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

% *Decision delivered on: 21.12.2022*

+ **W.P.(C) 11952/2022 & CM APPL. 35712/2022**

GDR FINANCE AND LEASING PRIVATE LIMITED.... Petitioner

Through: Mr Prakash Kumar & Mr Rupinder
Kumar Aggarwal, Advs.

versus

INCOME TAX OFFICER, WARD 10(1), NEW DELHI.. Respondent

Through: Mr Abhishek Maratha, Sr. Standing
Counsel

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against order dated 23.07.2022 passed under Section 148A(d) of the Income Tax, 1961 [in short "Act"] and the consequent notice of even date i.e., 23.07.2022 issued under Section 148 of the Act.
2. The impugned order and notice were preceded by a notice dated 15.05.2022 issued under Section 148 A (b) of the Act concerning assessment year (AY) 2015-2016.
3. A perusal of the notice shows that the principal allegation against the petitioner was the following:

"2. As per the information available on Insight Portal & flagged by the Directorate of Income-Tax (System) as per risk profiling, the information relating to evasion of tax by the assessee has been disseminated, brief of which are as under:

A Search operation u/s 132 of the I.T. Act was carried out on 13.04.2017 on Himanshu Verma Group and during the post search proceedings by Central Circle, it was found that Sh. Himanshu Verma was indulged in providing bogus accommodation entries through various shell companies operated or controlled by him or dummy

directors. During enquiry, it was found that there was no actual business activity in any of concerns managed by him. He was doing business of providing bogus accommodation entries in the shape of share application money, Capital Gain on Shares, expenditure entries in lieu of certain commission charged from the beneficiary parties and to convert the unaccounted black money into white. The statement u/s 131 of the I.T. Act was also recorded on 13.04.2017 by the Investigation Wing, Delhi, wherein he admitted to have indulged in the above activity.

Further, from the information, it is seen that assessee company has made transaction with M/s Kanhaiya Impex Pvt. Ltd (PAN- AAHCM7195C) amounting to Rs. 60,00,000/- during the F.Y. 2014-15. The financial implication of the transactions by the assessee is Rs. 60,00,000/- during the F.Y. 2014-15."

4. A perusal of the extract would show, that *inter alia* what was alleged against the petitioner is, that it had entered into a transaction with an entity going by the name M/s Kanhaiya Impex Pvt. Ltd.[PAN - AAHCM7195C] amounting to Rs 60,00,000/- in FY 2014-2015.

5. In response to the notice, the petitioner had taken a stand that it had not entered into any transaction with M/s Kanhaiya Impex Pvt. Ltd.

6. Mr Abhishek Maratha, who appears on behalf of the respondent/revenue, has drawn our attention to the communication dated 20.06.2022 wherein *inter alia* the following is set aside:

"In this connection, the PAN of Kanhaiya Impex Pvt. Ltd. inadvertently written as AAHCM7195C, the correct PAN – AAACK4032H should be considered as the information provided to you earlier."

7. Interestingly, despite issuance of this communication, the respondent/revenue continued on the wrong course, as in the order dated 23.07.2022 passed under Section 148A(d) of the Act, it continued to allege that the petitioner had entered into a transaction with M/s Kanhaiya Impex Pvt. Ltd. [PAN - AAACK4032H] amounting to Rs 60,00,000/-.

8. A coordinate bench of this Court via order dated 18.08.2022 had noticed the stand of the petitioner, that it had not entered into any transaction with M/s Kanhaiya Impex Pvt. Ltd.

9. It is in this background that Mr Maratha has returned with instructions in writing which *inter alia* states the following:

“.....Perusal of the above mentioned Bank Book clearly revealed that assessee had entered into above said transactions appearing in the above table. Amount and date of transaction are exactly the same. However name of the party appearing in the Bank Book with respect to above said transactions is M/s K.G. Finvest Pvt. Ltd. and not M/s Kanhaiya Impex Pvt. Ltd. Further it has been found from the departmental database that PAN of M/s K.G. Finvest Pvt. Ltd. is AAACK4032H which is exactly matching with the PAN No. mentioned in the information sheet. It is important to mention here that PAN is unique identity of the party and not the name. Assessee, in its reply submitted that they had not entered into any transaction with M/s Kanhaiya Impex Pvt. Ltd. but never mentioned the PAN despite the fact that PAN of the party was duly supplied to the assessee. So it can be concluded that the information in possession of the Department and supplied to the assessee is correct except the fact that name of the party was wrongly mentioned but PAN was correct which is sufficient for unique identification.....”

10. Clearly, a perusal of the instruction would show that PAN - AAACK4032H concerns an entity going by the name K.G. Finvest Pvt. Ltd.

10.1 This PAN does not concern M/s Kanhaiya Impex Pvt. Ltd.

11. The petitioner's stand that it had not entered into any transaction with M/s Kanhaiya Impex Pvt. Ltd. is correct.

11.1 Given this position, in our view, both the notice which is issued under Section 148 A (b) of the Act and the order that was passed under Section 148 A (d) of the Act suffer from obvious errors.

12. Accordingly, the impugned order and notice are set aside.

12.1 Resultantly, the notice dated 23.07.2022 issued under section 148 of the Act would collapse.

13. The assessing officer will however have liberty to take next steps in the matter, *albeit*, as per law.
14. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 21, 2022/r

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