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

% *Decision delivered on: 21.12.2022*

+ **W.P.(C) 12040/2022&CM APPL. 35993/2022**

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)]

TARA VITASTA GANJU, J. (ORAL):

1. This Writ Petition is directed against order dated 27.07.2022 passed under Section 148A(d) of the Income Tax, 1961 [hereinafter referred to as "Act"] and the consequent notice of even date i.e., 27.07.2022 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 148A(b) of the Act concerning assessment year ('AY') 2016-2017.
3. A perusal of the impugned order shows that the principal allegation levelled against the petitioner is 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 [sic: has] 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 following transactions with the entities controlled and managed by Sh. Himanshu Verma during F.Y.2015-16 relevant to A.Y.2016-17:

S. NO.	NAME	AMOUNT (IN RS.)	REMARK S
1	Kanhaiya Impex Pvt. Ltd.	1,13,50,000	Accommodation entry
	Total	1,13,50,000	

Thus, the assessee has received accommodation entries of Rs. 1,13,50,000/-during F.Y. 2015-16 relevant to A.Y. 2016-17”

4. A perusal of the extract would show that *inter alia* what was alleged against the Petitioner is that transactions have been made with an entity controlled and managed by Mr Himanshu Verma called Kanhaiya Impex Pvt. Ltd.(“KIPL”) amounting to Rs 1,13,50,000/- in AY 2016-2017.

5. On 28.05.2022, in response to the notice dated 15.05.2022, the Petitioner stated that it does not have any dealings whatsoever with the company KIPL and therefore no income, much less Rs 1,13,50,000/-, has escaped assessment. The relevant part of the said reply is extracted hereafter:

“v. That the assessee company has not dealt with and has not entered into any transaction of whatsoever nature (sale, purchase, loan, share application money, transactions resulting into capital gains. etc.) with alleged M/s Kanhaiya Impex Pvt. Ltd (PAN-AAHCM7I95C) amounting to Rs. 1,13,50,000/- during the F.Y.

2015-16.”

6. The Respondent/Revenue had thereafter by a letter dated 21.06.2022 provided additional information and asked the Petitioner to submit its reply. The additional information merely reiterated what was set forth earlier i.e., that it had entered into five transactions in the nature of accommodation entries with KIPL for Rs.1,13,50,000/-. The relevant extract of the information sheet appended reads as follows:

Information Details							
S. No.	Source PAN	Source PAN Name	Information FY	Information Type	Information Value	Information Date	Remarks
1.	AAACK4032H	Kanhaiya Impex Pvt. Ltd.	2015-16	Others	1800000	29-07-2015	Accommodation Entry
2.	AAACK4032H	Kanhaiya Impex Pvt. Ltd.	2015-16	Others	5000000	06-08-2015	Accommodation Entry
3.	AAACK4032H	Kanhaiya Impex Pvt. Ltd.	2015-16	Others	1500000	15-12-2015	Accommodation Entry
4.	AAACK4032H	Kanhaiya Impex Pvt. Ltd.	2015-16	Others	200000	17-12-2015	Accommodation Entry
5.	AAACK4032H	Kanhaiya Impex Pvt. Ltd.	2015-16	Others	350000	19-12-2015	Accommodation Entry
6.	AAACK4032H	Kanhaiya Impex Pvt. Ltd.	2015-16	Others	2500000	16-04-2016	Accommodation Entry

6.1 The Petitioner on 27.06.2022 replied, reiterating that it had not entered into any transactions with KIPL and stating that the information did not appear to be based on any factual evidence.

7. Despite issue of these communications, the Respondent/Revenue passed order dated 23.07.2022 reiterating the allegations as set forth in hereinabove.

8. A coordinate bench of this Court in its order dated 22.08.2022 had

noticed the stand of the Petitioner that it had not entered into any transaction in the nature of an accommodation entry of Rs 1,13,50,000/- with KIPL during AY 2016-2017. In this regard, Mr Maratha had sought time to return with instructions.

8.1 Mr Maratha today has handed over an undated report issued by the Respondent/Revenue which *inter alia* states as follows:

“.....Perusal of the above mentioned Bank Book clearly revealed that assessee had entered into above said transactions appearing at S. No. 1-5 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 five 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”

9. A perusal of the instruction would show that it is the stand of the Respondent/Revenue that the transactions referred to are with respect to a company called K.G. Finvest Pvt. Ltd. (“KG Finvest”) and not KIPL. The said instructions also refer to PAN - AAACK4032H of the entity going by the name K.G. Finvest as mentioned in the information sheet.

9.1 As is evident from the foregoing, all communications addressed to the Petitioner only refer to KIPL and not KG Finvest.

10. In these circumstances, the Petitioner’s stand that it had not entered into any transaction with KIPL appears to be correct.

10.1 Given this position, in our view, both the notice which is issued under

Section 148A(b) of the Act and the order that was passed under Section 148A(d) of the Act suffer from obvious errors.

11. Accordingly, the impugned order and notice dated 27.07.2022 are set aside.

12. The Assessing Officer will however have liberty to take next steps in the matter as per law.

13. The writ petition is disposed of in the aforesaid terms. The pending application shall, accordingly, stand closed.

14. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

RAJIV SHAKDHER, J

DECEMBER 21, 2022/r

[Click here to check corrigendum, if any](#)