

GAHC010061922022



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

**Case No. : WP(C)/2325/2022**

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 REPRESENTED BY SRI  
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 NO-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 FACESLESS 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  
HAVING OFFICE 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 KALYAN RAI SURANA**

**ORDER**

**Date : 30.03.2022**

Heard Dr. A Saraf, learned senior counsel, assisted by Mr. N. Dutta, learned counsel for the petitioner. Also heard Mr. R K D Choudhury, learned ASGI for the respondents, i.e. the Income Tax Department.

2. The legality of the notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961; notice dated 03.09.2021 issued under Section 142(1) of the Income Tax Act, 1961 and letter dated 22.03.2022 is assailed in this writ petition filed under Article 226 of the Constitution of India.

3. Issue notice, returnable on 22.04.2022. As notice for all respondents are accepted by the learned ASGI, the learned counsel for the petitioner shall serve requisite copies of the writ petition to the learned ASGI within 2 days. The

respondents are to file their affidavit on or before the returnable date as to why the reassessment proceeding had been initiated under Section 148 of the Income Tax Act.

3. Heard both sides on the prayer for interim relief.

4. Pursuant to notice under Section 148 of the Income Tax Act, 1961 in respect of the assessment year 2014-15, the petitioner had filed his objection, return of income for the said period, and also provided other information as directed. The objection dated 21.03.2022 filed against the said notice issued to the writ petitioner was responded to by the respondent no. 4 vide order dated 22.03.2022.

5. In clause 5.1.1 of the said order, it was observed that the petitioner/assessee has not provided the complete details of the losses from equity/derivative trading 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 in the equity/derivative trading.

6. The case of the petitioner is that Income tax returns for the relevant assessment year 2014-15 (financial year 2013-14) had provided the information that the petitioner had suffered forex currency losses amounting Rs.27,71,250/. Accordingly, the proceeding under Section 143(3) of the Act was completed.

7. In the communication dated 17.03.2022 (Annexure-7), the reasons for reopening of the assessment against the petitioner in respect of the assessment year 2014-2015 is 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.27,71,250/-. 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.

8. From the copy of Income Tax return for assessment year 2014-15 (Annexure-1) stated to be filed on 24.09.2014 and the assessment order dated 15.10.2016 under Section 143(3), the learned senior counsel for the petitioner has *prima facie* demonstrated that in the return filed by the petitioner there was a mention about the derivative trading loss on account of forex transaction.

9. Therefore, till the returnable date, the further proceeding under Section 148 of the Income Tax Act, initiated against the petitioner by the order dated 31.03.2021 (Annexure-4) be not carried further.

10. List on 22.04.2022.

**JUDGE**

**Comparing Assistant**