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

+ **W.P.(C) 1357/2016**

SABH INFRASTRUCTURE LTD. Petitioner
Through : Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya Kapoor,
Mr.Sanat Kapoor, Advocates.

versus

ASSTT. COMMISSIONER OF
INCOME TAX Respondent
Through : Mr. Rahul Chaudhary, Senior
Standing Counsel with Mr. Sanjay
Kumar, Junior Standing Counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER
% 25.09.2017

1. The Petitioner seeks the quashing of a notice dated 20th March, 2015 issued under Section 148 of the Income Tax Act ('Act') by the Assistant Commissioner of Income Tax (hereinafter Assessing Officer 'AO') and the order dated 1st February, 2016 passed by the AO disposing of the objections filed by the Petitioner to the said notice.

2. The Petitioner is a company engaged in the business of real estate and property development. It filed its return of income for the Assessment Year ('AY') 2008-09 on 30th September, 2008 declaring a total income of

Rs.59,83,183/-. A questionnaire dated 4th August, 2013 was issued to the Petitioner by the AO seeking details and documents as a part of the assessment proceedings. One such detail sought for was with respect to ‘share application money received, if any, during the year’. The Petitioner replied to the questionnaire on 11th October, 2010. In its reply, the Petitioner disclosed the details of share capital allotted during the AY as under:-

<u>S.NO.</u>	<u>Name of the Party</u>	<u>Assessment Particulars</u>	<u>No. of Shares Issued</u>	<u>Amount</u>
1.	CHANDELIER TRACON PVT. LTD. 6, HANS PUKUR LANE, KOLKATA-7	AABCC1624N WBG/W/110/2 ITO WD 10(2)	4,000	400,000.00
2.	ELEGANCE TRADE & HOLDING PVT. LTD. 6, HANS PUKUR LANE, KOLKATA-7	AAACE7011L WBG/W/105/3 ITO WD 5(3)	4,000	400,000.00
3.	ECHOLAC VINIMAY PVT. LTD. 6, HANS PUKUR LANE, KOLKATA-7	AAACE5809N WBG/N/109/2 ITO WD 9(2)	4,000	400,000.00
4.	GALORE SUPPLIERS PVT. LTD. 2, DIGAMBER, JAIN TEMPLE ROAD, KOLKATA-7	AAACG9662P WBG/W/109/1 DC AC Cir 9	2,000	200,000.00
5.	SUGAM COMMODEAL PVT. LTD. 2, DIGAMBER, JAIN TEMPLE ROAD, KOLKATA-7	AAECS3360A WBG/W/110/3 ITO WD 10(3)	6,000	600,000.00
TOTAL			20,000	2,00,00,000.00

3. On 19th November, 2010, the Petitioner further submitted the confirmation from the said five companies along with their ITRs and PAN Cards. On 26th November, 2010, the Petitioner further submitted the Auditor's Reports, Balance Sheets, Particulars of P&L accounts, and Schedules of Balance Sheet and P&L Account of the above named five companies. An assessment order under Section 143 (3) of the Act was passed by the AO on 20th December, 2010, after the details regarding the five companies and their confirmations were submitted. The assessment order, however, did not contain any discussion in respect of the share application money. It thus appeared that the AO accepted the information furnished by the Petitioner and raised no further doubt or queries in respect to the same.

4. On 20th March, 2015, a notice was issued under Section 148 of the Act on the ground that income had escaped assessment. Reasons to believe were extracted and furnished on 16th December, 2015, which state as under:

“Reasons recorded for initiating proceedings u/s 148 of the I.T. Act, 1961

A credible information has been received to this office from the ITO (Inv.), Unit –V(2), Jhandewalan Extension, New Delhi vide their letter No. F.No.ITO (Inv.) /Unit-V(2)/ND/SAPL & SPIPL/2014-15 dated 29.05.2014 wherein he has stated that during the investigation carried out by the DDIT(Inv.). Unit –III (1), Kolkata, the statement of Sh. Navneet Kumar Singhania, s/o Late Jawala Prasad Singhania, r/o D-6/8, Purbasha Housing Estate, Manicktala Main Road, Kankurgachi, Kolkata 700054 was recorded on oath u/s 131 of the IT Act, 1961 of 18.03.2014. In his statement, Sh. Navneet Kumar Singhania admitted that he is an entry operator, having his office at 5/1, Clive Row, III

Floor, RN-91, Kolkata -700001. He also admitted that his source of income is from commission earned in lieu of giving service in the form of giving cheques to his clients in return for cash. He has also admitted that he along with his team members was operating the following paper companies which had provided book entry to M/s Sabh Infrastructure Limited namely:-

- (a) Chandelier Tracon PL (PAN – AABCC1624N)
- (b) Galore Suppliers PL (PAN – AAACG9662P)
- (c) Echolac Vinimay PL (PAN – AAACE5809N)
- (d) Sugam Commondeal PL (PAN – AAECs3360A)
- (e) Elegance Trade & Holdings PL (PAN–AAACE7011L)
- (f) Subhrekha Vyapaar PL (PAN – AADCS8327A)

During the AY 2008-09 M/s Sabh Infrastructure Limited had received share premium wherein share premium of Rs.400 per share was received on the nominal value per share of Rs.100 each. The sum total of the value of the shares so subscribed was Rs.1.00crore in M/s Sabh Infrastructure Limited as details given hereunder:

	Date	31.03.2008	
Name & Address of Company Investing	SAM + Premium paid per share	No. of shares subscribed	Value
Chandelier Tracon PL. 6, Hans Pukur Lane, Kolkata (PAN – AABCC1624N)	100+400	4000	20,00,000
Galore Suppliers PL. 2 Digamber Jain Temple Road, Kolkata (PAN – AAACG9662P)	100+400	2000	10,00,000
Echolac Vinimay PL. 6, Hans Pukur Lane, Kolkata (PAN – AAACE5809N)	100+400	4000	20,00,000
Sugam Commondeal PL. 2, Digamber Jain Temple Road, Kolkata (PAN – AAECs3360A)	100+400	6000	30,00,000
Elegance Trade & Holdings PL. 6, Hans Pukur Lane, Kolkata	100+400	4000	20,00,000

(PAN – AAACE7011L)			
			1,00,00,000

Since in the light of new facts, it has been established that these companies, from whom share premium has been received by M/s Sabh Infrastructure Limited are not genuine, I am of the view that the Assessee has not disclosed fully and truly all material facts in its income tax return resulting in under assessment of income of Rs.1,00,00,000/- on account of share premium.

The assessment u/s 143 in this case was completed on 20/12/2010 at assessed income of Rs.2,15,45,860/-

Hence, I have reasons to believe that an amount of Rs.1,00,00,000/- as per reasons mentioned above, has escaped assessment in the case of Assessee relevant to AY 2008-09, within the meaning of Section 147 of the IT Act.

Since, in the instant case, the period of 4 years has expired and income escaped by reasons of the failure on the part of the Assessee to show true particulars of his income, Accordingly, the case falls under Section 151 (1) of the IT Act, 1961, therefore, the reasons are put up before CIT, Delhi VIII, New Delhi through Addl. CIT.(Range-22)New Delhi for necessary approval for issue of notice u/s 148 of the IT Act, 1961 for the purpose of reopening of assessment u/s 147 of the Income Tax Act, 1961.”

5. The Petitioner objected to the reopening of assessment under Sections 147 and 148 of the Act. In the said objections, the Petitioner contended that the reasons to believe do not contain any allegation as to what material facts and information the Petitioner had failed to disclose. Apart from raising various jurisdictional objections, the Petitioner also raised objections on merits. The objections were rejected by the AO on 1st February, 2016.

Submissions of the Petitioner

6. Mr. Salil Kapoor, learned counsel appearing on behalf of the Petitioner submits that there was no failure to disclose fully and truly all material facts, during the assessment proceedings. The Petitioner had candidly disclosed the names of all the five companies, the share amount received from them as also the share premium amount received. The fact that the Petitioner was specifically served with a questionnaire seeking these details and that the same were submitted to the AO clearly points to the satisfaction of the AO during the assessment proceedings. The Petitioner did not merely submit the details of the said five companies and the amounts so received but also submitted the relevant documents of the said five companies including letters of confirmations. Mr. Kapoor submits that all the five companies are assessed to tax and hence, it was quite easy for the AO to cross verify if the need was felt. The order under Section 143 (3) of the Act having been passed in the Petitioner's assessment proceedings for the relevant AY and the notice under Section 147 having been issued after the expiry of four years from the end of the relevant AY, the first proviso to Section 147 is squarely attracted. Therefore, there exists a higher onus upon the Revenue to discharge its burden of proving that there was non-disclosure by the Petitioner.

7. Mr. Kapoor specifically relies on various judgments including ***CIT v. Kelvinator of India Ltd. (2010) 187 Taxman 312*** (hereafter 'Kelvinator') and the judgments thereafter of this Court. He submits that on a perusal of the reasons to believe, it can be seen that the AO has merely relied upon information received from an investigation carried out by DDIT (Inv.) Unit

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III, Kolkata, in which a statement of Mr. Navneet Kumar Singhania was recorded on 18th March, 2014 under Section 131 of the Act. The AO came to the conclusion that the said five companies were ‘paper companies’ without examining if the said statement was enquired into. He submits that the AO did not himself verify any of the facts contained in the said statement. He further submits that the reasons *per se* do not refer to any investigation report of the DDIT (Inv) and even if such report existed, a copy thereof, was not furnished to the Petitioner. Mr. Kapoor also took exception to the manner of communicating the reasons. The AO has written a letter extracting the reasons for expiry of the assessment instead of furnishing of copies of the forms used by the AO for obtaining the permission of the Superior Officer. The Petitioner is not aware of what other information was relied upon by the AO. He thus submits that the notice seeking to reopen the assessment under Sections 147 and 148 of the Act as also the order dated 1st February, 2016 disposing of the objections of the Petitioner deserve to be quashed.

Submissions of the Revenue

8. Mr. Rahul Chaudhary, learned Senior Standing counsel for the Revenue defends the notice as also the order dated 1st February, 2016 on the ground that the reasons recorded clearly spell out the necessity to reopen the assessment. Mr. Chaudhary submits that in the assessment proceedings, the AO never had the information that these companies were ‘paper companies’, and that this information was in fact concealed by the Petitioner. Therefore, the fact that the AO subsequently received information that the said companies were ‘paper companies’ was sufficient to justify the issuance of

the notice under Sections 147 and 148 of the Act. At this stage, it was not necessary for the AO to make a detailed enquiry into such information. Mr. Chaudhary asserted that there must have been a report of investigation of the DDIT on the basis of which it was concluded that the said five companies were 'paper companies'. However, he was candid that the reasons for reopening the assessment made no reference to such report.

9. Mr. Chaudhary, further submits that the Petitioner should be directed to participate in the proceedings. The mere issuance of the notice does not itself result in a conclusion that there is escapement of income. Mr. Chaudhary submits that this was not a case where there was no basis for the AO to reopen the assessment. He relies upon *CIT v. Multiplex Trading & Industrial Co. Ltd.* 378 ITR 350 (hereafter 'Multiplex') as also the *Pr. CIT v. M/s Paramount Communication Pvt. Ltd.* [2017] 392 ITR 444 (Del), in support of the Revenue's case.

Analysis and Findings

10. The law on this subject is well settled. As held in *Kelvinator (supra)*, the powers under Section 147 of the Act have to be exercised after a period of four years only if there is a failure to disclose fully and truly all material facts and information, by the Assessee. This legal position has been reiterated recently by this Court in *Oracle India Pvt. Ltd. v. ACIT 2017 SCC OnLine Del 9360*, *Unitech Limited v. DCIT 2017 SCC OnLine Del 9408*, *BDR Builders and Developers Pvt. Ltd. v. ACIT 2017 SCC OnLine Del 9425* and in judgment dated 30th August, 2017 in W.P.(C) 5807/2014 (*Swarovski India Pvt. Ltd. v. Deputy Commissioner of Income Tax*).

11. Thus, it is also now well settled that the reasons to believe have to be self explanatory. The reasons cannot be thereafter supported by any extraneous material. The order disposing of the objections cannot act as a substitute for the reasons to believe and neither can any counter affidavit filed before this court in writ proceedings.

12. In the present case, the reasons to believe contained the names of the very same five companies which were initially disclosed by the Petitioner during the assessment proceedings. The number of shares subscribed to by the said companies is the same and the amount received has been disclosed by the Assessee. There is no new material which has been found or mentioned in the reasons to believe which were not contained in the information provided by the Assessee prior to the conclusion of assessment under Section 143 (3) of the Act.

13. In fact, the Petitioner, after initially submitting the details of the companies and the shares subscribed to, further provided confirmations from the said companies. The Petitioner also submitted copies of the balance sheets of the said companies for the relevant AYs showing that these amounts were duly reflected therein. The said companies were also assessed to tax. Thus, it appears that the AO was satisfied with the details and information provided by the Petitioner.

14. A perusal of the order disposing of the objections reveals that it proceeds on the basis that the information sought for by the Petitioner which formed

the basis for the reasons to believe, including the evidence collected, was required to be provided only in the further assessment proceedings. The said order overlooks the fact that the reasons for reopening do not mention as to what fact or information was not disclosed by the Petitioner. This is very vital and in fact goes to the root of the matter. An allegation that the companies are 'paper companies' without further facts is by itself insufficient to reopen assessments that stand closed after passing of orders under Section 143 (3) of the Act.

15. The assessment proceedings, especially those under Section 143 (3) of the Act, have to be accorded sanctity and any reopening of the same has to be on a strong and sound legal basis. It is well settled that a mere conjecture or surmise is not sufficient. There have to be reasons to believe and not merely reasons to suspect that income has escaped assessment. In this case, the reasons failed to mention what facts or information was withheld by the Petitioner. Merely relying upon the statement of Mr. Navneet Kumar Singhania that the companies in question were 'paper companies', by itself, is insufficient to reopen the assessment, unless the AO had further information that these companies were non-existent after making further inquiries into the matter. It is clear that the AO did not make any inquiry or investigation, if these companies were in fact 'paper companies'. No effort has been made to establish the connection between the statement of Mr. Navneet Kumar Singhania and the five companies.

16. Mr. Chaudhary's submission that this Court cannot dictate the manner and content of what is to be written in the reasons to believe is correct as a

legal proposition. However, the Court has to examine the reasons to believe to see if it satisfies the rigour of the provisions. The observations of this court in *Multiplex (supra)* are relevant in this respect and are set out below:

“24. In our view, the question whether the Assessee could have been stated to disclosed fully and truly all material facts have to be examined in the light of facts of each case and also the reasons that led the AO to believe that income of an Assessee has escaped assessment. In a case where the primary facts have been truly disclosed and the issue is only with respect to the inference drawn, the AO would not have the jurisdiction to reopen assessment. But in cases where the primary facts as asserted by the Assessee for framing of assessment are subsequently discovered as false, the reopening of assessment may be justified”. ”

17. In the facts of this case, the primary facts have not been shown to be false. The five companies do exist. They did subscribe to the share capital of the Petitioner. They did pay the money to the Petitioner. All the five companies are assessed to tax. These are the primary facts. The reasons to believe rely upon a letter received from the Investigation Wing and Mr. Chaudhary submits that this letter was in fact an investigation report. The report does not form part of the reasons and neither was it annexed to the reasons. Interestingly, even the counter affidavit is silent as to the material which has not been disclosed by the Petitioner. The counter affidavit merely states that the information was specific and the information would be provided to the Petitioner during the assessment proceedings. Thus, if the Revenue had any basis to show that the primary facts were incorrect, the same ought to have been set out in the reasons to believe. That has not been done in the present case.

18. Thus, the Petitioner cannot be said to have failed to disclose fully and truly all the material facts. This being a jurisdictional issue, the assumption of jurisdiction under Sections 147 and 148 of the Act was erroneous. The notice dated 20th March, 2015 and the subsequent order dated 1st February, 2016 deserve to be and are hereby quashed.

19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re-opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and

any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

20. The writ petition is allowed in the above terms. There will be no order as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 25, 2017

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