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

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Date of Decision: 26.09.2024

+ **W.P.(C) 13224/2018**

R P FOAM HOME (P) LTD.

.....Petitioner

Through: Mr. S. Krishnan, Adv.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX.....Respondent

Through: Mr. Vipul Agrawal, Mr. Gibran
Naushad & Ms. Sakashi Shairwal,
Adv.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition impugning a notice dated 27.03.2018 (hereafter the *impugned notice*) issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) for reopening the petitioner's assessment for the Assessment Year 2011-12.

2. Mr. Krishnan, learned counsel appearing for the petitioner has assailed the impugned notice on essentially two fronts. First, he submitted that there was no reason to believe that income of the petitioner had escaped assessment as all material, on the basis of which the assessment is sought to be reopened, was examined in assessment proceedings for the previous assessment year – Assessment Year 2010-11. He submits that the Assessing Officer (hereafter AO) has issued the impugned notice to tax the income represented by sales, which were substantially taxed in the earlier assessment year (AY 2010-11). He contends that the petitioner had shown the sale advances received by the



petitioner from various purchasers in the earlier assessment year (AY 2010-11) and the same were assessed to tax. Therefore, the sales reflected in the books of accounts cannot be charged to tax as the advances for such sales, which were received in previous financial year (FY 2009-10) was assessed to tax in Assessment Year 2010-11. He contended that the AO had no reason to believe that the income in respect of the Assessment Year 2011-12 had escaped assessment. Second, he submitted that the petitioner had furnished its explanation with regard to its books of accounts not only pertaining to the previous Financial Year 2009-10 (relevant to the Assessment Year 2010-11) but also for the previous year 2010-11 *albeit* in connection with the proceedings initiated in respect of Assessment Year 2011-12. He submitted that therefore, the AO had all the material on which assessments for Assessment Year 2011-12 could be framed at the material time. However, no additions were made in the assessment for the Assessment Year 2011-12 and therefore, the information as was available to the Assessing Officer prior to the assessment order for the Assessment Year 2011-12 cannot be a ground for reopening the said assessment.

3. Before proceeding to address the said issue, it is relevant to refer to the reasons set out by the Assessing Officer for reopening the assessment under Section 147 of the Act. The reasons placed on record indicate that the search and seizure operations were conducted in respect of M/s Spaze Group and an information in that regard was forwarded to the AO. During the search and seizure proceedings and thereafter, statements of certain persons connected with the M/s Spaze Group were recorded under Section 131(1A) of the Act. The same also included statement of one Mr. Anand Singh who was ostensibly the proprietor of M/s JMD International. He stated that he was an



electrician and received a remuneration of ₹6,000/- per month. He made statements to the effect that he had signed blank cheques in his capacity of proprietor of M/s JMD International and he was not in control of the said concern. He had stated that he had no knowledge of any godown or office of the said concern (M/s JMD International). According to his statement, one Sh. Kishori Sharan Goyal was the person who was controlling the said concern for providing “Bogus Billing to various entities”. The record of M/s JMD International indicated that it had made payment to the petitioner. This provided the AO the reason to believe that the petitioner’s income chargeable to tax had escaped assessment. The relevant extract of the reasons for reopening the assessment is set out below:

“Shri Anand Singh, the proprietor of M/s JMD International in his statements recorded on Oath u/s 131(1) of the Income Tax Act, 1961 has accepted that Shri Kishori Sharan Goyal was using this firm for providing accommodation entries to various parties via Bogus Sales/purchases. Shri Anand Singh also accepted that he works as Electrician and receives Rs.6,000/- per month for signing on blank cheques in the capacity of Proprietor of M/s JMD International. He also informed through his statement that as per his knowledge there exists no Godown, office of the firm M/s JMD International and that it is used by Shri Kishori Sharan Goyal for the purpose of providing Bogus Billing to various entities. (Copy of statement of Shri Anand Singh is available on record and maybe verified from the File itself).”

4. The contention that there are no credible reasons for issuing the impugned notice for reopening the assessment for the Assessment Year 2011-12 is thus insubstantial. The contention that all receipts have been taxed during the previous assessment year – Assessment Year 2010-11 – is also erroneous. Copy of the ledger account maintained by the petitioner indicates that certain amounts were received from M/s JMD International in the



financial year 2010-11 (relevant to Assessment Year 2011-12). According to the learned counsel for the petitioner only a sum of ₹5,00,000/- was received during the said financial year. It is not necessary for this Court to examine the quantum of receipts during the previous year 2010-11 (relevant to AY 2011-12) in these proceedings. Suffice it is to state that, *prima facie*, all receipts received from M/s JMD International Ltd. were not taxed in Assessment Year 2010-11. Thus, notwithstanding that the petitioner's income chargeable to tax was assessed in Assessment Year 2010-11, *prima facie*, certain amounts, which were received in the financial year 2010-11 were not brought to tax in the Assessment Year 2011-12.

5. The petitioner's explanation that its books of accounts were available with the Assessing Officer prior to its assessment for the Assessment Year 2011-12 also does not carry the petitioner's case any further. This is for the reason that the AO had not assessed the petitioner's income for the Assessment year 2011-12 under Section 143(3) of the Act. It is relevant to refer to the decision of this Court in ***Indu Lata Rangwala v. Deputy Commissioner of Income Tax: Neutral Citation No.2016:DHC:4033-DB***. In the said case, this Court had held as under:

“35.1 The upshot of the above discussion is that where the return initially filed is processed under Section 143 (1) of the Act, and an intimation is sent to an Assessee, it is not an ‘assessment’ in the strict sense of the term for the purposes of Section 147 of the Act. In other words, in such event, there is no occasion for the AO to form an opinion after examining the documents enclosed with the return whether in the form of balance sheet, audited accounts, tax audit report etc.

35.2 The first proviso to Section 147 of the Act applies only (i) where the initial assessment is under Section 143 (3) of the Act and (ii) where such reopening is sought to be done after the



expiry of four years from the end of the relevant assessment year. In other words, the requirement in the first proviso to Section 147 of there having to be a failure on the part of the Assessee “to disclose fully and truly all material facts” does not at all apply where the initial return has been processed under Section 143 (1) of the Act.”

6. In view of the above, the contention that all material including explanation of the petitioner was available with the Assessing Officer at the time of framing of the assessment for the Assessment Year 2011-12 and the impugned notice is occasioned by a change in opinion, is unmerited. The assessment of tax under Section 143(1) of the Act is a self-assessment and in a strict sense cannot be stated as assessment framed by the AO.

7. The petition is unmerited and accordingly dismissed.

8. However, we clarify that nothing stated in the order shall be construed as an opinion on the merits of the assessment to be framed. All observations made in the order are solely to address the question whether the impugned notice can be faulted for being issued without any reason to believe that the income has escaped assessment.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

SEPTEMBER 26, 2024

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