IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF AUGUST 2013

BEFORE

THE HON'BLE MR.JUSTICE RAM MOHAN REDDY

WRIT PETITION NO. 36150 OF 2013 (T-IT)

BETWEEN:

JEANS KNIT PRIVATE LIMITED
(A PRIVATE COMPANY LIMITED BY SHARES INCORPORATED
UNDER THE COMPANIES ACT, 1956)
HAVING ITS OFFICE AT:
NO.21-E-1, 2ND PHASE,
INDUSTRIAL AREA, PEENYA
BANGALORE

REPRESENTED HEREIN BY ITS DIRECTOR
MR LAXMINARAYAN GAUR
S/O SRI NEMI CHAND SHARMA
AGED ABOUT 57 YEARS
RESIDING AT RENAISSANCE TEMPLE BELL,
FLAT NO.704, B BLOCK
7TH FLOOR, INDUSTRIAL SUBURBD
RAJAJINAGAR
BANGALORE-560022

... PETITIONER

(BY SRI. NAGESWAR RAO AND ARUN SRI KUMAR, ADVS.)

AND

1. THE DEPUTY COMMISSIONER OF INCOME TAX
   CIRCLE 11 (5)
   R P BUILDING
   NRUPATHUNGA ROAD
   BANGALORE-560001

2. THE COMMISSIONER OF INCOME TAX
C R BUILDING
QUEENS ROAD
BANGALORE-560001

... RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE COMPLETE RECORD OF THE CASE; QUASH THE NOTICE DATED 6.3.2012 [IMPUGNED ORDER] ISSUED BY THE RESPONDENT NO.1 TO THE PETITIONER UNDR SECTION 148 OF THE INCOME-TAX ACT 1961 [THE ACT] VIDE ANNEXURE-A AS BEING UNLAWFUL, ILLEGAL AND WITHOUT JURISDICTION; QUASH THE NOTICES DATED 3.1.2013 UNDER SECTIONS 1443[2] AND 142[1] OF THE ACT VIDE ANNEXURE-B & C; QUASH THE ORDER DATED 2.8.2013 [IMPUGNED ORDER] DISPOSING OF THE OBJECTIONS FILED BY THE PETITIONER ON 11.2.2013 [TO THE INITIATION OF REASSESSMENT PROCEDINGS UNDER SECTION 147 OF THE ACT] VIDE ANNEXURE-D; AND ETC.

THIS WRIT PETITION IS COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

Though this petition is listed for orders on office objections, with the consent of the learned counsel for the petitioner, petition is finally heard and disposed of by this order.

2. On an earlier occasion, when the petitioner was before court in W.P.13174/13 challenging the notice dt.

6/3/2012 of the Deputy Commissioner of Income Tax issued under Sec.148 of the Income Tax Act, 1961, by order dt. 23/7/2013 – Annex.W, it was observed thus:

> *"16. Having heard the learned counsel for the parties, perused the pleadings and examined the order, Annexure-B, ex-facie what is patent is that the order suffers from reasons and findings, except for drawing conclusion.*
>
> *17. It is elsewhere said that recording of reasons is a part of fair procedure since reasons are the harbinger between the mind of maker of the decision in the controversy and the decision or conclusion arrived at to substitute subjectivity with objectivity. It is true that the order of affirmation of the reasons need not be by extracting the reasons elaborately but even then the arguments or submissions made, points urged have to be dealt with if not elaborately, atleast briefly. Regard being had to the only reason assigned in the order Annexure-D being that of extracting Section 147 of the Act and saying that reasons attributed to the invoking of Section 147 are just and reasonable, there is nothing to show application of mind over*

the elaborate reply made by the petitioner, more appropriately on relevant material as existed during the assessment year 2006-07 which the office while conducting a survey under Section 133A had no knowledge of. Regard being had to the principles of law laid down by the Apex Court in the decisions noticed supra, it is needless to state that the 1st respondent should have considered the plea of the petitioner, by applying the principles of law laid down in order to come to a conclusion either accepting the objections or rejecting the same. A mere statement rejecting the objections advanced by the petitioner does not confirm to rule of law and on that score alone this petition deserves to be allowed in part.

In the circumstances, there is a need for the 1st respondent to consider all the pleas advanced by the petitioner in the reply Annexure-M to the reasons Annexure-G and pass an orders assigning reasons and findings strictly in accordance with law within a fortnight from today."

3. In compliance with the said order, the Deputy Commissioner of Income Tax considered the objections

filed by the petitioner to the reasons for re-assessment proceedings for the assessment year 2006-07 and passed the order dt. 2/8/2013 observing that the re-opening under Sec.147/148 of the Income Tax Act for the impugned assessment year 2006-07 is within the legal provisions envisaged under the Act as there are reasons to believe that but for the transfer of the assets of Fibres & Fabrics International Private Limited, for short 'FFIPL', ie., its business premises, entire machinery, same business of manufacture and export of jeans and almost all employees including technical and managerial being shifted from FFIPL to the petitioner-company, coupled with the testimony of one Nagesh, said to be an employee of FFIPL, later an employee of the petitioner, the new undertaking of the petitioner, could not have come into being and therefore petitioner is not entitled to the benefit under Sec.10B of the Income Tax Act. The Deputy Commissioner having regard to several facts as set out in the reasons, as well as in the order impugned, has pointed

out to the 'reasons to believe' which are based upon reasonable grounds including direct or circumstantial evidence, but not of mere suspicion, gossip or rumor, which it cannot but be said, the Deputy Commissioner was well within his jurisdiction to record the 'reasons to believe' that the income of the petitioner had escaped assessment by wrongfully claiming deduction under Sec.10B of the Act. An examination of the order impugned is also in the direction of establishing the fact that the belief that is entertained by the Deputy Commissioner is neither arbitrary nor irrational, but after an examination as to whether the reasons are relevant and have a bearing on the matter in regard to which is required to entertain the belief. From the facts obtainable from the reasons and the order impugned, in my opinion, there is a rational and intelligible nexus between the reasons and the belief.

4. The submission of the learned counsel for the petitioner that Nagesh, a Manager in FFIPL, later on a

Manager in the petitioner-organization had retracted from his statement, and hence not a relevant material, *perse*, at this stage is unacceptable, since the Deputy Commissioner has applied his mind to that aspect of the matter and held that it is a question of fact as to whether there was any coercion or otherwise when Nagesh's statement was recorded which deserved to be answered only after an enquiry.

5. The further submission of the learned counsel for the petitioner that 'there are no reasons to believe' and therefore invoking the jurisdiction under Sec.147/148 of the Income Tax Act was susceptible to suspicion, I am afraid, at this stage, is impermissible of acceptance. 'Reason to believe' does not mean that the assessing officer should have finally ascertained the fact by legal evidence. It only means, the examination that is required to be made on the basis of information that the assessing officer has received and if he discovers or finds as satisfied that the taxable income has escaped assessment, suffice it

to state that he had reason to believe that such income had escaped assessment.

6. The next submission of the learned counsel for the petitioner that job work done by FFIPL for the petitioner, by itself and nothing more, cannot deprive the petitioner from claiming deduction under Sec.10B of the Act, is a pure question of fact that has to be decided based upon an enquiry. It is well settled law that it is for the authorities to lift the veil and ascertain the true nature of transaction that has taken place as between FFIPL and the petitioner, who claim to be sister-organizations, carrying on identical business. It is useful to notice that FFIPL could not make any further claims for deduction under Sec.10B of the Income Tax Act after the period specified therein, whence the petitioner-company was incorporated and two years thereafter purchased the machinery of FFIPL disclosing the value of the old machinery was less than 20%. It is elsewhere said that tax planning may be legitimate provided it is within the

framework of law. However colorable devices cannot be part of tax planning.

7. The reasons assigned by the Deputy Commissioner to reject the objections of the petitioner in the exercise of jurisdiction under Sec.147/148 of the Income Tax Act for the assessment year 2006-07 cannot be said to be either arbitrary or irrational calling for interference in exercise of extraordinary writ jurisdiction under Art.226 of the Constitution of India.

Petition devoid of merit is rejected.

Sd/-
JUDGE

Rd/-