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

\+ W.P.(C) 12390/2022

LOGIX INFRATECH PRIVATE LIMITED .....Petitioner

Through: Mr. Gaurav Jain & Mr. Shubham Gupta, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 13(1) NEW DELHI .....Respondent

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V. K. Saksena, JSCs.

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\+ W.P.(C) 15390/2022

LOGIX CITY DEVELOPERS PRIVATE LIMITED .....Petitioner

Through: Mr. Gaurav Jain & Mr. Shubham Gupta, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE -13 (1), NEW DELHI .....Respondent

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V. K. Saksena, JSCs.

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

**O R D E R**

% **30.07.2024**

1. These two writ petitions impugn the reassessment action initiated for **Assessment Year**[1] 2013-14. For the purposes of brevity,

[1] A.Y.

we propose to take note of the facts as they obtain in W.P. (C) 12390/2022.

2. We had in terms of our order of 26 August 2022 noticed the dispute which arises in the following terms:-

> "Learned counsel for the Petitioner states that the Respondent initiated the proceedings under Section 148A of the Act on the basis of incorrect assumption of facts that the Petitioner has received Rs.2,35,88,43,420/- in the assessment year 2013-14. He states that vide reply dated 06th June, 2022, the Petitioner informed the Respondent that there was no such receipt or payment of the aforesaid amount during the year under consideration.
>
> Learned counsel for the Petitioner states that the Respondent upon realizing that the information received was incorrect, changed the entire case and passed the order under Section 148A(d) of the Act on a completely new ground that the Petitioner has not proved the creditworthiness and genuineness of the parties from whom funds, which were utilized in making payments for the purchase of immovable property to the tune of Rs 235.88 crore, had been borrowed without realizing that neither any funds were borrowed nor any payments had been made to the tune of Rs.235.88 crore for purchase of property during the year under consideration.
>
> Learned Counsel for the Petitioner states that the Petitioner had acquired the leasehold rights in a property at Noida at a premium of Rs.235,88,43,420/- in the assessment year 2011- 12, out of which payment of Rs. 23,58,84,342 (being 10% of premium) was made in the assessment year 2011-12 and the entire remaining amount of Rs.2,12,29,59,079/- (being 90% of premium) was outstanding for payment during the entire year under consideration and thus no funds were borrowed during the year under consideration.
>
> **xxxx xxxx xxxx**
>
> Though the Assessing Officer is permitted to pass the assessment order, yet it is directed that the same shall not be given effect to and shall be subject to further orders to be passed by this Court."

3. As would be manifest from the above, the notice issued under Section 148A(b) of the **Income Tax Act, 1961**[2] was premised on an unexplained receipt of INR 2,35,88,43,420/- in the A.Y. in question. In response to the aforesaid, the petitioner contested the assumption of

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[2] Act

such receipt having been received in the year in question. It was further disclosed that the aforesaid sum was the premium paid to acquire the leasehold rights in a property at Noida in A.Y. 2011-12. The petitioner also appears to have asserted that insofar as A.Y. 2011-12 was concerned, the amount of premium being 10% of the total consideration as well as the entire remainder amount payable for acquisition of leasehold rights was duly disclosed in the return which was filed.

4. In light of the aforesaid disclosure, the respondents while framing an order under Section 148 A(d) then sought to call upon the writ petitioner to explain the source on the basis of which the acquisition was made. Undisputedly, this issue never constituted the backdrop for the formation of opinion under the issuance of a Section 148 A(b) notice. We note that we had in a recent judgment rendered in **ATS Infrastructure Limited vs Assistant Commissioner of income Tax Circle 1 (1) Delhi and Ors**[3] examined this position and come to the following conclusions:- **WRONG QUOTE**

> "**30.** We thus, come to the conclusion that the enunciation with respect to the indelible connection between Section 148A(b) and Section 148 A(d) of the Act are clearly not impacted by Explanation 3. As we read Sections 147 and 148 of the Act, we come to the firm conclusion that the subject of validity of initiation of reassessment would have to be independently evaluated and cannot be confused with the power that could ultimately be available in the hands of the AO and which could be invoked once an assessment has been validly reopened.
>
> **31.** Explanation 3, or for that matter, the Explanation which presently forms part of Section 147, would come into play only once it is found that the power to reassess had been validly invoked and the formation of opinion entitled to be upheld in light of principles which are well settled. The Explanations would be applicable to issues which may come to the notice of the AO in the course of proceedings of reassessment subject to the supervening

[3] 2024 SCC OnLine Del 5048

> requirement of the reassessment action itself having been validly initiated.
>
> **32.** Explanation 3, cannot consequently be read as enabling the AO to attempt to either deviate from the reasons originally recorded for initiating action under Section 147/148 of the Act nor can those Explanations be read as empowering the AO to improve upon, supplement or supplant the reasons which formed the bedrock for initiation of action under the aforenoted provisions."

5. In view of the aforesaid, we find ourselves unable to sustain the impugned order issued under Section 148A (d) as well as the consequential notice issued under Section 148 of the Act.

6. The writ petition shall accordingly stand allowed. The impugned order and notice dated 28 July 2022 issued under Sections 148A(d) and 148 respectively as well as the notice under Section 148A(b) dated 17 May 2022 shall stand quashed. This order however shall not restrain the respondents from taking any further steps as may be otherwise permissible in law.

**YASHWANT VARMA, J**

**RAVINDER DUDEJA, J**

**JULY 30, 2024/***sk*