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HIGH COURT OF CHHATTISGARH, BILASPUR
WPT No. 56 of 2022

Hariom Ingots and Power Pvt. Ltd. 59-60-61, Light Industrial Area, Bhilai, Through Its Director Sandeep Kumar Agrawal, S/o Shri Santosh Kumar Agrawal, Aged About 39 Years, Resident of New Khursipar P.O. & City, Bhilai, District Durg, Chhattisgarh.

---- Petitioner

Versus

1. The Principal Commissioner of Income Tax, Raipur - 2, Central Revenue Building, Civil Lines, Raipur Chhattisgarh.
2. The Assessing Officer, National Faceless Assessment Centre, Income Tax Department, Ministry of Finance Govt. of India, Room No. 401 2nd Floor, E-Ramp, Jawaharlal Nehru Stadium, Delhi-110003.
3. The Joint Commissioner of Income Tax, Range-1, Bhilai, Central Revenue Building, New Civic Centre, Bhilai.
4. The Assistant Commissioner of Income Tax Circle-1(1), 32/32 Banglow, Amdibhata, Bhilai.

---- Respondents

 For Petitioner : Mr. Mool Chand Jain, Advocate
 For Respondents : Mr. Amit Chaudhari with
 Mr. Ajay Kumrani, Advocates

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

22.03.2022

1. Petitioner aggrieved by issuance of notice under Section 148 of the Income Tax Act, 1961 (in short 'I.T. Act') has filed this writ petition seeking following relief :-

“10.1 In the light of the facts and illegality committed by the respondents the Hon'ble High Court may graciously be pleased to issue suitable directions, orders or writ in

the nature of mandamus, certiorari, prohibition etc. to quash the impugned notice u/s. 148 and give direction to drop the proceedings u/s 147.

10.2 To grant any other relief, which the Hon'ble Court may deem fit.”

2. Mr. Mool Chand Jain, learned counsel for petitioner would submit that petitioner is a private limited company and engaged in the business of manufacturing and sales of M.S. Ingots and Re-Rolled Products. During Assessment Year 2014-15, petitioner's company had issued 25,000 shares in the name of Amarnath Agrawal and Smt. Ramadevi Agrawal at face value of Rs.100/- per share. The sale of share has been disclosed in their return. After receiving notice under Section 142(1) of the I.T. Act, petitioner has submitted details as required to be submitted by petitioner under notice. Petitioner vide letter dated 22.12.2016 had very clearly mentioned that due to losses suffered by Steel Industry and no buyers in the market, company was facing paucity of funds and therefore, shares have been allotted on its face value. After considering the reply to notice, final assessment order under Section 143(3) of the I.T. Act has been passed. He contended that notice issued under Section 148 of the I.T. Act is after lapse of 4 years and once petitioner has disclosed all the transactions, particularly, sale of share and also

explained the authority the reason for transferring of share on the face value, which was accepted by Assessing Officer, there was no ground available for the respondents to issue notice under Section 148 of the I.T. Act as there was no failure on the part of assessee to make return and disclosing all the material facts fully and truly. He further submits that notice issued under Section 148 of the I.T. Act is also not sustainable because, the reason assigned for issuance of notice is transfer of shares, attracts provision of Section 56(2) (vii)(c)(ii) of the I.T. Act. He contended that the provision relied for forming reason to belief is for the 'Individual and Hindu undivided Family'. Petitioner is a company. As there was no valid reason/ground for issuance of notice under Section 148 of the I.T. Act, notice issued to the petitioner/company be quashed.

3. Per contra, Mr. Amit Chaudhari, learned counsel for respondents opposes the submissions of learned counsel for petitioner and would submit that notice under Section 148 of the I.T. Act has been issued after following due procedure as provided under the I.T. Act. In Annexure to notice, reason and ground for issuance of notice has been specifically mentioned. However, he does not dispute the submission of learned counsel for petitioner with respect to the provision under Section 56 of the I.T. Act.

4. I have heard learned counsel for the parties.
5. The main thrust of counsel for petitioner for challenging notice under Section 148 of the I.T. Act is that provisions under Section 56(2)(vii)(c)(ii) of the I.T. Act will not be attracted, in the fact of the case, I find it appropriate to extract relevant provisions of Section 56(1) and (2) along with provisions under Section 56(2)(vii)(c)(i) & (ii) of the I. T. Act for ready reference :

“56. Income from other sources.-(1)

Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head “Income from other sources”, if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of subsection (1), the following incomes, shall be chargeable to income-tax under the head “Income from other sources”, namely :—

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[(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—

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(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :”

6. Perusal of aforementioned provisions under Section 56 of the I.T. Act would reflect that Section 56 mentions about the income from other sources. Section 56(vii) talks about the income received by an individual or a Hindu undivided family in any previous year. Petitioner is a company and in view of specific provision under Section 56(2)(vii) of the I.T. Act, relied by the Assessing Officer for issuance of notice will not be applicable to the petitioner who is a company. For issuance of notice under Section 148 of the I.T. Act, there should be tangible material and mandatory compliance of Section 147 of I.T. Act. Proceedings of reassessment has been initiated against company after lapse of 4 years of

submission of return, which is not in dispute. Under first proviso to Section 147 of the I.T. Act, for starting the reassessment proceedings after lapse of 4 years, Assessing Officer has to record his conclusion that there was failure on the part of assessee in not disclosing fully and truly all material facts necessary for assessment of that particular assessment year, which is not appearing from the reading of the Annexure i.e. reasons for issuance of notice.

7. Considering the aforementioned facts and circumstances of the case, reason assigned for issuance of notice and provisions mentioned therein, in the opinion of this Court, there was no reason/ground available with Assessing Officer to issue notice under Section 148 of the I.T. Act. Issuance of notice under Section 148 of the I.T. Act to petitioner is not in accordance with the first proviso to Section 147 of the I.T. Act, therefore, it is not sustainable, which is liable to be quashed and it is hereby quashed.
8. The writ petition is accordingly allowed.

Sd/-
(Parth Prateem Sahu)
Judge