

GAHC010056902022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2020/2022

M V REALCON PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT C/O-
MANORANJAN DAS, DURGA SAROVAR, RUP KUNWAR BY LANE,
KAMAKHYA GATE, MOUZA JALUKBARI, GUWAHATI, KAMRUP-781011,
ASSAM, INDIA AND IN THE PRESENT CASE REP. BY ABHISHEK KUMAR,
ONE OF THE DIRECTORS OF THE PETITIONER COMPANY.

VERSUS

THE UNION OF INDIA AND 4 ORS
REP BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE), ROOM N0-46, NORTH BLOCK, NEW DELHI-
110001

2:THE PRINCIPAL COMMISSIONER
OF INCOME TAX
GUWAHATI-I
AAYAKAR BHAWAN
G.S. ROAD
CHRISTIAN BASTI
GUWAHATI-781005.

3:THE JOINT COMMISSIONER
OF INCOME TAX
GUWAHATI AAYAKAR BHAWAN
G.S. ROAD
CHRISTIAN BASTI
GUWAHATI-781005.

4:NATIONAL FACELESS ASSESSMENT CENTRE
DELHI

INCOME TAX DEPARTMENT
ARA CENTRE
E-2
GROUND FLOOR
JHANDEWALA EXTENSION
NEW DELHI-110005

5:ITO W-2 (1) GUWAHATI
HAVING ITS OFFICE OF THE INCOME TAX OFFICER
AT AAYAKAR BHAWAN
G.S. ROAD
CHRISTIAN BASTI
GUWAHATI-781005
ASSA

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 23.03.2022

Heard Dr. A Saraf, learned senior counsel for the petitioner. Also heard Mr. R K D Choudhury, learned ASGI for the respondent in the Income Tax Department.

2. Issue notice, returnable on 01.04.2022.

2. The order disposing of the objections filed against the notice under Section 148 of the Income Tax Act, 1961 (in short, the Act) issued to the writ petitioner assessee is assailed in this writ petition. In clause 5.1.1 of the said order a conclusion had been arrived at that the assessee had not provided the complete details of the losses from derivative which the assessee had incurred from forex trading and that the Assessing Officer had received contrary information from the insight portal of the department regarding the fictitious losses from the derivatives.

3. The assessment returns of the given assessment year had specifically provided the information that the petitioner had suffered forex currency losses amounting to

Rs.38,64,798/. During the assessment proceeding the assessee was required to provide the detailed information regarding the said transaction and by their communication available at page-68, the necessary information was provided. Accordingly, the proceeding under Section 143(3) of the Act was completed.

4. In the communication dated 18.02.2022 the reasons for reopening of the assessment against the petitioner in respect of the assessment year 2015-2016 provides that the information had been received through the insight portal of the department regarding fictitious losses in equity and derivative trading and that the assessee was found to be the beneficiary of fictitious losses in equity/derivative trading amounting to Rs.38,45,270/-. In the third paragraph thereof it is stated that during the scrutiny assessment under Section 143(3) of the Act, the assessee did not bring the said fact before the department and it was found that the same was a new fact/ information, which was not covered in the earlier proceeding.

5. From such point of view there also appears a discrepancy between the reasons of the reopening and the conclusion in the order disposing of the objection dated 16.03.2022 that the assessee had not provided complete details of the losses from derivative which the assessee had incurred from forex trading.

6. The respondents to file their affidavit as to why the reassessment proceeding had been initiated under Section 148 of the Act. Affidavit be filed before the next returnable date.

7. Till the returnable date further proceeding under Section 148 initiated against the petitioner by the communication dated 31.03.2021 be not carried further.

8. List on 01.04.2022.

JUDGE

Comparing Assistant