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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5059 OF 2022

B.U. Bhandari Autolines Pvt. Ltd.
A private Limited Company having its
registered address at :
101, Mumbai Bangalore Highway,
Baner, Pune-411 005.

PAN : AACCK8249G

... Petitioner

Versus

1. The Assistant Commissioner of
Income Tax, Circle 1(1), Pune
Income Tax Office, PMT Building,
Shankar Sheth Road, Pune-411 037
Email

2. The Additional/Joint/Deputy/
Assistant Commissioner of Income
Tax/Income Tax Officer,
National Faceless Assessment Centre,
Though the Principal Chief Commissioner
of Income Tax (National Faceless
Assessment Centre), Delhi
Room No.401, 2nd Floor,
E-Ramp, Jawaharlal Nehru Stadium
New Delhi-110 003.

3. The Union of India
Through the Principal Secretary,
Department of Revenue, Ministry
of Finance, Room No.128-B, North
Block, New Delhi-110 001

... Respondents

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Mr. Mihir Naniwadekar a/w Mr. Rohan Deshpande i/b Ms. Farzeen
Khambatta for the Petitioner.

Mr. Suresh Kumar for the Respondents.

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**CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, JJ.**

RESERVED ON : 3 JANUARY 2023

PRONOUNCED ON : 10 FEBRUARY 2023

: J U D G M E N T :

Per DHIRAJ SINGH THAKUR, J.

. The Petitioner filed its return of income, which was processed under Section 143(1) of the Income Tax Act, 1961 (“the Act”) for the assessment year 2016-17. The assessing officer subsequently issued a notice under Section 148 of the Act dated 30.03.2021 seeking to reopen the assessment for the assessment year 2016-17 on the ground that income chargeable to tax for the said year had escaped assessment. The reasons for reassessment as furnished to the Petitioner were as under :

“Issues as per reasons recorded for reopening

In this case, information has been received from O/o DDIT(Inv.), Unit-7(4), New Delhi, wherein the DDIT has informed that a search was conducted in the case of Mohit Garg and others on 26 November 2016 after information was received from Delhi Police that Rs.3.70 core cash in demonetized currency (Old Rs.500 and Rs.1000 notes) was seized from Mr. Mohit

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Garg, Mr. Devendra Kumar Jha and Mr. Raj Kumar Sharma. In his statement Mr. Mohit Garg, had named Shri Rajeev Singh Kushwaha, an Entry Operator, as the key accomplice involved in converting old currency in lieu of commission. The modus operandi was to deposit the unaccounted demonetized cash belonging to different persons in the Bank accounts of one of the shell entities floated by Mr. Rajeev Singh Kushwaha who thereafter used to circulate the money among the shell entities created by them through RTGS/NEFT transfer thereby making 3-4 layers and finally transferring money to the ultimate beneficiary.

On verification of the VAT return and Annexure-2A of M/s Magnum Tradex Pvt. Ltd., for the period 01.01.2016 to 31.03.2016 it is found that M/s BU Bhandari Auto Lines Pvt. Ltd. is one of such beneficiaries (seller). Ms/ BU Bhandari Auto Lines Pvt. Ltd. has sold goods amounting to Rs.2,08,76,068/- to M/s Magnum Tradex Pvt. Ltd. (a shell entity).”

2 Objections were filed to the said reopening of the assessment, which was disposed of vide the Order dated 24 February 2022. Mr. Naniwadekar, learned Counsel appearing for the Petitioner, placed reliance upon the Apex Court judgment in the case of **Income-tax Officer Vs. Lakhmani Mewal Das**¹, to urge that the

1 [1976] 103 ITR 437 (SC)

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reassessment proceedings initiated by the assessing officer based upon reasons furnished to the Petitioner, which reasons besides being vague and general, had no direct nexus or live link with the formation of the belief that the assessee's income had escaped assessment. It was, therefore, contended that the jurisdictional requirement of Section 147 having not been fulfilled by the assessing officer, the notice under Section 148 of the Act, was without jurisdiction.

3 Learned Counsel for the revenue, Mr. Suresh Kumar, on the other hand, buttressed the reasoning of the assessing officer and stated that there was enough material and reasons for the assessing officer to initiate reassessment proceedings based upon the information, which was clearly suggestive of the fact that income chargeable to tax had escaped assessment. With reference to the reply affidavit filed by the revenue, it was urged that the information obtained by the assessing officer was specific as regard the transaction made by the assessee with M/s Magnum Tradex Pvt. Ltd, which is a shell company floated by Mr. Rajeev Kushwaha for the purpose of providing accommodation entries.

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4 We have heard learned Counsel for the parties and have also gone through the material on record. Section 147 of the Act authorizes an assessing officer to assess or reassess any income if he has ‘reason to believe’ that any such income chargeable to tax had escaped assessment for any assessment year.

5 In **ITO Vs. Lakhmani Mewal Das** (*supra*), the Supreme Court held that the reopening of the assessment after a lapse of many years is a serious matter and while the Act contemplates the reopening of the assessment if grounds exist for believing that income of the assessee had escaped assessment, yet the words of the statute were “reason to believe” and not “reason to suspect”. It was further held that the powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. It, therefore, emphasized that before action could be taken, the requirement of law be satisfied. It was held :

“As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the

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income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words “definite information” which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

6 Testing the ratio in the aforementioned judgment on the touchstone of the reasons furnished to the Petitioner for reopening, it has to be seen whether the information available with the assessing officer had a direct nexus or live link with the formation of his belief that the assessee's income chargeable to tax had escaped assessment.

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7 On a perusal of the reasons, the following facts emerge :

that a search had been conducted in the case of Mohit Garg and others on 26 November 2016, wherein Rs.3.70 crores cash in demonetized currency was seized from Mohit Garg and others.

that Mohit Garg in his statement had named Rajeev Singh Kushwaha, an Entry Operator, as the key accomplice in converting old currency in lieu of commission.

that Rajeev Khushwaha was an Entry Operator, who was converting old currency in lieu of commission after the demonetization. The fact that Rajeev Khushwaha was an Entry Operator was based upon the statement of one Mohit Garg. This is the transaction allegedly connected with the seizure of the demonetized currency from the premises of Rajeev Khushwaha an alleged Entry Operator.

Coming to the the second part of the reason, it is alleged that on verification of the VAT returns and Annexure-2A of M/s Magnum Tradex Pvt. Ltd. for the period 1 January 2016 to 31 March 2016, it was found that the Petitioner, i.e. M/s BU Bhandari Auto Lines Pvt. Ltd. had sold goods amounting to Rs.2,08,76,068/- to M/s Magnum Tradex Pvt. Ltd, which was allegedly a shell entity.

8 In the reasoning recorded, it is not clear as to how M/s Magnum Tradex Pvt. Ltd. is sought to be connected with Rajeev Khushwaha. It has not been alleged in the reasons that M/s Magnum Tradex Pvt. Ltd., with whom the Petitioner made an

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alleged sale was being run by Rajeev Khushwaha, although, in the reply affidavit, it is stated by the revenue that M/s Magnum Tradex Pvt Ltd, was one of the entities which was floated by Rajeev Khushwaha for the purpose of providing accommodation entries.

9 It is settled law that the issue of reopening of assessment has to be tested only on the basis of the reasons recorded, which reasons can neither be improved upon nor substituted by an affidavit or oral submissions (**First Source Solution Ltd Vs. Asst. CIT²**). Therefore, the action of the assessing officer for the purpose of reopening of reassessment has to be tested on the basis of reasons recorded by the said officer and cannot, therefore, be improved upon the reply affidavit.

10 Further, it can be seen that reasons also do not furnish any explanation as to on what basis and material the assessing officer came to a conclusion that M/s Magnum Tradex Pvt. Ltd., was indeed a shell entity. The verification of the VAT returns referred to in the reasons recorded suggest only transaction between the Petitioner and M/s Magnum Tradex Pvt. Ltd., in regard to goods

2 [2021] 438 ITR 139 (Bom.)

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sold amounting to Rs.2,08,76,068/-. There was, thus, no material or basis for the assessing officer to hold the transaction between the Petitioner and M/s Magnum Tradex Pvt. Ltd., as not a genuine transaction of sale or for that reason to hold that M/s Magnum Tradex Pvt. Ltd. was a shell entity. The reasons recorded do not suggest at all whether pursuant to receipt of information, the assessing officer had independently applied its mind to the information received or conducted its own inquiry into the matter for the purpose of coming to a conclusion that indeed income assessable to tax had escaped assessment or that the transaction in question with the alleged shell entity was only a paper transaction.

11 In our opinion, the impugned notice dated 30 March 2021 issued under Section 148 of the Act was issued without satisfying the conditions precedent under Section 147 of the Act.

12 We, accordingly, allow the Petition and quash the impugned notice dated 30 March 2021 and set aside the Order dated 24 February 2022.

(KAMAL KHATA, J.)

(DHIRAJ SINGH THAKUR, J.)