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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2958 OF 2016

Piramal Enterprises Ltd.

..Petitioner

*Versus*Deputy Commissioner of Income Tax
Circle 7(3) (2) and 2 Ors.

..Respondents

.....

Mr. J. D. Mistri, Senior Counsel, a/w Madhur Agrawal i/b. Atul Jasani for
the Petitioner.

Mr. N. C. Mohanty for the Respondents.

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**CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.****DATE : 15th FEBRUARY, 2017**

P.C.

1. Heard. Rule.

2. Respondents waive service.

3. This petition under Article 226 of the Constitution of India challenges the order dated 24th February, 2016 passed by the Income Tax Appellate Tribunal (Tribunal) under Section 148 of the Income Tax Act, 1961 (the Act) seeking to reopen the assessment for Assessment Year 2011-12.

4. The reason in support of the impugned notice proceed on the basis that no scrutiny assessment under Section 143(3) was done for the subject Assessment Year and the same was processed only under Section 143(1) of the Act. The reasons recorded in support of the impugned notice is based upon a communication received from the office of the Chief Commissioner of Income Tax dated 10th February, 2014 to which was annexed a list of companies, who have issued shares at the huge premium. Consequent to the above, the Assessing Officer in his reasons recorded indicates that he acted upon the same and learnt that there was a single subscriber to the share capital issued by the petitioner company at a huge premium viz. The Swastik Safe Deposit and Investment Ltd. (SSDI). The reasons recorded also indicates the PAN of SSDI. The reasons further state that the share premium charged is unbelievably high and thus the genuineness of the transaction is not proved. It is pertinent to note that the reasons do not indicate any amount according to the Assessing Officer which has escaped assessment.

5. We note that the communication dated 10th February, 2014 from the office of the Chief Commissioner of Income Tax directed that the matter be examined and appropriate action, if necessary, be taken in accordance with law. Consequent to the above communication dated 10th February,

2014, the Assessing Officer issued a notice on 19th March, 2014 under Section 133(6) of the Act seeking details of the issue of shares at a premium. The petitioner responded giving details as sought for. Thus details were available with the Assessing Officer to examine the material before arriving at a reasonable belief that income has escaped assessment for the subject Assessment Year. It is a settled position that even where an assessment has been only processed under Section 143(1) of the Act, the reopening notice must satisfy the test of having reason to believe that the income chargeable to tax has escaped assessment (see Asst. CIT v/s. Rajesh Jhaveri Stock Brokers (P)Ltd. 291 ITR 500). The reason to believe has to be arrived at after applying one's mind to the material available and to reach a prima facie view that income chargeable to tax has escaped assessment. Mere receipt of information from any source would not by itself tantamount to reason to believe that income chargeable to tax has escaped assessment. In the present case the Assessing Officer prima facie has not done the bare necessary/rudimentary enquiry into the material received before he concludes that income chargeable to tax has escaped assessment. The evidence of the same is the absence in the reason of any amount being determined by the Assessing officer as having escaped assessment. This prima facie determination of income escaping assessment would indicate application of mind to arrive at the reason to

believe that income chargeable to tax has escaped assessment.

6. Further this Court in *Vodafone India Services Pvt. Ltd. v/s. CIT 368 ITR 1* has taken a view that the share premium being on capital account cannot be subjected to tax as income.

7. Thus, prima facie, the impugned notice appears to be without jurisdiction. In the above view, the respondent-Revenue is restrained from acting further in pursuance of the impugned notice dated 24th February, 2016 till the final disposal of this petition.

8. This petition be placed for final hearing alongwith Income Tax Appeal No.418 of 2015.

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)

सत्यमेव जयते

Wadhwa