> May, 2019 *inter alia* state how

the DTIT Investigating Unit-1, Kolkata in its letter dated 15<sup>th</sup> January, 2019 passed on information in the case of beneficiaries identified in the “Banka Group of Cases”. Apparently a search and seizure/survey operation was conducted in the case of the Banka Group on 21<sup>st</sup> May, 2018. It was found that there were various paper/shell companies controlled by one Mr. Mukesh Banka for the purpose of providing accommodation entries in the nature of unsecured loans or in other forms. It appears that the Petitioner firm was one of the beneficiaries who had obtained accommodation entries in the financial year 2013-14 from two such papers companies controlled by said Mr. Mukesh Banka, the details of which have been set out in the reasons for reopening the assessment as furnished to the Petitioner.

13. The said information appears to have been analyzed by the Department vis-à-vis the case record of the Petitioner for the AY 2012-13. It transpired that in the original assessment proceedings, the Petitioner had furnished the ledger accounts of both the above ‘shell’ companies for the financial year 2011-12 and this showed that the Petitioner had taken loans of Rs. 15 lakhs from them. The statement made by Mr. Mukesh Banka under Section 132 (4) of the Act was also set out in the reasons for reopening.

14. It requires to be noted that while the original assessment under Section 143(3) was completed on 15<sup>th</sup> November, 2014 and an assessment order passed, the information gathered by the Department pursuant to the search and seizure operation on the

Banka Group of Companies emerged only on 21<sup>st</sup> May, 2018 and thereafter. Clearly, this information was not available with the Department earlier. Prima facie, therefore, it does not appear that the re-assessment was triggered by a mere change of opinion by Opposite Party No.1. Further, it is not possible to accept the plea of the Petitioner that such opinion was based on the very same material that was available to the AO. The fact of the matter is that there was no occasion for the AO to have known of the transactions involving the Petitioner and the shell companies controlled by Mr. Mukesh Banka. As pointed out in ***Rajesh Jhaveri Stock Brokers Pvt. Ltd. v. ITO (supra)***:

“Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.”

15. Whether in fact the materials gathered during the search operation and the statements made by Mr. Mukesh Banka disclose that there was a failure by the Petitioner to disclose the true and full facts and whether there was concealment of income by the Petitioner will emerge only during the course of re-

assessment. As explained by the Supreme court in ***Raymond Woolen Mills Ltd. v. ITO (supra)***:

“In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.”

16. The facts of the present case therefore are distinct from the facts in ***Meenakshi Overseas Pvt. Ltd., M/s. Shodiman Investment Pvt. Ltd., GKN Sinter Metals Ltd., and Rajendra Suganchand Shah (supra)***. This is not a case where no materials have been placed on record to establish a nexus between the material and the escaped income. A perusal of the order of rejection also does not bear out the contention of the Petitioner that this is a case of “*borrowed satisfaction*” without any independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped the assessment.

17. It was then contended by Mr. Jena, learned counsel for the Petitioner that, despite the Petitioner asking for copies of the statement of Mr. Mukesh Banka and seeking cross-examination, this was denied to him and, therefore, there was violation of the principle of natural justice. In support of his submission, Mr. Jena referred to the objections filed by the Petitioner to the reopening of the assessment, where, in para-4, inter alia, it is stated as under:

“Therefore it is now necessary for the assessee to provide with a copy of the statement given by Sri Mukesh Banka during the course of investigation in his case. After going through the statement, if necessary, Sri Mukesh Banka may be called upon for cross-examination by the assessee. So that real truth can be ascertained.”

18. The Court is unable to accept the contention of the Petitioner that the non-supply of the copy of Mr. Banka’s statement (which incidentally has been extracted in full in the reasons for reopening), or not providing an opportunity to cross-examine Mr. Banka at the stage of objections vitiates the reopening of the assessment. Such opportunity would be provided, if sought by the Petitioner, and if so permitted in law, in the reassessment proceedings.

19. Consequently, this Court is not satisfied that the Petitioner has made out any case for interference by the Court at the present stage, i.e. the stage of issuance of the notice for reopening of the assessment under Section 147 of the Act.

20. Accordingly, while reserving the right of the Petitioner to raise all the defences available to it in accordance with law in the reassessment proceedings, including the right to cross-examine the deponents of the statements relied upon by the Department in the reassessment proceedings, the Court declines to interfere in the matter.



21. The writ petition is accordingly dismissed in the above terms but with no order as to costs. The interim order passed earlier stands vacated.

22. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4798, dated 15<sup>th</sup> April, 2021.



*S.K. Parida*