

**Court No.39**

**Case :-** WRIT TAX No. - 455 of 2016

**Petitioner :-** M/S Abc Classes PRS

**Respondent :-** Principal Commissioner Of Income Tax And Another

**Counsel for Petitioner :-** Parv Agarwal

**Counsel for Respondent :-** C.S.C.

**Hon'ble Dilip Gupta, J.**

**Hon'ble Ravindra Nath Kakkar, J.**

The petitioner, who claims to be engaged in providing commercial training and coaching classes to the aspirants of IIT, JEE, AIEEE, PMT and other competitive examinations under the name and style of “M/s ABC Classess PRSS”, seeks the quashing of the proceedings that have been initiated against the petitioner under Section 147 of the Income Tax Act, 1961<sup>1</sup> for the assessment years 2009-10, 2010-11 and 2011-12. The petitioner has also sought the quashing of the order dated 3 May 2016 by which the objections filed by the petitioner against the re-opening of the assessment for assumption of jurisdiction by the Income Tax Officer have been rejected.

It transpires from the records of the writ petition that for the assessment years 2009-10, 2010-11 and 2011-12, the petitioner in its profit and loss account had declared that the total fees received from students was Rs.33,95,000/-, Rs.38,79,800/- and Rs.43,12,075/- respectively. It also transpires that on 9 September 2010, the Assistant Commissioner, Central Excise and Service Tax Division, Gorakhpur conducted a search at the premises of the petitioner and recorded

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1 the Act

statements. A demand-cum-show cause notice dated 18 October 2013 was issued by the Commissioner, Customs, Central Excise and Service Tax, Allahabad as to why the service tax amounting to Rs.55,51,706/- for the period 2009-10, 2010-11 and 2011-12 under Section 73(1) of the Finance Act, 1994 along with interest and penalty may not be imposed upon the petitioner. This notice was confirmed by order dated 2 March 2015. The petitioner claims to have preferred an Appeal before the Customs, Excise and Service Tax Appellate Tribunal which is said to be pending.

The Income Tax Assessing Officer issued three notices each dated 28 August 2015 to the petitioner that he had reason to believe that the income of the petitioner for the assessment years 2009-10, 2010-11 and 2011-12 respectively had escaped assessment and, accordingly, called upon the petitioner to furnish a return of income within one month. The reason for taking action under Section 147 of the Act is on account of the statements of the partners Rajnish Singh and Praveen Singh recorded during the search and during further investigation. It is on the basis of the statements and the material that the Excise Department worked out the year-wise taxable service/gross fee receipts. Accordingly, service tax demand of Rs.55,51,706/- was raised by the Central Excise Department, which demand was confirmed by the Commissioner, Central Excise Allahabad. It is on the basis of the aforesaid statements that it has been stated that gross fee receipts of the assessee-firm for the assessment years 2009-10, 2010-11 and 2011-12 is Rs.1,37,39,500/-, Rs.2,06,40,200/- and

Rs.1,68,35,425/- respectively. The Assessing Officer, therefore, recorded that he had reason to believe that the aforesaid income had escaped assessment within the meaning of Section 147 of the Act. The petitioner filed objections to the re-opening of the assessment which were rejected by the order dated 3 May 2016.

Learned counsel for the petitioner has submitted that the requirement of Section 147 of the Act for assumption of jurisdiction was not satisfied as absolutely vague reasons have been indicated and there has been no application of mind by the Income Tax Officer. His submission is that since an appeal had been filed by the petitioner before the Tribunal which was pending, the Income Tax Officer could not have assumed jurisdiction under Section 147 of the Act and in any case the proceeding should have been kept in abeyance till the appeal is decided.

Sri Manish Goyal, learned counsel appearing for the Department has, however, submitted that in the facts and circumstances of the case, the Income Tax Officer had sufficient reason to believe that the income chargeable to the tax had escaped assessment and in support of his contention he has placed reliance upon the decision of the Supreme Court in **Income Tax Officer Vs. Selected Dalurband Coal Co. Pvt. Ltd.**<sup>2</sup>

We have considered the submissions advanced by learned counsel for the parties.

The reasons to believe recorded by the Assessing Officer are based on the information that was gathered by the Excise Department from the statements of the two partners of the firm during the search and the

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<sup>2</sup> [1996] 217 ITR 597 (SC)

material found during further investigation. This, in our opinion, constitutes a relevant material for the purpose of invoking the provisions of Section 147 of the Act. At the stage of issue of notice, what has to be seen is whether there was relevant material upon which a reasonable person could have formed the requisite plea.

The contention of learned counsel for the petitioner that proceedings under Section 147 of the Act should be kept in abeyance till the Customs Excise and Service Tax Appellate Tribunal decides the appeal cannot also be accepted. The petitioner would have to furnish requisite material information to the Assessing Officer in proceedings initiated under Section 147 of the Act.

There is, therefore, no merit in this petition. It is, accordingly, dismissed.

**Date:23.05.2016**

**SK**

**(Dilip Gupta, J.)**

**(Ravindra Nath Kakkar, J.)**