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

\+ W.P.(C) 9321/2024

ALANKAR APARTMENTS PVT. LTD. .....Petitioner

Through: Mr. Anand Chaudhuri, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(1) ....Respondent

Through: Mr. Sanjay Kumar and Ms. Easha, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **10.07.2024**

CM APPL. 38169/2024 (Ex)

Allowed, subject to all just exceptions.

This application stands disposed of.

W.P.(C) 9321/2024 & CM APPL. 38168/2024 (for interim stay)

1. This writ petition has been preferred seeking the following reliefs:-

> "a) Allow the present Writ Petition and pass a Writ of Certiorari, Mandamus and/or any other appropriate Writ, direction or order and quash/set aside the impugned notice dated 31.03.2024 issued u/s. 148 of the *Income-tax Act, 1961*, impugned order dated 31.03.2024 passed u/s. 148A(d) of the said Act, impugned notice dated 23.05.2022 issued u/s. 148A(b) of said Act, impugned letter dated 13.03.2024,impugned letter dated 26.03.2024 along with impugned proceedings initiated u/s. 147/148 of the said Act against the Petitioner with respect to subject Assessment Year 2016-17;
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> b) Grant any other relief deemed just, fair and appropriate."

2. The record reflects that proceedings under Section 148 of the

Income Tax Act, 1961 ['**Act**'] were originally initiated prior to the rendering of the judgment by the Supreme Court in **Union of India vs. Ashish Agarwal** [2022 SCC OnLine SC 543]. The reasons which were recorded appear at pages 91-93 of our record and read as under:-

> "1. ALANKAR APARTMENTS PRIVATE LIMITED{hereinafter *'the assessee'*} was incorporated on 14.09.1989 under the Companies Act, 1956 and reported of being engaged in the business of *PROPERTY DEVELOPERS*. Ite-filed its ITR for the year on 08.08.2017 at Loss of (Rs. 10,55,02,808/-) and Book Loss of (Rs. 6,39,01,182/-).
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> 2. Credible information has been received on the *Insight Portal* of the Department by DDIT/ADIT (Inv.) 1(3), Delhi dated 15.03.2021. The list of information is as under:
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> 2.1 Information is received that the assessee company and other concern M/s Ambience Developers & Infrastructure Pvt Ltd are having common Directorship of Gehlot Family namely:
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> | | |
> |---|---|
> | Sh. Raj Singh Gehlot | DIN 00029788 |
> | Sh. Aman Gehlot | DIN 00925059 |
> | Smt. Shahista Gehlot | DIN 07149633 |
>
> 2.2 It was stated that the company Alankar Apartments Pvt LTd have executed works of multi crores in Gurugram in FY 2014-15, 2015-16 and FY 2016-17 but are not registered in VAT and the company deducted VAT @ 5 to 13.5% from its vendor/work contractors but have not deposited the same to the department.
>
> 2.3 in the balance sheet of Alankar Apartment Pvt Ltd as on 31.03.2017, there is no payable of WCT (Work Contract Tax) which indicates that they are clearly evading the same. The statutory liability as per the balance sheet as on 31.03.2015 was **Rs. 1,16,27,466/-**which increased to **Rs. 8,51,65,846/-** on 31.03.2016 and further increased to **rs. 11,64,73,919/-** on 31.03.2017 which indicated that they are not paying their liability.
>
> 2.4 The entity took loan from financial institutions to the tune of Rs. 780.04 crore and mentioned the securities hypothecated in the balance sheet which they have also shown in their other

company M/s Ambience Developers & Infrastructure Pvt Ltd where they have taken a loan of Rs. 1336.90 crore.

2.5 They have illegally and fraudulently diverted Rs. 330.33 crore out of the above loan of Rs. 780.04 crore to their sister concern instead of paying to their statutory liabilities and other creditors.

3. The above information has been perused with the financials of the assessee, it is seen that Long Term Borrowings (from other parties) of Rs. 703.18 crore was outstanding as on 31.03.2016. A total of Rs. 423.08 crore was raised during the year on this account it is further seen that under Other Current Liabilities>>Other Payables, total outstanding liability on year end is as under:

As on year ending:	31.03.2013	31.03.2014	31.03.2015	31.03.2016
Amount	57,41,87,573	132,39,72,538	52,37,69,167	40,62,98,728

4. It is further seen from the audit report of the year that the tax auditor didn't mentioned the VAT Registration No. of the assessee company which itself is a proof that that the company didn't registered itself under VAT. Therefore the above allegations levied in information under consideration are found evident from the financials of the assessee.

5. In this regard, in order to verify the above, notice u/s 133(6) of Act was issued to assessee on 23.06.2021 seeking details with supporting evidences regarding VAT/WCT/other statutory taxes collected from vendors and subsequent payment of these to the Government. Assessee was also asked vide this notice to provide the details of statutory liabilities standing in its books along with details of payment made against these.

6. However, no response was received from the assessee company till date against the aforesaid queries It can be said that assessee has no genuine explanation to offer.

7. From analysis of the material available on record, and from perusal of the information forwarded in the case it is seen that the assessee company enhanced its statutory liability by **Rs. 7,35,38,380/-** (8,51,65,846 1,16,27,466) but didn't found paying these liabilities collected from the vendors to the Govt. However, no disallowance is found made by assessee against this default in its ITR.

8. The undersigned has carefully applied mind to the above discrepancy and failure on part of the assessee to prepare and submit a return of income offering his true and complete income to

> tax for the assessment year under consideration. The discrepancy gives a substantial basis for the formation of a reason to believe to initiate reassessment u/s 147 of the Act. Thus, there is clear failure on part of the assessee to make full and true disclosure while filing return of income. Hence, I have reason to believe that income amounting to **Rs.7,35,38,380/-**has escaped assessment due to failure on part of the assessee."

3. The petitioner impugned the exercise of the assessment which came to be continued post the rendering of the judgment in *Ashish Agarwal* in terms of a Section 148A(b) notice which was dated 23 May 2022. The proceedings ultimately culminated in an order under Section 148A(d) dated 30 July 2022, which came to be impugned by way of W.P. (C) 3577/2023. The Court while examining the challenge which was raised principally took into consideration the stand of the writ petitioner that the statutory dues in respect of withholding tax, service tax and outstanding labour cess could not be viewed as income chargeable to tax which had escaped assessment. It ultimately found that although that contention had been specifically taken, the same had neither been examined nor ruled upon by the Assessing Officer ['**AO**']. Consequently, the writ petition came to be allowed and the order under Section 148A(d) dated 30 July 2022 came to be set aside. The Court framed a direction for the AO to carry out an exercise *de novo*.

4. Before us it was contended by Mr. Chaudhuri that as would be evident from the reasons which had been originally recorded and which had never been set aside by the Court, the issue of an alleged illegal and fraudulent diversion of INR 330.33 crores out of a loan of INR 780.04 crores to its sister concerns instead of being utilised for discharging its statutory liabilities was never made the foundation for the formation of opinion that income liable to tax had escaped

assessment. In view of the above, it was his submission that the impugned orders are rendered unsustainable.

5. We find ourselves unable to sustain that challenge bearing in mind the fact that the credible information which constituted the bedrock for the formation of opinion had categorically alluded to the aforesaid transactions, namely, the alleged diversion of the loan to sister concerns. The direction of the Court was to carry out an exercise of examining the explanation as proffered by the petitioner afresh.

6. In that view of the matter, we are of the opinion that the AO was clearly not disabled from proceeding to examine the entire case including on the basis of the allegations which formed part of para 2.5 of the original "reasons to believe".

7. Consequently, we find no merit in the challenge which stands raised. The writ petition fails, and stands dismissed.

8. This order, however, shall be without prejudice to the rights and contentions of respective parties.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 10, 2024/*vp*