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

Judgement reserved on **15.03.2021**
Judgement pronounced on **26.03.2021**

\+ **W.P.(C) 12544/2018**

SYNFONIA TRADELINKS PVT LTD .....Petitioner

Through: Mr. Udaibir Singh Kochar and Ms. Kunjala Bhardwaj, Advs.

versus

INCOME TAX OFFICER, WARD-22(4) .....Respondent

Through: Ms. Vibhooti Malhotra and Mr. Shailendra Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: -

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Preface: -

1. This writ petition is directed against notice dated 31.03.2018, issued under Section 148 of the Income Tax Act, 1961 [hereafter referred to as 'the Act'], and the sanction accorded by respondent no. 2 i.e. the Principal Commissioner of Income Tax, Delhi-VIII on 29.03.2018 for issuance of notice under Section 148 of the Act. The assessee, being aggrieved, has moved this court *via* the instant writ petition.

Background facts: -

2. To adjudicate upon the writ petition, the following broad facts are required to be noticed:

2.1. The assessee before us is a private limited company going by the name Synfonia Tradelinks Pvt. Ltd. The assessee was incorporated on 28.05.1993 under the Companies Act, 1956 *albeit* under the name Synfonia Pharmaceuticals Pvt. Ltd. On 31.03.2015, the assessee changed its name to Synfonia Tradelinks Pvt. Ltd.

2.2. The income tax return for the assessment year [in short 'AY'] 2010-2011 along with the balance sheet as on 31.03.2010 was filed by the assessee, on 23.09.2010.

2.3. Insofar as the succeeding year was concerned, which is also the AY in issue i.e. AY 2011-2012, the income tax return was filed on 29.08.2012 by the assessee along with the balance sheet as on 31.03.2011. Returns for the aforementioned AY(s) were filed *via* electronic mode.

2.4. On 31.03.2018, which was the last date on which the limitation was to expire, a notice under Section 148 of the Act was issued by respondent no.1, wherein respondent no.1 *inter alia* stated that he had reason to believe that income chargeable to tax *qua* AY 2011-2012 had escaped assessment within the meaning of Section 147 of the Act. Accordingly, the assessee was directed to

file a return in the prescribed form for the said AY as respondent no.1 proposed to assess/re-assess the income/loss for the concerned AY.

2.5. The record shows that the assessee had, perhaps, written to respondent no.1 on 03.04.2018 to close the reassessment proceedings as the notice under Section 148 *qua* AY 2011-2012 was time-barred having been served upon him after the expiry of the prescribed limitation. As indicated above, the limitation for issuance of notice expired, concededly, on 31.03.2018. This aspect finds mention in the assessee's communication dated 23.04.2018 addressed to respondent no.1. Besides this, the said communication went on to state, that without prejudice to its contention that the notice under Section 148 of the Act was time-barred, it had enclosed a copy of the income tax return *qua* AY 2011-2012.

2.6. In addition to the aforesaid, the assessee also called upon respondent no.1 to furnish a copy of the reasons based on which he believed that the assessee's income for AY 2011-2012 had escaped assessment. The communication concluded with a request to respondent no.1 to furnish a copy of the approval, granted by respondent no.2, for initiating proceedings under Section 147 of the Act.

2.7. Since respondent no.1 did not furnish a copy of the proceedings in which he had documented his reasons for initiating proceedings under Section 147 of the Act, the assessee escalated the matter, by writing to the Assistant Commissioner of Income Tax [in short 'ACIT'] *vide* communication dated 09.06.2018. In this communication, while flagging the issue that the assessee has not been furnished reasons for initiating proceedings under Section 147 of the Act, reference was also made to the fact that the assessee's case had also been picked up for initiating proceedings under Section 147 in AY 2009-2010 and AY 2010-2011 when additions amounting to Rs. 3,06,00,000/- and Rs. 2,30,62,500/- respectively had been made. Furthermore, the assessee pointed

out that its share capital, which included reserves and surplus as on 31.03.2010, amounted to Rs. 3,87,78,048/-; a figure which had remained consistent since the financial year [in short 'FY'] 2005-2006.

2.8. Even while this request was pending, the assessee was served with a notice dated 02.08.2018 under Section 143(2) of the Act *vis-à-vis* AY 2011-2012 as also a notice of even date i.e. 02.08.2018 for the said AY under Section 142(1) of the Act.

2.9. Finally, on 14.09.2018, the petitioner was furnished, the reasons for issuance of notice under Section 148 of the Act. In response to the same, the assessee filed its objections. Respondent no.1 *vide* order dated 08.10.2018 rejected the objections preferred by the assessee. This order was handed over to the chartered accountant of the assessee on 12.10.2018.

3. It is in these circumstances that the assessee was propelled to move this court by way of the instant writ petition. The court, while issuing notice dated 26.11.2018, which was accepted by the counsel for the revenue, made the following observations:

> *"Issue Notice. Mr. Deepak Anand, Jr. Standing Counsel accepts notice.*
>
> *This Court is of the opinion that the petitioner/applicant's grievance is with respect to non-application of mind by the concerned officer (A.O.) to issue the impugned notice under Sections 147/148 is prima facie warranted and justified.*
>
> *In these circumstances, the respondents are hereby restrained from passing a final order in the re-assessment proceedings during the pendency of the present writ petition.*
>
> *The Revenue is directed to produce the original file for consideration on the next date of hearing.*
>
> *List on 11th February, 2019.*
>
> *Dasti."*

4. Since then, respondent no.2 has filed a counter-affidavit on behalf of the revenue.

Submissions made on behalf of the assessee: -

5. Arguments in the matter on behalf of the assessee have been advanced by Mr. Udaibir Singh Kochar, while on behalf of the revenue submissions have been made by Mr. Shailendra Singh.

6. Briefly, Mr. Kochar made the following submissions:

i. That respondent no. 2, who is the sanctioning authority under Section 151 of the Act, has not applied his mind to the reasons, supposedly, recorded by respondent no.1. Respondent no.2 has simply rubber-stamped the reasons by simply writing, "approved".

ii. Furthermore, the assessee has also gone on to aver that, the approval for issuance of notice under Section 148 of the Act, and commencement of proceedings under Section 147 of the Act were sought by ACIT and not by respondent no.1. It is averred by the assessee that since the notice was issued after the expiry of four years from the end of the relevant assessment year under the provisions of Section 151 of the Act, the ACIT had no role to play in the process of grant of sanction.

iii. There was a total non-application of mind by both respondent no.1 and respondent no.2, inasmuch as they did not correlate the information received from the Additional Director of Income Tax (Investigation) Unit 2(1) [in short 'ADIT'], and that which was available in the income tax return and the balance sheet filed by the assessee. It was submitted that not only the information concerning the authorized capital, issued and subscribed paid-up capital and share premium account was wrongly recorded but also an error as gross as that which pertained to its year of commencement of business had crept in the order recording reasons. It was submitted that respondent no.1 proceeded on the basis that FY 2010-

2011 was the assessee's first year of business whereas the assessee's incorporation took place as far back as 28.05.1993.

a) In support of the aforesaid plea, the reference was made to the following facts and figures:

Figures referred to in the order containing reasons recorded by respondent no. 1	**Correct figures as per return**
Authorised Capital Rs. 1,25,00,000/-	Authorised Capital Rs. 25,00,000/-
Issued and Subscribed Paid-up Capital Rs. 16,00,000/-	Issued and Subscribed Paid-up Capital Rs. 24,15,200/-
Share Premium Account Rs. 14,83,40,250/-	Share Premium Account Rs. 3,66,16,800/-

iv. Although respondent no.1 in the notice issued under Section 148 of the Act has referred to the report of the ADIT, there is no discussion qua the said report in the order recording reasons. Therefore, it is difficult to discern from the order recording reasons as to what was the basis of the formation of belief by respondent no.1 that the assessee's income chargeable to tax had escaped assessment.

v. Respondent no.1 erred in rejecting the objections raised by the assessee by relying upon a purported statement of one, Mr. Pradeep Kumar Jindal, who had allegedly provided accommodation entries to the assessee without furnishing a copy of the statement made by the said person.

vi. Respondent no. 2, *via* the counter-affidavit, has attempted to justify the issuance of notice under Section 148 of the Act by adverting to matters which are not found in the order recording reasons for initiating proceedings under Section 147 of the Act. The revenue cannot supply reasons by way of counter-affidavit which were not available at the time of issuance of a notice under Section 148 of the Act.

vii. We may note, at this juncture, that the grounds set forth hereafter are the grounds incorporated in the writ petition which were not articulated during the submissions made in the Court before us:

a) The assessee has averred that while the reasons, which were furnished to the assessee, were recorded by ITO Ward 22(4), the reasons, purportedly given for obtaining approval of respondent no.2, were recorded by ITO Ward 22(2).

b) Besides this, the assessee has also averred that although, according to the revenue, the sanction was accorded by respondent no.2 before the issuance of the notice dated 31.03.2018 under Section 148 of the Act, the order granting sanction was served upon it only on 01.11.2018 and that too, after repeated requests. According to the assessee, the inordinate delay in the dispatch of the sanction order was suggestive of the fact that the sanction was not granted before the issuance of a notice under Section 148 of the Act. In support of this submission, reliance was placed on the judgement of the Supreme Court rendered in ***State of Andhra Pradesh v. M. Ramakishtaiah & Co. [1994] 93 STC 406(SC)***.

Submissions advanced on behalf of the Revenue: -

7. On the other hand, Mr. Shailendra Singh, submitted that respondent no.1 had reasons to believe that the taxable income of the assessee, for the concerned AY 2011-2012, had escaped assessment.

7.1. Mr. Singh contended that notwithstanding the obvious errors in the order recording reasons passed by respondent no.1, concerning assessee's authorized capital, issued and subscribed paid-up capital, the share premium account and the year of its incorporation, no fault could be found in the initiation of reassessment proceedings under Section 147 of the Act since all that respondent

no.1 was required to demonstrate that the formation of the belief that the taxable income had escaped assessment was not based on reasons which were either arbitrary or irrational. To demonstrate that the formation of the belief, as discernible from the order recording reasons, was neither arbitrary nor irrational, a reference was made to the following portion of the said order :

> *"Further, on perusal of return of income filed by the assessee for A.Y 2010-11 and A.Y 201l-12 it has been observed that the assessee has shown unsecured loans of Rs. 38,071/- and Rs. 25,57,206/- respectively. Thus there is substantial increase in the unsecured loans during A.Y. 2011-12.*
>
> *A careful scrutiny of information received from the investigation wing and reportreceived from Investigation Wing. New Delhi subsequent analysis of report of investigation wing, data of transactions and verification of ITR lead to an irresistible conclusion that the assessee company has taken accommodation entry at least up to the amount of Rs.26,93 ,500/-*
>
> *Considering the above referred credible information, and enquiries and analysis subsequent to the information. I have reason to believe that an amount at least of Rs.26,93,500/- & Commission @ 2.5% amounting to Rs 67,338/- (Total Rs.27,60,838/-) has escaped assessment in case the of M/s SYNFONIA TRADELINKS PVT. LTD for the A. Y 2011-12 within the meaning of Section 14 7/148 of Income-tax Act, 1961."*

7.2. The submission advanced was that the assessee had taken accommodation entries from, one, Mr. Pradeep Kumar Jindal in lieu of cash *via* dummy companies/entities which was reflected in the balance sheets of the assessees as unsecured loans. It was contended that this fact was discovered upon search being conducted at the premises of Mr. Pradeep Kumar Jindal on 18.11.2015.

7.3. Mr. Singh attempted to explain away the assertion made in the order recording reasons "*Thus the assessee company has taken bogus share capital/share premium account from the above said entry providers amounting to Rs.26,93,500/-*" by submitting that the reference to share capital/share premium account was an inadvertent error.

7.4. According to Mr. Singh, the accommodation entries were reflected in the return of the assessee which is accompanied by its balance sheets in the form of unsecured loans. It was, thus, the contention of Mr. Singh that at the stage of initiation of reassessment proceedings, all that one is required to enquire is

whether or not *prima facie* material was available, which could form the basis for reassessment. Mr. Singh emphasized the fact that, at this stage, the court was not required to examine the sufficiency or correctness of the material, which formed the edifice for the formation of the belief that the assessee's taxable income had escaped assessment. In support of this plea, reliance was placed by Mr. Singh on the judgment of the Supreme Court rendered in ***Raymond Wooden Mills Limited v. Income Tax Officer, Central Circle XI, Range Bombay and Ors., (2008) 14 SCC 218***

7.5. Mr. Singh drew our attention, as noted above, to that part of the order recording reasons which bore the heading "analysis of information" to emphasize the fact that reassessment proceedings had been initiated as respondent no.1 suspected the genuineness of the loans received during the subject AY.

7.6. In sum, Mr. Singh argued that there was cogent material available for respondent no.1 to form a belief that the assessee's taxable income had escaped assessment. This information, according to Mr. Singh, which was received from the office of the ADIT and the report generated thereafter and its analysis formed the basis of respondent no.1's belief that the assessee's income chargeable to tax had escaped assessment.

7.7. Mr. Singh went on to state that respondent no.2 had given his approval to initiation of proceedings against the assessee only after satisfying himself that a case was made out for initiation of proceedings under the provisions of Section 147 of the Act.

8. We may record here that a perusal of the counter-affidavit filed by respondent no.2 would show that the revenue has denied the allegation levelled against it that a breach of principles of natural justice had occurred by adverting to the fact that it had furnished the relied upon documents (i.e. the information received from the investigation wing and the statements of Mr. Pradeep Kumar

Jindal and his associates i.e. Shri Laxman Singh Satyapal and Ms. Meera Mishra) to the authorized representative of the assessee at the proceedings held before the respondent no.1 on 12.10.2018.

Analysis and Reasons: -

9. We have heard the learned counsel for the parties and perused the record. Before we proceed further, it would be helpful if we were to set forth certain well-established principles enunciated by the courts over the years *vis-à-vis* initiation of proceedings under Section 147 of the Act.

(i) The reasons which lead to the formation of opinion or belief that the assessee's income chargeable to tax has escaped assessment should be inextricably connected. In other words, the reasons for the formation of opinion should have a rational connection with the formation of the belief that there has been an escapement of income chargeable to tax (*See: ITO v. Lakhmani Mewal Das, 1976 3 SCC 757]*

(ii) The expression "reason to believe" is stronger than the word "satisfied". The belief should be based on material that is relevant and cogent. (*See: Ganga Saran & Sons Pvt. Ltd. v. ITO, 1981 3 SCC 143*].

(ii) (a) The assessing officer should have reasons to believe that the taxable income has escaped assessment. The process of reassessment cannot be triggered based on a mere suspicion. The expression "reason to believe" which is found in Section 147 of the Act does not have the same connotation as "reason to suspect". The order recording reasons should fill this chasm. The material brought to the knowledge of the assessing officer should have nexus with the formation of belief that the taxable income of the assessee escaped assessment; the link being the reasons recorded, in that behalf, by the assessing officer.

(iii) The AO is mandatorily obliged to record reasons before issuing notice to the assessee under Section 148(1) of the Act. This is evident from the bare perusal of sub-section (2) of Section 148 of the Act.

(iv) No notice can be issued under Section 148 of the Act by the A.O. after the expiry of four years from the end of the relevant AY unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner arrives at a satisfaction based on the reasons recorded by the A.O. that it is a fit case for issuance of a notice under Section 148 of the Act. [*See: Section151(1) of the Act*].

(v) The limitation for issuance of notice under Section 148 as prescribed under Section 149 of the Act commences from the date of its issuance while the time limit for passing the order of assessment, reassessment, computation and re-computation as prescribed under Section 153 of the Act commences from the date of service [*See: R.K. Upadhyay v. Shanab Bhai P. Patel, (1987) 3 SCC 96*].

(vi) A jurisdictional error would occur, which can be corrected by a writ court, if reasons to believe are based on grounds that are either arbitrary and/or irrational. (*See: Sheo Nath Singh v. Appellate ACIT, Calcutta (1972) 3 SCC 234*].

9.1. Thus, if one were to apply the aforestated principles, it would be clear as daylight that the order recording reasons discloses complete non-application of mind. The reason we say so is discernible from the following:

9.2. Respondent no.1 in paragraphs 2 and 3 of the order recording reasons has unequivocally stated that under the heading "Details of information received regarding escapement of income and analysis" that material impounded during the search conducted at the premises of Mr. Pradeep Kumar Jindal had, *inter alia*, revealed that he had made investments in the form of share capital, share

premium, loans and advance in lieu of cash via front/non-listed companies controlled by dummy directors to the tune of nearly Rs.100 crores which included the assessee. It is in this context that in the order recording reasons, the following table is set out:

S.No.	Beneficiaries	Name of Entry Provider	Date	Amount (Rs.)
i.	Synfonia Pharmaceuticals Pvt. Ltd. Name changed to Synfonia Tradelinks Pvt. Ltd.	Dume Footwears Pvt. Ltd.	09.06.2010	17,00,000
ii.	Synfonia Pharmaceuticals Pvt. Ltd.	Dume Footwears Pvt. Ltd.	09.06.2010	5,00,000
iii.	Synfonia Pharmaceuticals Pvt. Ltd.	Dume Footwears Pvt. Ltd.	22.06.2010	1,00,000
	Synfonia Pharmaceuticals Pvt. Ltd.	Focus Industrial Resources Ltd.	24.05.2010	43,500
	Synfonia Pharmaceuticals Pvt. Ltd.	Pawansut Holdings Ltd.	24.05.2010	3,50,000
			Total	26,93,500/-

The table extracted above, as noted in the earlier part of the judgment, is followed by the following assertion which is made in the order recording reasons:

> *"Thus, the assessee company has taken bogus share capital/share premium from the said entries providers amounting to Rs.26,93,500/-."*

9.3. Furthermore, respondent no.1 in no uncertain terms, has indicated in the order recording reasons that the information which triggered the initiation of proceedings *qua* the assessee under Section 147 of the Act was received upon a search being carried out at the residence of Mr. Pradeep Kumar Jindal. While a general statement had been made that Mr. Pradeep Kumar Jindal had provided accommodation entries in the form of share capital/share premium, loans and advances, in lieu of cash, *qua* a large number of beneficiaries through his front companies, insofar as the assessee was concerned, it was emphasized that the

accommodation entry was reflected in its books in the form of bogus "share capital and share premium".

9.4. Respondent no.1, in paragraph 4 of the order recording reasons, in no uncertain terms alludes to the fact that the information was received from the investigation wing. The emphasis was laid on the fact that the entry providers were three companies i.e. Dume Footwears Pvt. Ltd., Focus Industrial Resources Ltd. and Pawansut Holdings Ltd. A perusal of the order recording reasons shows that the purported investments made *via* these entities were quantified at Rs.26,93,500/-. This information which was the underlining material based on which proceedings under Section 147 of the Act were triggered was correlated with the return of income filed by the assessee for the concerned AY i.e. AY 2011-2012. In correlating the information, concededly, respondent no.1 made errors with regard to the basic information provided by the assessee in its balance sheet for the year ending on 31.03.2011 concerning authorized share capital, issued and subscribed paid-up share capital, share premium and even as regards the year in which the assessee had been incorporated. The facts and figures have already been recorded in paragraphs 2 to 2.9 above. Therefore, the correlation between the underlying material and the information which was available in the balance sheet of the assessee was clearly not made.

9.5. Mr. Singh, in a desperate attempt to salvage the situation, drew our attention to the unsecured loans shown in the income tax returns of the assessee for AYs 2010-2011 and 2011-2012 amounting to Rs.38,071/- and Rs.25,57,206/- respectively. Apart from anything else, simple math would show that the cumulative total of these figures is Rs.25,95,277/- and not Rs.26,93,500/- which, according to respondent no. 1, is the unexplained credit in the books of accounts of the assessee and, hence, required to be added under Section 68 of the Act. Therefore, for Mr. Singh to say that these are inadvertent

errors and hence should be ignored, in our opinion, is an argument that is completely misconceived. As indicated above, if the information received (from the investigation wing) was that the accommodation entries, in lieu of cash, were taken in the form of share capital and share premium they could certainly not be linked to unsecured loans received in AYs 2010-2011 and 2011-2012.

9.6. It is pertinent to note that in the objections filed by the assessee, an attempt has been made to explain the purported accommodation entries by stating therein that the advances had been given to the 5 companies adverted to in the order recording reasons which were received back on the dates given in the said order. The assessee also went on to state, in its objections, that the opening balance (as on 01.04.2010) and closing balance (as on 31.03.2011) of the share premium account (Rs. 3,66,16,800/-) and the share capital account (Rs. 24,15,200/-) remained unchanged. In other words, the emphasis was that there was no increase in the share capital or the share premium account, as alleged, or at all. In the order passed by the assessing officer dated 08.10.2018, whereby, the objections of the assessee were rejected; none of this has been dealt with. Therefore, in our view, while the assessing officer may suspect that the taxable income of the assessee escaped assessment, he could not have formed a belief *qua* the same based on the material which is, presently, on record.

9.7. Therefore, in our opinion, the formation of belief by respondent no.1 that income of the assessee chargeable to tax had escaped assessment, was unreasonable and irrational, as it could not be related to the underlining information; something which is discernible from a bare reading of the order recording reasons.

9.8. This apart, what is even more disconcerting is the fact that respondent no.2, who accorded sanction for triggering the process under Section 147 of the

Act, simply rubber-stamped the reasons furnished by respondent no.1 for issuance of notice under Section 148 of the Act.

9.9. The provisions of Section 151(1) of the Act required respondent no.2 to satisfy himself as to whether it was a fit case in which sanction should be accorded for issuance of notice under Section 148 of the Act and, thus, triggering the process of reassessment under Section 147. The sanction-order passed by respondent no.2 simply contains the endorsement 'approved'.

10. In our view, the sanction-order passed by respondent no.2 presents, metaphorically speaking 'the inscrutable face of sphinx' ***(See: Breen v. Amalgamated Engineering Union [1971] 2 QB 17500; Also see: State of H.P. v. Sardara Singh, (2008) 9 SCC 392)***. In our view, the satisfaction arrived at by the concerned officer should be discernible from the sanction-order passed under Section 151 of the Act. In this context, the observations made by the Supreme Court in ***Chhugamal Rajpal vs. S.P. Chaliha***, (1971) 1 SCC 453 being apposite are extracted hereafter :

> "… **Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder.** We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. **The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance**. "
>
> [Emphasis is ours]

10.1. Also see the observations made in the judgment of the Division Bench of this Court in ***The Central India Electric Supply Co. Ltd. vs. Income Tax***

Officer, Company Circle – X, New Delhi & Anr., (2011) SCC OnLine Del 472 : (2011) 333 ITR 237.

> "19. In respect of the first plea, if the judgments in Chuggamal Rajpal's case (supra); Chanchal Kumar Chatterjee's case (supra); and Govinda Choudhury & Sons's case (supra) are examined, the absence of reasons by the assessing officer does not exist. This is so as along with the proforma, reasons set out by the assessing officer were, in fact, given. However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is affixed. It is signed by a Under Secretary underneath a stamped 'Yes' against the column which queried as to whether the approval of the Board had been taken. **Rubber stamping of underlying material is hardly a process which can get the imprimatur of this Court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the ITO was to be agreed upon, the least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority.** Our opinion is fortified by the decision of the Apex Court in Union of India v. M.L. Capoor and Ors. MANU/SC/0405/1973 : AIR 1974 SC 87 wherein it was observed as under:
>
> > 27. ... We find considerable force in the submission made on behalf of the Respondents that the "rubber-stamp" reason given mechanically for the supersession of each officer does not amount to "reasons for the proposed supersession". The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion. ... ...
> >
> > 28. ... If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. ...
>
> (emphasis supplied)
>
> This is completely absent in the present case. **Thus, we find force in the contention of learned Counsel for the Appellant that there has not been proper application of mind by the Board and if a proper application had taken place, there would have been no reason to re-open the closed chapter in view of what we are setting out hereinafter**."

[Emphasis is ours]

10.2. We may also note that apart from respondent no.2, the order, according sanction also bears an endorsement of the ACIT. For the sake of convenience, the said endorsement is set forth hereafter:

> *"On perusal of information received from the investigation wing & reasons recorded by AO, I am satisfied that Rs. 27,60,838/- has escaped taxation.*
> *Approval for reopening may be granted."*

10.3. There is no explanation by the revenue as to why approval of ACIT was taken in the instant case. Even if we were to assume for the moment that the approval of the ACIT was rightly taken, a bare perusal of the endorsement would show that there is no application of mind as to whether the information received by the AO had any nexus with the formation of honest belief that the assessee's taxable income had escaped. What is glaring is that the ACIT notes that income to the tune of Rs.27,60,838/- had escaped taxation whereas, in the order recording reasons, the taxable income has been quantified as Rs.26,93,500/-. As noted above, based on the arguments of Mr. Singh that the escaped income should be related to unsecured loans, there is in play a third figure which is Rs.25,95,277/-.

10.4. The reliance placed by Mr. Singh on paragraphs 40 to 43 of the judgment of a division bench of this court in ***Experion Developers Pvt. Ltd. and Ors. vs. Assistant Commissioner of Income Tax and Ors. [2020] 422 ITR 355(Delhi)*** in support of his submissions that the order granting sanction for initiation of proceedings under Section 147 was valid is misconceived as a careful perusal of paragraph 42 of the said judgment would show that the learned judges were of the view that there was no requirement to provide elaborate reasoning while granting approval if the principal commissioner was satisfied with the reasons recorded by the AO. In that case, while according sanction, the principal commissioner had at least paid lip service to the provision by noting "I am satisfied that it is a fit case for notice under Section 148". In the instant case, respondent no.2, i.e. the principal commissioner, has not even made such an

endorsement. This apart, the endorsement of the ACIT should have indicated to respondent no.2 if nothing else that there was something amiss when the escaped income is quantified as Rs. 25,95,277/- whereas in the order recording reasons, penned by respondent no.1, the escaped income was quantified as Rs.26,93,500/-.

10.5. As noted above, in the instant case, because of the failure on the part of respondent no.1 to correlate the information received with the ostensible formation of belief by him, respondent no.2 attempted to connect, via her counter-affidavit, that the escaped income with the "suspicious" unsecured loan entries reflected in the assessee's returns for AY 2010-2011 and 2011-2012. As correctly argued by Mr. Kochar, the counter-affidavit and the submissions made across the bar cannot be used to sustain the impugned actions. The order recording reasons and the order granting sanction should speak for themselves. ***(See observations made Commissioner Of Police, Bombay vs Gordhandas Bhanji*** ***AIR 1952 SC 16*** ***and Mohinder Singh Gill and Ors. vs. The Chief Election Commissioner, New Delhi and Ors.*** ***(1978) 1 SCC 405)***

10.6. Insofar as the ground taken in the writ petition is concerned, that the notice issued under Section 148 was barred by limitation, we are of the view that this submission advanced on behalf of the assessee is not sustainable. As noticed above, the limitation provided under Section 149 of the Act for issuance of notice commences from the date when the notice is issued and not when the notice served. The record presently, before us shows that the notice was issued on 31.03.2018. Therefore, this submission made on behalf of the petitioner is rejected.

10.7. The other argument advanced on behalf of the assessee that the notice under Section 148 was issued by an AO Ward No.22(4) while the order recording reasons was issued by another officer is not borne out from the record.

10.8. This brings us to another ground raised in the writ petition, which is, that there was a huge time lag between the issuance of the impugned notice under Section 148 of the Act and the date when the order recoding reasons was furnished to the authorized representatives of the petitioner. While the assessee is, in our view, right in contending that if the time lag is huge, it does point in the direction that the order was ante-dated, a final view on this aspect could have only been taken if the original record was examined by us. Since the revenue has denied the allegation levelled against it and Mr. Kochar did not press this issue during the hearing, we can't reach a definitive view on this aspect of the matter based on the record available before us Therefore, this submission, made on behalf of the assessee, cannot be accepted.

11. Given the aforesaid, we are also of the view that since respondent no.1 was unable to link the information received with the formation of belief, a jurisdictional error did occur, which, this Court, is empowered to correct, by exercising its powers under Article 226 of the Constitution of India (See: ***Calcutta Discount Co. Ltd. vs. Income Tax Officer, Companies District I Calcutta and Another***, (1961) 2 SCR 241).

11.1. Although Mr. Singh did argue that the assessee should be relegated to statutory remedies, in our view, a case is made out for interference at this stage itself. According to us, relegating a party to an alternative remedy is a self-imposed limitation which, however, does not denude the court of its powers under Article 226. The Court is duty-bound to exercise its powers under Article 226 where ever it finds that a statutory authority has exercised its jurisdiction either irregularly or acted in a matter in which it had no jurisdiction or committed a breach of the principles of natural justice.

11.2. Before we conclude, we must also indicate that the order recording reasons neither discusses the contents of the report received from the investigation wing or the statements made by Mr. Pradeep Kumar Jindal and his

associates. The order recording reasons, merely, indicates that the formation of belief is based on these sources. Furthermore, although, there is a reference to Shri Laxman Singh Satyapal and Ms. Meera Mishra in paragraph 3.14 of the counter-affidavit, as persons, whose statements were also recorded during the search, which formed the basis of initiation of proceedings under Section 147 of the Act, there is no reference to them in the order recording reasons.

11.3. Besides this, the revenue has taken the position that not only the report of the investigation wing but also the statements of Mr. Pradeep Kumar Jindal and his aforementioned associates were furnished to the authorized representative of the assessee in the proceedings held before respondent no.1 on 12.10.2018 (See para 3.6 of the counter-affidavit). The proceedings sheet of 12.10.2018 [which is appended with the counter-affidavit] does not refer to this fact. Therefore, apart from anything else, a case could have been made out also of breach of principles of natural justice. For the reasons best known, Mr. Kochar did not press this issue. We need not elaborate any further on this aspect of the matter as our decision does not turn on whether or not there has been a breach of principles of natural justice.

Conclusion: -

12. Thus, for the foregoing reasons, we are inclined to quash the impugned notice dated 31.03.2018 issued under Section 148 of the Act as well as the order granting sanction issued by respondent no.2. It is ordered accordingly. Parties will bear their own cost.

13. The case papers shall stand consigned to record.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

MARCH 26, 2021

Click here to check the corrigendum, if any