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

Date of Decision: 13.08.2021

+ **W.P.(C) 6155/2021 & CM 19527/2021**

MAKAMS INDUSTRIES PVT LTD Petitioner
Through Mr.Salil Kapoor, Ms.Ananya
Kapoor, Ms.Soumya Singh,
Mr.Sumit Lalchandani,
Mr.Sanat Kapoor, Advs.

versus

ASSIST. COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE 29 & ANR. Respondents
Through Mr.Abhishek Maratha, Sr.
Standing counsel.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the Assessment order dated 15th June, 2021 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') in case of the petitioner for the assessment years 2018-19 on the ground that the regular assessment proceeding in the case of the petitioner had already stood concluded vide assessment order dated 26th November, 2019 and the respondent Assessing Officer had become *functus officio*.

3. The learned Predecessor Division Bench while issuing notice on 07th July, 2021 had stayed the operation of the impugned Assessment Order dated 15th June, 2021. The order dated 07th July 2021 is reproduced hereinbelow:

*"W.P.(C) 6155/2021 & CM No.19527/2021
[Application filed on behalf of the petitioner seeking stay on the operation of the impugned assessment order dated 15.06.2021 and consequential actions]*

2. Via this writ petition, inter alia, challenge is laid to the assessment order dated 15.06.2021 passed under Section 143(3) of the Income Tax Act, 1961 (in short „the Act“), concerning the assessment year (AY) 2018-2019.

2.1. Mr. Salil Kapoor, who appears on behalf of the petitioner, says that the aforementioned assessment order dated 15.06.2021 was passed by the concerned Assessing Officer (in short „AO“) when he had already been rendered functus officio. In this context, our attention has been drawn to the earlier assessment order dated 26.11.2019 concerning the very same AY i.e. 2018-2019. This order was also passed under Section 143(3) of the Act by the very same officer.

2.2. According to Mr. Kapoor, after the earlier assessment order was passed, i.e. the order dated 26.11.2019, impugned notices under Section 142(1) of the Act, dated 08.02.2021, 12.02.2021 and 06.03.2021 were served on the petitioner by respondent no.1, which, according to him, was an action without jurisdiction. Mr. Kapoor says that, objections qua the same were raised by the petitioner via communications dated 09.02.2021, 15.02.2021 and 18.03.2021.

2.3. It is also emphasized by Mr. Kapoor that, a bare perusal of the assessment order dated 26.11.2019 would show that it was not passed either under Section 153A or 153C of the Act.

3. Accordingly, issue notice to the respondents. Mr. Abhishek Maratha accepts service on behalf of the

respondents/revenue.

3.1. Mr. Maratha says that he will revert with instructions. In case, instructions are received to resist the writ petition, a counter-affidavit will be filed before the next date of hearing.

4. List the matter on 13.08.2021.

5. In the meanwhile, there shall be a stay on the operation of the impugned assessment order dated 15.06.2021."

4. Mr. Maratha, learned counsel, on instructions, states that he does not wish to file any counter affidavit. However, he has drawn this Court's attention to the first assessment order dated 26th November, 2019, wherein it has been held as under:

"12. Assessment year 2018-19 is therefore the search year and the case is required to be assessed alongwith assessment years 2012-13 to 2017-18 for which proceedings u/s 153C were separately initiated.

13. In view of facts stated above, it is clear that the assessee did not submit any details in response to notices issued. Therefore, I have no option but to complete the assessment on the basis of material available on record.

14. As discussed above, it is evident that Sh. Verma was actually doing all these entry providing activities and also enjoying the commission earned out of it. Creation of various entities was solely with a view to facilitate him in carrying out his activities. All these entities being merely on papers, their directors/partners/proprietors were only name lenders and there was no actual business activity in any such entity. Therefore, the entire income arising out of these activities **shall be assessed in the hands of Sh. Verma and not in the hands of these paper entitles.**

14.1 Assessee company is one of the 200 shell companies/entities which is being controlled by Himanshu Verma for providing accommodation entries in lieu of commission. This was confirmed by Mr. Himanshu Verma in

his statement recorded during the course of search and also during assessment proceedings."

5. Mr. Maratha has also drawn this Court's attention to the impugned assessment order dated 15th June, 2021, which is reproduced hereinbelow:

"12. For the Assessment year 2018-19 the assessment proceedings were completed u/s 153C/143(3) of the Act on 26.11.2019 in name M/s Soubhagaya Mithila Television Pvt. Ltd. (AANCS0160K). Further, The ITR for A.Y. 2018-19 of the above assessee company in name M/s Makams Industries Pvt. Ltd (AANCS0160K) (Previously known as M/s Sobhagaya Mithila Television Pvt. Ltd.) had also been selected for limited scrutiny for the following CASS reasons:-

- 1. Exports/Imports*
- 2. Investment in Immovable property*

From the assessment records, following observations are being made:

1. It has been observed that the case for A.Y. 2018-19 was selected in CASS Scrutiny on date 28.09.2019. Similarly the company was covered in search of Sh. Himanshu Verma (Entry Operator). So the case of M.s Makams Industries Pvt. Ltd. were taken for scrutiny by the Assessing Officer on 28.09.2019.

2. For the same year A.Y. 2018-19 two notices were issued to assessee company M/s Makam Industries Pvt. Ltd. (Previously known as M/s Sobhagaya Mithila Television Pvt. Ltd.)

- 1. First Notice by NeAC*
- 2. Second notice by Assessing Officer in consequence of Search Operation*

1. As first case was covered in search operation and it was stated as a bogus/shell company of entry operator Sh. Himanshu Verma. Sh. Verma has been managing and

controlling a number of companies / firms sole proprietorship concerns and a number of bank accounts in the name of these entries in different banks. It is pertinent to mention that the case which was opened in consequence of search operation has been completed in the hands of bogus entry operator Sh. Himanshu Verma. At that time assessee company has not made any objection before the Department about pendency of assessment proceedings under CASS before NeAC.

2. Now, the case pending before NeAC has been transferred to Central Circle - 29, Delhi. Now, the assessee has made objection by stating that his case for A.Y. 2018-19 has already been completed. It is informed that case opened in consequence of search operation has been completed but the case opened by NeAC is still pending and to be completed as per time barring date 30.04.2021.

13. Further, the opportunity of being heard had been provided to the assessee company. In response to this opportunity, the assessee company had deposited a letter dated 18.03.2021 in which he had stated as under:- "Image".

14. On perusal of the records it is known that the assessee company was previously a shell company controlled and managed by entry operator Sh. Himanshu Verma. But then, the entry operator had sold this company to Sh. Mukesh Aggarwal & Sh. Aakash Agarwal on 17/02/2017 after taking commission in cash of total capital and changed the name of the company from Sobhagaya Mithila Television Ltd. to M/s Makams Industries Ltd. It is pertinent to mention here that the assessment proceedings u/s 153C/143(3) of the Act were concluded in light of the Jurisdictional High court judgment in case of CIT Vs Kabul Chawla dated 28/08/2015, and the assessment was concluded on the basis of the incriminating materials unearthed during the course of search and the Ld. AO was not vigilant about CASS reasons of limited scrutiny assessment pending before NeAC for the A.Y. 2018-19.....”

6. He emphasis that in the present case, two notices had been inadvertently issued simultaneously by NeAC and the Assessing Officer and two conflicting assessment orders had been passed.

7. Mr. Maratha states on instructions that he has no objection to the impugned assessment order dated 15th June, 2021 being quashed and the respondent-Revenue being given liberty to initiate appropriate proceedings in accordance with law.

8. Consequently, with the consent of the parties, the impugned assessment order dated 15th June, 2021 is quashed. However, the respondent/Revenue is given liberty to initiate appropriate proceeding in accordance with law with regard to the first assessment order.

9. This Court clarifies that it has not commented on merits with regard to first assessment order dated 26th November, 2019. In fact, the rights and contentions of all the parties are left open with regard to the said assessment order dated 26th November, 2019.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e- mail.

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MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 13, 2021
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