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

% *Date of decision: 07.11.2023*

+ **W.P.(C) 12545/2018**

PMC FINCORP LTD.

..... Petitioner

Through: Mr Ved Jain with Mr Nischay
Kantoor, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX CENTRAL
CIRCLE-30, NEW DELHI

..... Respondent

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition seeks to challenge the notice dated 30.03.2018 issued under Section 148 of the Income Tax Act, 1961 [in short, "the Act"] and the order dated 24.09.2018 disposing of the objections filed on behalf of the petitioner/assessee.

2. When the writ petition was listed before the court for the first time, a coordinate bench, while issuing notice, broadly etched out the issue which arises for consideration in this case. The coordinate bench alluded to the fact whether the material which was considered in the earlier reassessment round i.e., in 2015, was also the subject matter of reassessment in the fresh proceedings initiated by the Assessing Officer (AO).



3. It is in these circumstances that the court restrained the respondent/revenue from passing final orders in the “fresh impugned reassessment proceedings” during the pendency of the writ action.

4. To adjudicate upon the instant writ action, the following broad facts are required to be noticed.

4.1. The petitioner, formerly known as Priti Mercantile Company Ltd., filed its Return of Income (ROI) for the Assessment Year (AY) 2011-12 on 30.09.2011. The ROI declared the petitioner’s income as Rs.1,52,47,940/-. Concededly, the said ROI was processed under Section 143(1) of the Act.

4.2. Nearly four years later, a notice dated 17.09.2013 was issued to the petitioner under Section 148 of the Act [hereafter referred to as the “2013 notice”].

4.3. In response to the said notice, the petitioner filed a ROI, which was similar to the return filed on 30.09.2011.

4.4. It appears that the reasons recorded by the AO for triggering reassessment proceedings were supplied, not along with the notice issued under Section 148, but thereafter.

4.5. Upon receipt of the reasons to believe recorded by the AO for triggering the reassessment proceedings, the petitioner filed its objections dated 26.11.2013, which was received by the respondent/revenue on 13.12.2013.

4.6. Curiously, the AO did not dispose of the objections, and instead, *via* communication dated 17.12.2013, informed the petitioner that they would be considered at a later date, *albeit* before reassessment proceedings are completed.

4.7. The AO, thus, instead of disposing of the objections, issued a notice



under Section 143(2) of the Act to the petitioner, along with the aforementioned letter.

4.8. This was followed by a notice dated 15.01.2014. This notice was issued under Section 142(1) of the Act.

4.9. Given the fact that the AO had not disposed of the objections, the petitioner filed a letter dated 29.01.2014.

5. Once again, the AO *via* communication dated 11.02.2014 indicated to the petitioner that the objections would be disposed of before the completion of reassessment proceedings. As was the position earlier, the AO instead enclosed with the said communication a notice under Section 142(1) of the Act.

5.1. The AO continued with this approach and thus issued notices under Section 142(1) of the Act to the petitioner on 24.02.2014 and 08.09.2014.

5.2. The record shows that finally the objections were disposed of on 08.09.2014.

5.3. It appears that after the disposal of the objection, once again, the AO issued a notice dated 15.01.2015 to the petitioner wherein, he, *inter alia* alluded to the search conducted on one Mr S.K.Jain, which revealed that the petitioner was a beneficiary of an accommodation entry obtained from an entity named Transnational Growth Fund Ltd. [TGFL].

5.4. It was indicated that the petitioner had availed an accommodation entry amounting to Rs.50 lakhs. Accordingly, the petitioner was called upon to show cause as to why Rs.50 lakhs ought not to be added to its income.

5.5. The petitioner responded to the said notice *via* communication dated 29.01.2015. In the response, the petitioner took the stand that it had received Rs.50 lakhs as a loan from TGFL in the Financial Year (FY) 2010-11 [AY



2011-12] through banking channel. Furthermore, the petitioner indicated that not only was TGFL paid interest, but Tax at Source [TAS] was also deducted *qua* the amount remitted in that regard.

5.6. Besides this, the petitioner in support of its stand, furnished the following documents to the AO:

- (i) Copy of the ROI for AY in issue i.e., AY 2011-12.
- (ii) Copy of the bank statement of TGFL.
- (iii) Copy of the assessment order passed in TGFL's case for AY 2011-12.
- (iv) Copy of the financial statement for FY 2010-11 along with the Director's report.
- (v) Copy of the Auditor's report.
- (vi) Copy of the company's master data.

5.7. Although the aforementioned information was furnished by the petitioner, it received another notice under Section 142(1) of the Act dated 02.03.2015. *Via* this notice, an explanation was sought from the petitioner with regard to business carried out by it with various persons/entities including TGFL.

5.8. Although the record shows that the petitioner filed a reply to the said notice, the reply doesn't bear any date. The petitioner, broadly, reasserted the stand which it had taken earlier that it had received Rs.50 lakhs by way of loan from TGFL.

5.9. The record reveals that the AO framed an assessment order dated 30.03.2015, whereby it accepted the stand of the petitioner and thus made no addition concerning the purported accommodation entry said to have been received by it. This order has been framed under section 143(3), read with section 147 of the Act.



6. Significantly, the said assessment order adverts to the notices issued with regard to the enquiry made concerning the accommodation entry, and the two (2) sheets of paper recovered during the search and seizure action which were furnished to the petitioner.

6.1. The respondent/revenue thereafter appears to have passed an order dated 22.11.2016 under Section 127 of the Act. *Via* this order, the jurisdiction concerning the petitioner was transferred from DCIT Circle-1, Moradabad to ACIT Central Circle-30, New Delhi.

6.2. The attempt was to consolidate the petitioner's case with those concerning a group known as the Kuber Group of Companies.

6.3. The record shows that on 30.03.2018, the respondent/revenue triggered a fresh reassessment proceedings against the petitioner. Consequently, a notice of even date i.e., 30.03.2018 was issued to the petitioner under Section 148 of the Act [hereafter referred to as "2018 notice"]. The trigger for issuance of the 2018 notice apparently was also the purported avilment of the accommodation entry received from Mr S.K.Jain.

7. Given this position, the petitioner, this time around as well, filed its objections with the AO. These objections are dated 18.06.2018.

7.1. The AO, however, was not persuaded by the assertions made by the petitioner and, thus, proceeded to dispose of the objections *via* an order dated 24.09.2018.

8. It is against this backdrop the petitioner has approached this court *via* the instant writ action.

9. The argument advanced on behalf of the petitioner is that this is a classic case of change of opinion. In the first round, when the 2013 notice



was issued under Section 148 of the Act, the allegation made against the petitioner was similar to the one which was made in the 2018 notice.

9.1. It was contended that several notices under Section 142(1) of the Act were issued and upon receipt of replies and information, the matter was put to rest with the framing of the assessment order dated 30.03.2015. In sum, the contention was that the second round of reassessment under Section 148 of the Act was completely unsustainable in law.

10. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondent/revenue, sought to defend the respondent's/revenue's position by taking the stand that the assessment order dated 30.03.2015 was silent with regard to the query that had been raised in the 2013 notice.

10.1 It is, therefore, Mr Maratha's contention that since the query raised was not dealt with in the second notice i.e., the 2018 notice issued under Section 148 of the Act, it was viable in law.

11. We have heard the learned counsel for the parties and perused the record. It is not in dispute that the petitioner, after having filed its return for AY 2011-12, which was processed under Section 143(1) of the Act, was subjected to reassessment proceedings with the issuance of the 2013 notice. The trigger for the same was the accommodation entry said to have been received by the petitioner from Mr S.K. Jain. This is evident upon perusal of the reasons to believe framed by the AO which form the basis for issuing the 2013 notice. For the sake of convenience, the reasons, as recorded by the AO, are extracted hereafter:

“The assessee is a accompany and filed its return of income on 30.09.2011 showing total income of Rs. 1,52,47,940/-. The return of income was processed u/s 143(1) of I.T. Act, 1961. The department



has got information from office of DDIT(Inv.), Unit VI(2), New Delhi wherein it has been stated that Priti Mercantile Company Ltd., has received an accommodation entry from Transnational Growth Fund Ltd., of Rs. 50,00,000/- during financial year 2010-11. The said entry has been shown in various paper seized during search and seizure action conducted on the S.K. Jain Group of Delhi. The observation of Ld. DDIT(Inv.), New Delhi are as follows, "Company had obtained accommodation entry from various paper companies of S.K. Jain Group in lieu of cash during F.Y. 2010-11 amounting of Rs. 50,00,000/-. These bogus share capital/Premium/loan has clearly escaped taxation".

After going through the above said report, I have come to the conclusion that the assessee has intentionally entered into this sham transaction in order to bring its undisclosed income of this F.Y.(2010-11) of his business in the shape of share capital/premium/loan from the limited company namely Transactional Growth Fund Ltd. Thus, the assessee has not shown correct status of its income for the F.Y. 2010-11.

I, therefore, have reason to believe that income of Rs. 50,00,000/- chargeable to tax has escaped assessment Notice u/s 148 of the I.T. Act 1961 is hereby issued to the assessee company.”

[Emphasis is ours]

11.1. The fact that the reassessment proceedings in the second round which was triggered via the 2018 notice were founded on the same reasons and material, is evident, from what was recorded by the AO in the 2018 notice issued under section 148 of the Act. Once again, for convenience, the relevant part is extracted hereafter:

“The assessee company filed its return of income for the A.Y. 2011-12 on 30.09.2011 declaring Income of Rs. 1,52,47,940/- vide acknowledgment No. 302685431300911. The return was revised on 13/03/2013 at NIL Income vide acknowledgment No. 6956. The assessment u/s 144/147 of the Act was made in this case on 0/03/2015 and the income was assessed at Rs. 1,54,29,340/-.

As per the information received through email & its attachments received from Joint Commissioner of Income Tax (ISD) (Tech.), O/o Pr. CCIT, UP(East, Lucknow in the case of M/s PMC Fincorp Pvt. Ltd. (formerly known as M/s Priti Mercantile Company Ltd.), it is found that as search acton was conducted on 14/09/2010 in the case of S.K.Jain by O/s Pr. DIT(Inv.), Delhi, whereby incriminating



records were seized indicating that S.K. Jain was involved in providing accommodation entries to various beneficiaries. After perusal, it is notices that M/s PMC Fincorp Ltd.(formerly known as M/s Priti Mercantile Company Ltd.) is one of the beneficiaries of accommodation entries amounting to Rs. 50,00,000/- in F.Y. 2010-11.

Relevant information was also requested from Central Circle-32, New Delhi (AO of the S.K.Jain Group) and the same was received and perused. As per the information received, it is mentioned that during the search, various documents pertaining to various concerns (Companies as well as Firm) were seized from the premises of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain. These seized documents included blank unsigned as well as blank signed cheque books, Acknowledgement of filling of Returns of these companies, User Ids and Password of these companies from e-filing of their return, Bank A/c Opening & Closing letters, Authorization letters for attending the assessment proceedings, books of account in tally format as well as in the format required for filing a return, etc.

It is further mentioned that, Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain had also kept a meticulous record of cheques/RTGS issued from the bank accounts of these concerns to various beneficiary parties (apparently in lieu of the cash) that had been regularly received by them over a period of time and regularly entered in the cash books maintained by them in their own hand writing. It is also pertinent to mention that Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain, along with Ms. Priti Jain, Wife of Sh. Surendra Kumar Jain, were directors in few of these companies presently or they were directors in few of these companies at one point of time in the past. Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain have used these companies to undertake various financial transactions to further their activities of providing accommodation entries to various beneficiaries. It is apparently from seized record that Sh. Surendra Kumar Jain and Sh. Virendra kumar Jain had used a large no. of entities for the purpose of accommodation entries. All these entities represent a common 'Hotch Pot' used for the purpose of generation accommodation entries and their financial transaction individually do not reflect the correct business affairs & hence, taxable income.

As per the list attached with the information, M/s PMC Fincorp Ltd. is one of the beneficiaries of accommodation entries amounting to Rs. 50,00,000/- received by M/s PMC Fincorp Ltd. (formerly known as M/s Priti Mercantile Company Ltd.) Through the moderator "Modi Ji" are reproduced below:



Navneet-1.	EOOPTICA AXIS to EASTERN & WESTERN PRESSER TRADING PVT. LTD. P/O. No-033056 dtd 17/04/10 Rs.30,00,000/-
.....Do....2.	YUVRAJ AXIS toSame..... P/O.No-033057 dtd 17/04/10 Rs.30,00,000/-
.....Do....3.	SHALINI AXIS toSame..... P/O.No-033059 dtd 17/04/10 Rs.30,00,000/-
.....Do....4.	TWINKLE AXIS toSame..... P/O.No-033058 dtd 17/04/10 Rs.30,00,000/-
Singla Ji 5.	TGFL AXIS to RAVI BHAMBU RTGS dtd 17/04/10 Rs.20,00,000/-
Vijay Ji 6.	TGFL AXIS to MORE CREDIT SECURITIES Pvt. Ltd. RTGS dtd 17/04/10 Rs.15,00,000/-
Modi Ji 7.	TGFL AXIS to Priti Mercantile Co. Ltd. RTGS dtd 17/04/10 Rs.50,00,000/-

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As per MCA Data base, it is found that Sh. Raj Kumar Modi & Smt. Rekha Modi are the directors of M/s PMC Fincorp Ltd. To verify the status of the M/s PMC Fincorp Ltd., the records were perused and found that the above mentioned facts pertaining to accommodation entry of Rs. 50,00,000/- during A.Y. 2011-12 has escaped the taxation.

In light of the above facts, its established that M/s PMC Fincorp Ltd. is one of the beneficiary of accommodation entries described above and has received a sum of Rs. 50,00,000/- in the F.Y. 2010-11 and the genuineness of the credits received are doubtful.”

[Emphasis is ours]

12. The record shows, something that we have noticed above, that the notice dated 15.01.2015 issued to the petitioner was accompanied by two (2) sheets of paper, which, *inter alia* referred to the accommodation entries



made available to the petitioner. The assessment order was thereafter framed in the first round, i.e., on 30.03.2015. Therefore, according to us, the material that was examined by the AO in the second round was no different from that which was examined when the assessment order dated 30.03.2015 was passed.

13. As indicated above, the allegation with regard to the source of the accommodation entry and the amount was also similar, both when the assessment order dated 30.03.2015 was passed and when the 2018 notice was issued. Therefore, according to us, it is a clear case of change of opinion.

14. Mr Maratha's submission that the assessment order dated 30.03.2015 did not deal with the query raised with regard to the accommodation entry and the material furnished, in our opinion, is misconceived, as the aspect concerning accommodation entries was the focus of the assessment order, which is evident upon perusal of the said assessment order itself. For the sake of convenience, the relevant part of the assessment order is extracted hereafter:

“The assessee had filed the original income tax return on 30.11.2011 in the status of company on dated 30.09.2011 declaring the total income of Rs. 1,52,47,940.00. The return was processed u/s 143(1). The notice U/s 148 of the Income Tax Act was issued dated 17.09.2013. The assessee had filed the letter in response to notice U/S 148 to treat the return filed on 30.09.2013 as filed in response to notice U/s 148 of the Income Tax Act on dated 09.10.2013. The assessee has also requested in this letter for the copy of reasons recorded for the issue of notice U/S 148. The copy of the reasons was given to the company and the assessee filed detailed objection against the notice issued U/S 148 of the Act was filed which is placed on the file.

The notice U/S 143(2) of the Act was issued on dated 24.12.2013. the notice U/s 142(1) was also issued on dated 15.01.2014, 02.03.2015 and 27-03-2015 requiring various details and explanation Notice u/s



142(1) dated 27-03-2015 was issued annexing therewith copies of relevant two sheets wherein relevant entries were found in connection with deposit of Rs. 50,00,000/ as required by the assessee.

In Compliance to those notices, CA R.K. Agarwal FCA of the assessee company appeared and filed written reply along with required details explanations and other evidences from time to time.”

[Emphasis is ours]

15. A perusal of the above extracts would show that the AO adverts to the notices issued to the petitioner, to which we had made a reference above, and the material (i.e., two sheets of paper) which were alluded to the accommodation entry received by the petitioner.

16. It is well-established that an AO need not write a detailed order, as long as the assessment record is indicative of the fact that a query was raised and it was answered; if such an exercise has been undertaken, it would not be open to the AO to reopen the same, unless fresh material comes to light which was not available when the matter was examined in the first instance.

17. We may note that Mr Maratha, in support of this plea, had relied upon the judgment of a coordinate bench rendered in ***Commissioner of Income Tax-Vi, New Delhi v. Usha International Ltd.***, 2012 VII AD (Delhi) 673.

17.1 The court in paragraph 13 of the said judgment has made the following apposite observations with regard to when would a case be hit by the principle of change of opinion:

“13. It is, therefore, clear from the aforesaid position that:

(1) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion;

(2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by principle of —change of opinion.



(3) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons.”

[Emphasis is ours]

18. The observations made in paragraph 13(3) clearly establish the principle that once a query is raised and answered, the AO would have formed an opinion, notwithstanding the fact that no reasons are recorded in the assessment order. In such circumstances, the reassessment proceedings, if initiated, would be construed as being invalid in law. This principle is founded on the rationale that the assessee has no control over the manner in which the AO chooses to frame the assessment order. One needs to remember that the AO wears two hats, that of an inquisitor and adjudicator.

18.1 This principle would squarely apply to the facts of the instant case.

19. Thus, for the foregoing reasons, we are inclined to allow the writ petition. Accordingly, the impugned notice dated 30.03.2018 and the order dated 24.09.2018 disposing of the objections preferred by the petitioner are quashed.

20. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 07, 2023 / tr