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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 609/2024**

KORDIENT VENTURES PVT. LTD. Petitioner
Through: Mr. Vineet Bhatia, Mr.
Aamnaya Jaganath, Mr. Keshav
Garg, Mr. Bipin Punia, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13
(1), NEW DELHI AND ANR. Respondent

Through: Mr. Shlok Chandra, Sr.
Standing Counsel, Ms. Madhavi
Shukla, JR Standing Counsel,
Ms. Priya Sarkar, JR Standing
Counsel, Mr. Ujjawal Jain,
Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

ORDER
16.01.2024

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1. The petitioner challenges the initiation of proceedings under Section 148 of the Income Tax Act, 1961 [“Act”]. The issuance of a Show Cause Notice under Section 148A(b) of the Act dated 04 March 2023 is not disputed by the petitioner. The reassessment proceedings have come to be initiated pursuant to the material gathered with respect to Shri Dinesh Chand (Proprietor of M/s Manvee Traders) and the allegation that the firms of the aforementioned person were used for the purposes of generation of false invoices and in order for various beneficiaries, including the petitioner to avail of Input Tax Credit [“ITC”].

2. From a reading of the order ultimately passed under Section



148A(d) of the Act, we find that while considering the objections which were raised, the Assessing Officer has found as under:-

“6. In response to the Notice u/s 148A(b) dated 04.03.2023, assessee submitted its reply on 11.03.2023, and submitted that:

“We had not received nor aware of any notice or email for A.Y.2019-20 DIN ITBA/INV/F/17/2022-23/1047093762(1) dt 07-10-22 and moreover The Proported information is incorrect I have no transaction with aforesaid suppliers/customer.

The Proported information is incorrect I have no transaction with aforesaid suppliers/customer and to substantiate my bonafide I am enclosing you following documents as under:

- 1. Balance sheet for AY :2019-20 Annex-1*
- 2. Income tax return acknowledgement AY: 2019-20 vide e-filing no. 240333321311019 Dated: 31.10.2019 Annex-2*
- 3. GST R1 for the period FY : 2018-19 Annex-3*
- 4. GSTR 3 B for the period FY : 2018-19 Annex-4*
- 5. GST Certificate Annex -5*

There is Nil sales as per GSTR 3 B and The GSTR 1 also shows there is no purchase from the supplier/customer nor we have taken any input Credit form the mentioned unknown companies.”

Reply of the assessee has been considered u/s 148A(c) and prima facie found not on the merit as per facts and information available with office (which has already been communicated to the assessee) for the following reasons:

- The assessee, M/s Kordient ventures has contended that the information is incorrect and it had no transaction with aforesaid suppliers/customer. However it has failed to provide the supporting documents.
- As per note 19 of notes to balance sheet there are purchases of Rs. 16,72,674. However assessee has not provided the details of parties from whom these purchases have been made. Further there are no sales made during the period. Therefore purchases are being made but revenues are not being booked indicating that these purchases are bogus. No explanation is provided as to why there is a huge addition to stock and why stock is not converted to sales.



- Further, from the information available with this office, M/s Fortune Graphics Ltd (PAN: AAACF1861B) has reported total Purchases of Rs. 48,80,48,040/- under GSTR-1 with the assessee, M/s Kordient Ventures Private Limited. Therefore, the contention of assessee is not acceptable.
- Assessee has failed to provide the details of purchases, invoices and bank statements. Only a blurred sheet of Allahabad bank account has been provided wherein no details are provided related to from whom money is being received or to whom it is being paid. Copy of cash flow statement has not been provided.

7. Thus income of Rs. 48,80,48,040/- is chargeable to tax for this year and has escaped assessment. Hence, it is concluded that this is a fit case for issuing Notice u/s 148 of the I.T. Act, 1961.

8. Accordingly, it is concluded that this is a fit case for issuing notice u/s 148 of the I.T. Act.”

3. When the writ petition was argued before us, learned counsel for the petitioner had reiterated the contention that it had no transaction with Fortune Graphics Limited and that the entries as appearing in GSTR-1 were made unilaterally. It was also submitted that the petitioner had not availed of any ITC benefits in respect of the subject transaction. In fact, one of the contentions which was addressed before us was that the petitioner was ready and willing to concede to a reversal of the entries as evidenced from the GSTR-1.

4. In our considered opinion, the aforesaid submissions do not appear to raise a substantial jurisdictional challenge and pertain principally to allegations of fact. The petitioner has failed to provide any plausible explanation for the transaction which stood reflected in the GSTR-1 forms.

5. As is evident from a reading of the order dated 16 March 2023 issued under Section 148A(d) of the Act, the Assessing Officer has taken into consideration facts which would clearly be germane for the purposes of examining whether there was material to suggest that



income of the petitioner had escaped assessment.

6. We take note of the following principles which would govern a challenge to the initiation of reassessment proceedings in Article 226 of the Constitution as laid down in **Experion Developers P. Ltd v. Assistant Commissioner of Income Tax & Ors** [2020 SCC Online Del 2588] and **Synfonia Tradelinks Pvt. Ltd v. Income-tax Officer & Anr** [2021 SCC Online Del 2692]

“Experion Developers P. Ltd v. Assistant Commissioner of Income Tax & Ors

20. In the light of the above judicial principles, the crux lies in the recorded reasons which shed light on the mind of the Assessing Officer and having perused the same in the instant case, we are not persuaded with Mr. Vohra's submission that the observations of the Assessing Officer are based purely on conjectures and surmises, without reference to any tangible material. At this stage, we may refer to our decisions in Vedanta Ltd. v. Asst. CIT (W. P. (C) No. 13036 of 2019 dated December 20, 2019) and also in RDS Project Ltd. v. Asst. CIT (2020) 421 ITR 624 (Delhi) (W. P. (C) No. 11274 of 2019 dated October 23, 2019) wherein we have extensively examined the case law on this issue.

21. In the above judgments, we have noted the views of the Supreme Court in Asst. CIT v. Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 500 (SC) ; (2008) 14 SCC 208 wherein it has been held that the expression "reason" in section 147 of the Act means a "cause" or "justification". The Assessing Officer can be said to have reason to believe that income has escaped assessment, if he has a cause or justification to know, or suppose, that income has escaped assessment.

22. It is also apposite to note the observations of the Supreme Court in Sri Krishna P. Ltd. v. ITO (1996) 221 ITR 538 (SC) wherein, it was emphasised that at this stage, the test is not as to whether there has been any escapement of income, but whether there exist "reasons to believe" that the income chargeable to tax has escaped assessment.

23. There are several judgments of the Supreme Court and of the High Courts which have extensively deliberated on the construction of the expression "reason to believe" (Ref : G. S. Engineering and Construction Corporation v. Deputy DIT (International Taxation) (2013) 357 ITR 335 (Delhi)). The scope of judicial review under article 226 of the Constitution of India has



also now been well recognized. In a nutshell, the courts have applied the test of reasonableness, holding that the recorded reasons to believe must suggest and disclose that the belief is that of an honest and reasonable person, based on reasonable grounds. The discretion vested under the scheme of the Act has also prompted the courts to put a cautionary note in several judgments that while exercising judicial review, although the court can examine whether the "reasons to believe" satisfy the conditions, however, the declaration or sufficiency of the "reasons to believe" cannot be investigated."

"Synfomia Tradelinks Pvt. Ltd v. Income Tax Officer

9. We have heard the learned counsel for the parties and perused the record. Before we proceed further, it would be helpful if we were to set forth certain well-established principles enunciated by the courts over the years vis-a-vis initiation of proceedings under section 147 of the Act.

(i) The reasons which lead to the formation of opinion or belief that the assessee's income chargeable to tax has escaped assessment should be inextricably connected. In other words, the reasons for the formation of opinion should have a rational connection with the formation of the belief that there has been an escapement of income chargeable to tax (See : ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC) ; (1976) 3 SCC 757).

(ii) The expression "reason to believe" is stronger than the word "satisfied". The belief should be based on material that is relevant and cogent. (See : Ganga Saran and Sons Pvt. Ltd. v. ITO [1981] 130 ITR 1 (SC) ; (1981) 3 SCC 143).

(ii) (a) The Assessing Officer should have reasons to believe that the taxable income has escaped assessment. The process of reassessment cannot be triggered based on a mere suspicion. The expression "reason to believe" which is found in section 147 of the Act does not have the same connotation as "reason to suspect". The order recording reasons should fill this chasm. The material brought to the knowledge of the Assessing Officer should have nexus with the formation of belief that the taxable income of the assessee escaped assessment; the link being the reasons recorded, in that behalf, by the Assessing Officer.

(iii) The Assessing Officer is mandatorily obliged to record reasons before issuing notice to the assessee under section 148(1) of the Act. This is evident from the bare perusal of sub-section (2) of section 148 of the Act.

(iv) No notice can be issued under section 148 of the Act by the Assessing Officer after the expiry of four years from the end of the relevant assessment year unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner arrives at a satisfaction based on the reasons recorded by the Assessing Officer that it is a fit case for issuance of



a notice under section 148 of the Act. (See: section 151(1) of the Act).

(v) The limitation for issuance of notice under section 148 as prescribed under section 149 of the Act commences from the date of its issuance while the time limit for passing the order of assessment, reassessment, computation and recomputation as prescribed under section 153 of the Act commences from the date of service (See : R. K. Upadhyaya v. Shanabhai P. Patel [1987] 166 ITR 163 (SC) ; (1987) 3 SCC 96).

(vi) A jurisdictional error would occur, which can be corrected by a writ court, if reasons to believe are based on grounds that are either arbitrary and/or irrational. (See : Sheo Nath Singh v. Appellate Asst. CIT [1971] 82 ITR 147 (SC) ; (1972) 3 SCC 234)."

7. Accordingly, and in view of the above, we find no merit in instant writ petition which shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 16, 2024

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