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

% *Decision delivered on: 13.10.2023*

+ **W.P.(C) 15017/2022**

M/S TIRUPATI TRADING CORPORATION Petitioner
Through: Mr C.S. Aggarwal, Sr Adv. with Mr
Ravi Pratap Mall, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX.... Respondent
Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Parth Semwal,
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. We had heard learned counsel for the parties at some length on 16.12.2022, after which we had recorded the broad contours of the matter. For convenience, the relevant parts of the order dated 16.12.2022 are set forth hereafter:

"1. The matter is taken up today once again as the order dated 28.07.2022 passed by the respondent/revenue under Section 148A(d) of the Income Tax Act, 1961 [in short, "the Act"] was discrepant.



1.1 The discrepancy in the aforementioned order concerns the bank account number of one Mr Ramesh Kumar Bagri maintained with IDBI Bank.

2. Mr C.S. Aggarwal, learned senior counsel, who appears on behalf of the petitioner, says that he has got yet another certificate titled "To Whom It May Concern" dated 15.12.2022 with respect to the other account number i.e., 264102000006354 indicated in the aforementioned order.

2.1 A copy of this communication has been handed over to Mr Abhishek Maratha.

2.2 The Registry will scan and upload the same so that it remains part of the case file.

3. In any event, for the moment, we are not taking into account this document till it is verified by the respondent/revenue. However, that, by itself, will not come in the way of the petitioner being granted interim relief, for the reasons set out hereinafter.

4. This writ petition is directed against the order dated 28.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "the Act"] and the consequent notice of even date i.e., 28.07.2022 issued under Section 148 of the Act, concerning Assessment Year (AY) 2016-17.

5. Mr Aggarwal says that reassessment proceedings have been commenced without any information and material being supplied to the petitioner.

6. The record shows that notice, in the first instance, was issued to the petitioner under Section 148 of the Act on 07.04.2021. Since the new regime kicked in, a fresh notice under Section 148A(b) dated 27.05.2022 was issued to the petitioner.

7. The record shows that the allegation against the petitioner is that it has received bogus entry from an entry provider i.e., one Mr Ramesh Kumar Bagri.

8. A perusal of the order dated 28.07.2022 would show that in the suspicious transaction referred to under the heading "information available and action initiated", concerning Mr Bagri, there is no reference to the petitioner.

9. Mr Abhishek Maratha, who appears on behalf of the respondent/revenue, has placed before us the information received by the assessing officer i.e., Mr Sanjeev Bimbisariye. The following information was furnished to us by way of a tabular chart:



Date	F.Y.	Inst	Num ber	Particulars	Debit Amount	Credit Amount	Balance	Account details
27.08.2014	2014- 15	M106 423	1671 29	TIRUPATI TRADING CORPORATION	100000		43,703.2 0CR	IDBI BANK - 264102000006 354
18.10.2014	2014- 15	M384 06		TIRUPATI TRADING CORPORATION		35084	28,70,92 1.80CR	IDBI BANK - 264102000006 354
04.11.2014	2014- 15	M381 8		TIRUPATI TRADING CORPORATION		1539000	24,95,29 7.00CR	IDBI BANK - 264102000006 354

08.11.2014	2014- 15	M359 40		TIRUPATI TRADING CORPORATION		1021000	35,16,29 7.00CR	IDBI BANK - 264102000006 354
13.11.2014	2014- 15	M176 683		TIRUPATI TRADING CORPORATION		11568000	1,20,84,2 97.00CR	IDBI BANK - 264102000006 354
12.08.2015	2015- 16	M893 17		TIRUPATI TRADING CORPORATION		17600000	6,18,03,0 29.60CR	IDBI BANK - 264102000006 354

10. As would be evident from the above extract, in the last entry in the table, dated 12.08.2015, under the head "particulars", there is a reference to an entity going by the name Tirupati Trading Corporation [which is also the name of the petitioner] and against the said entity it is shown that an amount equivalent to Rs.1,76,00,000/- has been credited. The suggestion being that the aforementioned amount has been received by Mr Bagri.

11. Mr Aggarwal, in rebuttal, qua this aspect of the matter, has referred us to two documents which are appended on pages 147-148 of the case file and are marked as Annexure P12.

11.1. These are copies of "whomsoever it may concern" certificates issued by the Central Bank of India [in short, "CBI"] and are dated 15.10.2022 and 01.08.2022. The relevant parts of the certificates dated 15.10.2022 and 01.08.2022 are extracted below:

"GHAZIA/OPER/2022-23

15.10.2022

TO WHOM IT MAY CONCERN



This is to certify that M/s Tirupati Trading Corporation (PAN - AADFT9155C) was maintaining the following three accounts during the financial year 2015-16 with our bank:

S.no	Account Number	Account Type	Branch
1	3111317955	Cash Credit	Wrightganj, Ghaziabad
2	3145243754	Current account	Wrightganj, Ghaziabad
3	3006562407	Current (Collection A/C)	Wrightganj, Ghaziabad

It is further certified that M/s Tirupati Trading Corporation has not made any payment into IDBI bank account no. 264102000006454 of Shri Ramesh Bagri of Rs. 17600000/- (Rs. One Crore Seventy Six Lakh Only) on 12.08.2015. In fact, it has not made any payment or received any sum IDBI bank account no. 264102000006454 of Shri Ramesh Bagri in its aforesaid three bank accounts in FY 2015-16.

This certificate has been issued as per the request of customer without any risk and responsibility of bank officials.

*Astt. Manager
B/o Ghaziabad"*

xxx

xxx

xxx

"GHAZIA/OPER/2021-22

01/08/2022

TO WHOM IT MAY CONCERN

This is to certify that M/s Tirupati Trading Corporation was maintaining the following three accounts during the financial year 2015-16 with our bank:

S.no	Account Number	Account Type	Branch
1	3111317955	Cash Credit	Wrightganj, Ghaziabad
2	3145243754	Current account	Wrightganj, Ghaziabad
3	3006562407	Current (Collection A/C)	Wrightganj, Ghaziabad

It is further certified that none of the following transactions related to financial year 2015-16 has been either credited (received) or debited (paid) from any of the above-mentioned accounts:

Date	Nature of transaction	Amount (Rs.)
12/08/2015	Payment	17600000/-

This certificate has been issued as per the request of the customer without any risk and responsibility of the bank officials.

*Astt. Manager
B/o Ghaziabad"*



11.2. As would be evident upon perusal of the certificate dated 01.08.2022, CBI has stated that the amount of Rs.1,76,00,000/- was neither remitted nor credited from the accounts of the petitioner maintained with it.

11.3. Insofar as the certificate dated 15.10.2022 is concerned, CBI makes the same assertion and goes on to confirm that the remittance was not made to the account number [i.e., 2641020000006454] said to be maintained by Mr Ramesh Bagri.

12. It is required to be noticed, as adverted to hereinabove, that there is a discrepancy between the account numbers of Mr Ramesh Bagri, wherein Rs.1,76,00,000/- was allegedly received by him in AY 2016-17, in paragraphs 1 and 7.1. of the order dated 28.07.2022 issued under Section 148A(d) of the Act; while paragraph 1 sets out the account number as "2641020000006354", paragraph 7.1. of the same order sets out the account number as "2641020000006454".

12.1. While this discrepancy could have been on account of a typographical error, at the moment, we have before us, in the very least, the certificate dated 01.08.2022, which indicates that the petitioner had not remitted Rs.1,76,00,000/- on 12.08.2015 from its bank accounts maintained with CBI.

13. Given this position, it appears that, at least at this juncture, there was no information or material available with the concerned authority to trigger proceedings under Section 148/148A(d) of the Act.

14. Accordingly, issue notice

14.1 Mr Maratha accepts notice on behalf of the respondent/revenue.

15. Counter-affidavit will be filed within four weeks.

15.1 Rejoinder thereto, if any, will be filed before the next date of hearing.

16. List the matter on 11.04.2023.

17. In the meanwhile, there shall be a stay on the operation of the impugned order dated 28.07.2022 passed under Section 148A(d) of the Act and the consequent notice dated 28.07.2022 issued under Section 148 of the Act, till further orders of the court."

2. As would be evident, we had granted four weeks to the respondent/revenue to file a counter-affidavit in the matter.

2.1. However, the matter was listed for further proceedings on 11.04.2023. On that date, once again, a request was granted of further time to file the counter-affidavit in the matter. Accordingly, further four weeks were granted.

2.2. The interim order passed on 16.12.2022 was made absolute during the



pendency of the writ petition and the pending interlocutory application was disposed of.

3. The record shows that no counter-affidavit has been lodged with the Registry. However, Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondent/revenue, has placed before us a hard copy of the counter-affidavit that has been prepared for being lodged with this court.

4. A perusal of paragraphs 3 and 4 of the counter-affidavit reveals that, concededly, a mistake has been made in triggering reassessment proceedings against the petitioner. For convenience, the said paragraphs are extracted hereafter:

“3. Based on analysis of bank statements, it is submitted that verification has been made by this office. On perusal of information received from the bank it is observed actual details of the beneficiaries pertained to Tirapati trading co. PAN AEVPT9452L and Tirapati trading company BWXPK7867H. Inadvertently Tirupati trading Corporation PAN AADFT9155C was quoted while sharing the information

4. Submitted for information and necessary action.

Hence, based on the above-mentioned correspondence from the Office of the Deputy Director of Income Tax (Investigation). Unit-II. Faridabad, it is now evident that during the financial year under reference, no transactions have been carried out by the assessee with Sh. Ramesh Kumar Bagri and his name was inadvertently mentioned by the Investigation Wing in the report due to similarity in the names.”

5. In view of the assertions made in the counter-affidavit, Mr Maratha, cannot but accept that reassessment against the petitioner cannot continue.

6. Accordingly, the impugned order dated 28.07.2022 passed under Section 148A(d) and consequential notice of even date, i.e., 28.07.2022 issued under Section 148 of the Income Tax Act, 1961 [in short, “Act”] concerning Assessment Year (AY) 2016-17 are set aside.



7. The writ petition is disposed of, in the aforesaid terms.
8. For the purposes of good order and record, the Registry will scan and upload the counter-affidavit placed before us so that it remains embedded in the case file.
9. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 13, 2023
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