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

+ **WPC 13102/2022**

TOUCHSTONE HOLDINGS PVT. LTD. Appellant

Through: Mr Salil Aggarwal Senior Advocate
with Mr Madhur Aggarwal, Advocate.

versus

INCOME TAX OFFICER, DELHI AND OTHERS Respondent

Through: Mr Puneet Rai, Senior Standing Counsel
With Ms Adeeba Mujahid, Jr St. Counsel for
Income Tax Dept. Along with Mr Nikhil Jain,
Advocate.

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Date of Decision: 9th September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (Oral):

1. Present writ petition has been filed challenging the Order dated 20th July, 2022, passed under Section 148A(d) of the Income Tax Act 1961, ('the Act'), Notice dated 20th July, 2022 issued under Section 148 of the Act for the Assessment Year ('AY') 2013-14 and the CBDT Instruction No. 1/2022 dated 11th May, 2022.
2. Learned Senior Counsel for the petitioner states that the information regarding the petitioner's alleged transaction with M/s BDR Builders and

Developers Private Ltd. for the purchase of shares amounting to Rs.69,93,00,000/- is factually wrong as there was no transaction of any sale or purchase of shares in the assessment year under consideration. He states that the petitioner has no concern with the transactions set out in Notice dated 1st June, 2022, as the same were undertaken by petitioner's shareholders and the assessee has no concern with these transactions.

3. He also submits that as per the first proviso to Section 149 of the Act (as amended by Finance Act, 2021), no notice for re-assessment can be issued for assessment year 2013-14, as the time limit for initiating the proceedings expired on 30th March, 2020, as per the provisions of Section 149 (as it stood prior to its amendment by Finance Act, 2021). He, therefore, contends that the present proceedings initiated by the respondent in pursuance of the initial notice dated 29th June, 2021, and judgment of the Supreme Court in *Union of India Vs. Ashish Agarwal* reported in 2022 SCC OnLine SC 543 are time barred.

4. Learned Senior Standing Counsel for the Revenue, Mr. Puneet Rai submits that Section 3 of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('TOLA') applies to the unamended provisions of Section 149 of the Act (as it stood prior to its amendment by Finance Act, 2021) and therefore, the initial notice dated 29th June, 2021, and the proceedings taken in continuation as per the judgment of *Ashish Agarwal (supra)* are not time barred. He further states that the information pertaining to the petitioner, which is a part of the BDR Group is duly reflected in the investigation report and the said BDR Group is in the business of providing accommodation entries and as per the Revenue, the petitioner received bogus share premium and capital of Rs.

69.93 crores. He stated that in these facts, no interference is warranted in writ proceedings.

5. We have heard the learned counsel for the parties and perused the paper-book. This Court finds that the petitioner has not brought on record anything to prove that the reassessment proceedings are being undertaken in an arbitrary manner.

6. In the information shared with the assessee vide Notice dated 1st June, 2022 it was stated that the transaction of sale and purchase of shares held by the assessee by M/s Bagh Kothi Invest & Finance Private Limited and M/s Nandi Mercantile Pvt. Ltd. on 28.03.2013 is under scrutiny. The notice states that the creditworthiness and genuineness of this transaction of sale and purchase was not established. It was further stated that the petitioner-assessee is a part of the BDR group and it had received share premium to the tune of Rs. 69.93 crores from S.K. Jain group of companies, which are in the business of providing accommodation entries in the form of *inter-alia* bogus share capital. In support of the information, the Assessing Officer ('AO') relied upon the report of the Investigation Wing, Delhi and a survey report in the case of BDR Group.

7. The petitioner in its reply has contended that the said information even if assumed to be correct, evidences that the transactions which are under scrutiny was undertaken between its shareholders and no amount was received by the assessee and therefore, the provisions of Section 68 of the Act are not attracted as no share application money or share capital or share premium was received by the assessee in the relevant assessment year.

8. The AO after considering the reply dated 15th June, 2022 of the petitioner, in the impugned Order referred to the survey action carried out on

13th December, 2018 on the premises of the entities belonging to the BDR Group and in fact survey was also conducted at the premises of the assessee. The said survey as per the AO resulted in impounding of incriminating documents which disclosed that the BDR Group of companies are engaged in unaccounted cash transactions and one of the modus used by the said companies is to provide bogus share capital and bogus share premium to other companies. The AO has summarised the findings against the assessee at paragraph 6.2 of the impugned Order, which read as under:

“6.2 Following are the relevant findings with respect to the assessee M/s Touchstone Holding Pvt. Ltd. (PAN: AAAC1004E):

- *This company is a group company of BDR group. This company itself appears in the list of SK Jain related entities. The financial profile of M/s Touchstone Holdings P Ltd does not show any significant business activity. It must be noticed that shares of the company were acquired by the persons belonging to the target group (i.e. BDR Group) in FY 2014-15.*
- *The changes in shareholding pattern can be seen in detail from the Investigation Report in this case.*
- *It can be seen that how shareholding was acquired by the BDR group. The purpose for the BDR group to acquire the shares of this company is that the company has huge share premium to the tune of Rs. 69.93 crores. The Share premium was received on 26.03.2010.*
- *The three entities from whom Share Premium was received belong to S.K. Jain group of companies and have been in the business of providing accommodation entries in the form of bogus share capital/share premium/unsecured loans. Further all these three companies are also in confirmed list of SFIO investigation database of Shell Companies. Notice u/s 131(1A) also remains uncomplied in case of all the three entities.*
- *These shares were subsequently purchased by M/s BaghKoti Invest & Finance P Ltd. and M/S Nandi Mercantiles P Ltd. on 28.03.2013. Notice u/s 131(1A) was issued to know about their creditworthiness and genuineness of such transactions along with*

the price at which shares of M/s Touchstone Holdings P Ltd. were acquired by them. However, no response has been received from them till date. Therefore, the provisions of Section 56(2)(viiia) is attracted in the case of M/S BaghKoti Invest & Finance P Ltd. and M/S Nandi Mercantiles P Ltd. and remedial action as per the provisions of the Act may be taken for the income of these shareholders for AY 2013-14.

- *Considering the financial profile and lack of creditworthiness of above entities, provisions of Sec68/69/69C of the Income Tax Act may also be considered w.r.t. the source of investment in hands of shareholders of M/S Touchstone Holdings P Ltd. i.e. M/S BaghKoti Invest & Finance P Ltd. and M/S Nandi Mercantiles P Ltd. for A.Y. 2013-14.*
- *In addition to above, it was noted that the 92,020 shares were transferred in total by Kanak Mehta, Prem Kumar Mcheto, VA Realcon P Ltd to family member of BDR group i.e. Shashank Gupta during F.Y. 2013-14. Notice u/s 131(1A) were issued in the case of Kanak and Prem Kumar Mehta regarding the price at which such shares were transferred, however the same came unserved. It may be noted that the remaining members of BDR family acquired shares of M/S Touchstone Holdings P Ltd. during F.Y. 2014-15 at RS.10 per share.*

In view of the above fact of transfer of shares to have been made to the assessee M/s Touchstone Holdings Pvt. Ltd. Delhi (PAN: AAAC1004E) at a value which is inconsistent with Section 56 of the Income-tax Act, 1961, it is clear that the amount of Rs. 69,93,00,000/- along with the whole transaction should be scrutinized in light of the provisions of Income-tax Act, 1961.”

(Emphasis supplied)

It has been concluded by the AO that the transfer of shares held by the petitioner-assessee has been carried out at a value which is inconsistent with Section 56 of the IT Act and the said transactions require examination.

9. Upon a perusal of the impugned Order read along with the letter of

investigation wing placed on record, this Court *prima facie* does not find any merit in the submissions of the counsel for the petitioner that the assessee has no concern with the transactions. The contention of Revenue that M/s BDR Builders & Developers Pvt. Ltd. uses layered transactions for providing accommodation entries and the assessee and its shareholders are part of beneficiaries of the said transactions and the petitioner's denial of the same cannot be examined in writ proceedings. The facts are seriously disputed by both the parties.

10. With respect to the petitioner's challenge to the initiation of the re-assessment proceedings on the merits of the allegation, it would be relevant to refer to the judgment in the case of ***Raymond Woollen Mills Ltd. vs. ITO And Ors., [1999 236 ITR 34 SC]*** wherein the Supreme Court had held as under:-

*“3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. **The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding.** We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs.”*

(emphasis supplied)

11. This Court is of the view that the aforesaid facts put forth are disputed questions of facts, which cannot be adjudicated by a writ court exercising jurisdiction under Article 226 of the Constitution.

12. The Supreme Court in *Commissioner of Income Tax and Ors. v. Chhabil Das Agarwal, (2014) 1 SCC 603* has held that as the Act of 1961 provides complete machinery for assessment/reassessment of tax, the assessee is not permitted to abandon that machinery and invoke writ jurisdiction of High Court under Article 226. The present case does not fall under the exceptional grounds on which a writ jurisdiction of the Court can be invoked.

13. Further, the contention of the learned Senior Counsel for the petitioner that the present proceedings are time barred is not correct in the facts of the case, which pertains to AY 2013-2014 and reassessment proceedings were initiated during the time limit extended by TOLA. The provision of Section 149, as it read prior to its amendment by Finance Act, 2021 reads as under:

“Time limit for notice.

149. (1) No notice under Section 148 shall be issued for the relevant assessment year,-

(a) if found years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) and clause (c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

...”

The time limit for issuing notice under unamended Section 149 which was falling from 20th March 2020 till 31st March 2021 was extended by Section

3 of TOLA read with Notification No. 20/2021 dated 31st March, 2021, and Notification No. 38/2021 dated 27th April, 2021, until 30th June, 2021.

14. The initial notice in the present proceedings was issued on 29th June, 2021 i.e. extended time limit. The said notice was quashed by this Court following its judgment in *Mon Mohan Kohli Vs. Assistant Commissioner of Income Tax and Another*, reported in **2021 SCC OnLine Del 5250** as the mandatory procedure of Section 148A of the Act was not followed before issuing the said notice. In the said judgment, this Court struck down the Explanations A(a)(ii) and A(b) to the said notifications. However, the relevant portion of the notification which extended the time limit for issuance of time barring reassessment notices until 30th June, 2021 was not struck down by this Court and in fact, this Court categorically held at paragraph 98 that power of re-assessment that existed prior to 31st March 2021 stood extended till 30th June 2021. The said paragraph reads as under:-

“98. It is clarified that the power of reassessment that existed prior to 31st March, 2021 continued to exist till the extended period i.e. till 30th June, 2021; however, the Finance Act, 2021 has merely changed the procedure to be followed prior to issuance of notice with effect from 1st April, 2021.”

Subsequently, Supreme Court in *Ashish Agarwal* (supra) held that the Section 148 notices issued between 1st April 2021 to 30th June, 2021, will be deemed to have been issued under Section 148A of the Act and therefore the notice dated 29th June, 2021, issued to the petitioner stood revived.

15. Consequently, since the time period for issuance of reassessment notice for assessment year 2013-14 stood extended until 30th June, 2021, the

first proviso of Section 149 (as amended by the Finance Act, 2021) is not attracted in the facts of this case. It would be relevant to refer to the said proviso, which reads as under:

“Time Limit for notice.

Section 149. (1) No notice under section 148 shall be issued for the relevant assessment year, -

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

....”

(Emphasis Supplied)

As noted above, the time limit for initiating assessment proceedings for AY 2013-14 stood extended till 30th June, 2021. The petitioner does not dispute the said facts, consequently, the reassessment notice dated 29th June, 2021, which has been issued within the extended period of limitation is not time barred.

16. The petitioner’s challenge to the paragraph 6.2. (i) of the CBDT Instruction No. 1/2022 dated 11th May, 2022 is not maintainable. The contention of the petitioner that assessment for AY 2013-14 became time barred on 31st March, 2020 is incorrect. The time period for assessment stood extended till 30th June, 2021. The initial reassessment notice for AY

2013-14 has been issued to the petitioner within the said extended period of limitation. The Supreme Court has declared that the said reassessment notice be deemed as a notice issued under Section 148A of the Act and permitted Revenue to complete the said proceedings. In this case, the income alleged to have escaped assessment is more than 50 lakhs and therefore, the rigour of Section 149(1)(b) of the Act (as amended by the Finance Act, 2021) has been satisfied.

17. Accordingly, the present writ petition along with the pending application is dismissed. However, this Court clarifies that the Assessing Officer shall decide the matter on its own merits without being influenced by any observation made in the present order except the issue of limitation.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 08, 2022

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