

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1798 OF 2022

Digi1 Electronics Pvt.Ltd.

A Company incorporated in India,

having office at 7, Sevak Apartment

Dhobi Talao Road, Andheri West 400058.

PAN : AACCS1600H

.. Petitioner

Vs.

1. Assistant Commissioner of Income Tax-
13(2)(2), Mumbai, Room No. 571,
Aaykar Bhavan, M.K. Road,
Mumbai 400020 .
2. The Joint Commissioner of Income Tax-
5(2), Aaykar Bhavan, M.K. Road,
Mumbai 400020.
3. The Union of India through
the Secretary, Ministry of
Finance, Government of India,
North Block, New Delhi 110001.
4. National Faceless Assessment
Centre, 2nd floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110003.

.. Respondents

...

Mr. Dharan V. Gandhi, for the Petitioner.

Mr. Akhileshwar Sharma with Ms. Shilpa Goel, for the Respondent.

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CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, J.J.
RESERVED ON : 19TH JANUARY, 2023.
PRONOUNCED ON : 8TH MARCH, 2023.

J U D G M E N T

[PER KAMAL KHATA, J] :

1. By this petition, the petitioner challenges the notice dated 31st March 2021, issued under section 148 of the Income Tax Act, 1961 ('the Act') by respondent No.1 seeking to reopen the assessment, on the basis of 'his reason to believe' that income chargeable to tax for the assessment year 2016-17 had escaped assessment within the meaning of section 147 of the Act; and the order dated 11th March, 2022 disposing of the objections raised by the Petitioner *inter alia* on the ground that the respondent failed to consider the contentions raised did not conduct any further enquiry.

FACTS :

2. The Petitioner is engaged in the business of trading in electronic appliances and has filed its returns on a regular basis and even for A.Y.2013-14. The respondent No. 1 by its order under

section 143(3) of the Act dated 14th March 2016 accepted the returned income of the Petitioner for A.Y. 2013-14 after considering the submissions filed by the Petitioner. It filed its return of income under section 139(1) of the Act on 13.10.2016 for A.Y. 2016-17 declaring a total income of Rs. 2,85,63,750/-. The Petitioner's books of accounts were audited, and the auditor uploaded the audit report in the Form No. 3CD. On 31st March, 2021 notice under section 148 of the Act was issued to the Petitioner for the A.Y. 2016-17 with the prior approval of Respondent No. 2. Pursuant thereto, on 23rd April, 2021, the Petitioner filed its return of income. By letter dated 4th May, 2021, the Petitioner issued a letter seeking reasons recorded. On 23rd June, 2021 however, the respondent No. 1 issued a notice under section 143(2) of the Act and also supplied reasons recorded for reopening the assessment, which are summarized in the petition as follows :

“(a) Information was shared on INSIGHTS PORTAL under the “verification module” under the head “High Risk Transaction cases”.

(b) The Description of such information says ‘*Account Balance or value at the end of the reporting Period*’ and the amount mentioned is Rs. 103,79,33,586/-.

(c) In para 5 the finding of the officer is recorded which says that “*there is credible information received on the Insights portal that high risk*

transactions have taken place in the case of the assessee which needs to be verified.”

3. In response thereto, on 6th July, 2021, the Petitioner filed detailed objections. Further objections were filed by a letter dated 17th July, 2021. Since there was no progress on the disposal of the objections, the Petitioner uploaded online response on 18th February, 2022, whereby the Petitioner requested disposal of the objections raised by the letters dated 6th July, 2021 and 17th July, 2021. Thereafter, on 28th February, 2022, second reminder letter was filed. On 11th March, 2022 impugned order was passed disposing the Petitioner's objections to the proposed reassessment. Immediately, thereafter, a notice under section 142(1) of the Act was issued to the Petitioner calling upon them to provide certain details. In response to the notice, the Petitioner filed letter on 15th March, 2022 raising grievance that the notice only gave one working days' time to file a reply. The Petitioner apprehending arbitrary and huge demands, filed this petition.

4. Mr. Dharan Gandhi the learned Counsel for the Petitioner submitted that the A.O. has failed to establish that the jurisdictional conditions are satisfied to initiate reassessment

proceedings. He submitted that the reassessment is based solely on the information received under the head High Risk Transaction cases under the verification module on the “INSIGHTS PORTAL”. He submits that the description on the portal is “*Account Balance or value at the end of the reporting Period*”, against which an amount of Rs. 103,79,33,586/- is mentioned. He submits that there is nothing in the reasons or in the order disposing objections in this regard. Accordingly, on such vague and ambiguous information, assessment cannot be reopened. He submits that there is no live link or nexus between information received and the purported income i.e. escaped assessment. He further submits that there is no information or detail about the nature of transaction or account which is signed, *sine qua non* for the A.O. to have a “*reason to believe*” that income chargeable to tax has escaped assessment. In support of his contention, he relied upon the decision of the Apex Court in the case of *ITO vs. Lakhmani Mewal Das*¹. He submitted that there is no new tangible material based on which the assessment was being reopened and that from the reasons recorded, one could not deduce what was the new tangible material. He submitted that the reasons categorically recorded that the information requires further verification. He apprehends that the reopening would only lead to

1. (1976) 103 ITR 437(SC)

fishing and roving enquiry conducted by the respondent No.1. He submitted that a reopening of the assessment cannot be based on conjecture, surmises and assumptions. In support of the said contention, he relied upon following judgments:

- (i) 375 ITR 308(Bom) Nivi Trading Limited vs. UOI.
- (ii) 262 Taxman 404(Bom) Jalaram Enterprises (P) Ltd. vs. ITO.
- (iii) 261 Taxman 110(Bom) PCIT vs. Rajesh D. Nandu.
- (iv) 406 ITR 326 (Guj) PCIT vs. Manzil Dineshkumar Shah.

5. He further submitted that from the information available on the “INSIGHT PORTAL” it can be concluded that the impugned order was passed in mechanical and in routine manner without any application of mind, which by itself would make reassessment proceeding bad in law and liable to be set aside. He submitted that since the respondent No. 1 had taken no efforts to verify the records of the Petitioner, the actions were without any due diligence and therefore, contrary to the law. He placed reliance on the following decisions in support of his contention.

- “(I) Chhuganmal Rajpal vs. SP Chaliha (1971) 79 ITR 603(SC).
- (ii) PCIT vs. Shodiman Investments (P) Ltd. 93 taxmann.com 153(Bom).
- (iii) Nu Power Renewables (P) Ltd. vs. DCIT 94 taxmann.com 29(Bom).
- (iv) South Yarra Holdings vs. ITO 263 Taxman 594(Bom).”

6. He relied upon the decision of this Hon'ble Court in the case of *Hindustan Lever Ltd. vs. R.B. Wadkar*² to contend that in the present case, the reasons were absolutely silent about the nature of transaction/account and consequently, were vague and unambiguous and unsubstantiated information. He further submitted that a copy of the sanction or approval by the PCIT was not furnished to the Petitioner and consequently one could conclude that either there is no such approval or the same is sanctioned without any application of mind. He further submitted that the notice under section 143(2) of the Act dated 23rd June, 2021 is in contravention of the Judgment of the Apex Court in the case of *GKN Driveshafts (India) Ltd. v/s. Income-tax Officer*³ which held that the assessing officer has to supply reasons after which the assessee can file objections and thereafter, the same had to be disposed of by a speaking order. He submitted that a period of 4 weeks is required to be kept between the order disposing of the objections and the time barring date, which is not done in the present case. He submitted that whilst the assessing officer required more information, he averred "*the debit and credit figures mentioned in the STR 001 for*

2. 268 ITR 332(Bom)

3. (2003) 259 ITR19(SC),

*A.Y. 2016-17 are as under: “Debit transaction: Rs.105,94,63,630
Credit Transaction: Rs. 103,79,33,586/-.”* He submitted that the debit figure had appeared for the first time and was ignored while recording reasons. He submitted that the debit figure is more than credit figure and that since the clarification about the nature of transactions/accounts is unanswered by the respondent, the Petitioner is unable to explain the same. He lastly submitted that the order has been passed by NFAC i.e. respondent No. 4 whereas the reasons are recorded by respondent No. 1, which consequently vitiates the order passed disposing the objections. In view of the above, he prayed that the petition be made absolute.

7. Mr. Suresh Kumar, learned Counsel for the respondent submits that the information on the “INSIGHT PORTAL” from the Financial Intelligence Unit of the Government of India is tangible and concrete information. He submits that new tangible information was received in relation to the suspicious transactions from the Financial Intelligence Unit and the reasons for satisfaction were recorded and approved under section 151 of the Act from the Additional CIT 5-2, Mumbai. He submitted that the impugned order dated 11th March, 2022 passed by the Faceless Assessing Officer disposing of the

objections was based on facts available on the record. He submitted that since the case was reopened within four years from the end of the relevant assessment year and there was a large sum of cash transactions mentioned in the information, the same has not been scrutinized. He stated that the only requirement to initiate proceedings under section 147 of the Act was to record reasons to believe satisfaction of the A.O., which had been recorded. He submits that the notice under section 148 was issued after prior approval of the Additional CIT under section 151 of the Act and consequently, the notice was issued under section 143(3) of the Act is not in violation of the Supreme Court Judgment in the case of *GKN Driveshafts (India) Ltd.(Supra)*. He submitted that the information on the INSIGHT PORTAL clearly mentioned that the assessee has indulged in large sums of cash debit/credits and that by itself is sufficient reason for reopening of assessment as it can be construed as new tangible material. He submitted that by reassessment further verification and enquiry was permissible. He submitted that the assessment was reopened for verification of high risk transactions which are in the nature of large cash transactions. He submitted that as per the Faceless Assessment Scheme, cases are reopened under section 147 of the Act by the Jurisdictional Assessing Officer and

thereafter cases are transferred to the Faceless Assessing Officer (FAO).

8. The learned Counsel distinguished the case of *ITO vs. Lakhmani Mewal Das(supra)* on the ground that in that case reopening proceeding was initiated after four years whereas in the present case, reopening was done before 4 years and based on new and tangible information received from the FIU in relation to the suspicious transaction, that are in the nature of large cash transactions and moreover, the reasons to the satisfaction were recorded and approved by the Additional CIT as per section 151(2) of the Act. He further distinguished the case of *Hindustan Lever(supra)* on the ground that in the present case, there was information received on the insight portal under High Risk Transaction category received from FIU. He further distinguished the case of *GKN Driveshaft India Ltd.(Supra)* on the ground that the assessee in the present case was supplied with the reasons recorded along with notice under section 143(2) of the Act and the impugned order dated 11th March, 2022 was passed by FAO disposing of the objections. He consequently submitted that decision in the case of *Asian Paints Ltd. v/s. Deputy Commissioner⁴* on the ground that

4. (2008)296 ITR 90 (Bom.)

in the present case, assessment proceedings are still pending, as against in the case of *Asian Paints(supra)*, assessment was completed. In view of the above, it was urged that the petition be dismissed.

CONCLUSION

9. We have heard the learned Counsel at length. We are in agreement with the contention of the Petitioner and we find that the contentions raised in the affidavit in reply are completely different from the reasons which states:

“High risk transaction to be verified have been updated under the new system. In this case high risk transaction has been reported.”; and

“Finding of the AO: There is credible information received on the Insights portal that high risk transactions have taken place in the case of the assessee which needs to be verified”

and the paragraph 5 of the affidavit in reply states as under:

“... the Cash credits and subsequent debits in the current account of the assessee.”

We could not find any mention about the *“cash credits and subsequent debits”* in the reasons recorded. Moreover, as per the reasons itself the said transactions were to be verified. Hence there was a clear departure from the stand. There is no averment in the reply that would suggest that the information was verified and

thereafter approval was taken. We are in agreement with the petitioner's counsel who placed reliance on the following Judgments:

- (i) *268 ITR 332 (Bom) Hindustan Lever Ltd. vs. R.B. Wadkar.*
- (ii) *362 ITR 402(Bom) Aroni Commercial Ltd. vs. DCIT.*
- (iii) *439 ITR 582(Bom) Peninsula Land Ltd. vs. ACIT.*
- (iv) *438 ITR 139(Bom) First Source Solutions Ltd. vs. Asstt. CIT.*

10. Having perused the reasons and the information, we find no new tangible material as contended by the respondents. Debits and Credits can in no way disclose the nature of transactions or lead to an inference of income escaped assessment. The respondents have not taken any ground of extrapolation. The debits and credits cannot be a ground for further enquiry and verification and the same is impermissible. We find no live link or nexus between the information received and the income escaping assessment. The Petitioner is carrying on a retail business of electronic appliances. Usually, appliances would be supplied to clients wherever required and payment would be received in cash upon delivery. Therefore, the cash deposits from various places cannot be doubted be considered suspicious transactions. In our view, there is no prima facie case made out that income has escaped assessment. The Petitioner has fully and truly disclosed all the material facts and there is no specific averment to show what material fact was required to be disclosed by

the Petitioner that is not disclosed. The ratio of the Judgment in the case of *Lakhmani Mewal Das(supra)* that the reasons for formation of the belief must have rational connection with or relevant barring on formation of belief is squarely applicable to the present case. The Petitioner in the present case has filed Tax Audit reports and has shown total turnover in the sum of Rs. 189 Crores. The cash deposits which find mention in the affidavit in reply is a sum of Rs.11 Crores. Being in the retail business of trading in electronic items, this is not a large sum that would lead to a belief that the income has escaped assessment. The respondent No. 1 ought to have made prior enquiries about the nature of business before considering reopening of the assessment, which they have failed to do. We also find that the respondent No. 2 has not applied his mind before granting approval under section 151 of the Act. We have seen the details mentioned in the rejoinder by the Petitioner which shows that out of 8 accounts mentioned, only 3 accounts belong to the Petitioner and the other 5 accounts did not belong to the Petitioner. It appears that from the table at page 181 that there was no application of mind. It can also be seen from the averments in the rejoinder that although total cash deposits mentioned at page 151 is only Rs.11.52 Crores as against the figure of Rs. 103 Crores mentioned in the reasons

recorded, it also appears that the cash deposit was for a period of 21st November, 2014 till 20th November, 2015 and consequently, did not fall in the year under consideration. The respondent has also not disputed that the Petitioner is operating from approximately 25 different shops of varied sizes at different locations and not only from a rented commercial premises of area between 500 to 1000 sq.ft..

11. In the impugned order it has been stated that sufficiency of material is not required to be gone into at that stage. The decision of the Apex Court in the case of *ACIT vs. Rajesh Jhaveri Stock Brokers(P) Ltd.*⁵ is vaguely relied upon. It is further vaguely stated information about the account balance is provided. There is no reason provided as to why the debit and credit transaction had no mention in the recorded reasons nor was there meaningful averment with regard to the nature of transaction. It is pertinent to note that whilst the order has been passed by NFAC the reasons are recorded by respondent No. 1 to which there is no explanation in the affidavit in reply. In our view the response in the impugned order as to the nature of transaction, and as to how it makes it suspicious are missing. We also find that the decision of the Apex Court in the case of *GKN Driveshafts (I) Ltd. v/s. ITO(Supra)* and the decision of this

5. (2007) 161 Taxman-316(SC)

Court in the case of *Asian Paint Ltd. v/s. Dy. CIT (supra)* are also not followed.

12. Be that as it may, the law is well settled in respect of all the issues raised by the Petitioner herein and we find no reason to differ from it. In view of the above, we set aside the impugned notice dated 31st March, 2021 and the impugned order dated 11th March, 2022 and stay all consequential proceedings, that may be taken pursuant or in implementation of the said notice and order.

13. Writ Petition is allowed. No order as to cost.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]