IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.11.2024

+ **W.P.(C) 17326/2022**

DAISY DISTRIBUTORS PVT. LTD. ..... Appellant

versus

THE INCOME TAX OFFICER WARD 7(1)
NEW DELHI ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Kapil Goel and Mr Sandeep Goel, Advocates.

For the Respondents : Mr Sanjay Kumar, Advocate.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MS JUSTICE SWARANA KANTA SHARMA

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 24.07.2022 (hereafter *the impugned* order) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) as well as a notice dated 24.07.2022 issued under Section 148 of the Act.

2. The Assessing Officer had issued a notice dated 20.05.2022 under Section 148(A)(b) of the Act for Assessment Year (AY) 2015-16, *inter alia,* stating that information was received through insight portal from the Investigation Wing to the effect that the petitioner was a beneficiary of accommodation entries provided by one Sh. Joginder

Pal Gupta (DAG Group). The relevant extract of the said notice is set out below:

> "**GIST OF INFORMATION**:
>
> In this case information was received through Insight portal dated: 25.03.2021 from the office of Investigation Wing, Delhi, wherein it has been stated that during search and seizure operation conducted on Sh Joginder Pal Gupta on 23.12.2019 in the case of DAG group of Sh Joginder Pal Gupta. During the investigation it was established that he is an entry provider who controlled several shell companies and provided accomodation entry to beneficiaries. M/s Daisy Distributors Pvt Ltd is one such beneficiary which received Rs 3,13,00,000/- from entities (M/s Anupam Buildmart Pvt Ltd, Nicky Marmo Ltd, Bell Indus Fibercon Pvt Ltd, Bij Buildcon Pvt Ltd, RSKM Traders Pvt Ltd and Olwin Garments Pvt Ltd) controlled & managed by Sh Joginder Pal Gupta during F.Y. 2014-15 which remained unverified.
>
> 1. You are requested to submit your reply with documentary evidences in compliance to the order of the Hon'ble Supreme Court, referred supra, within 15 days from the date of issuance of this letter. The reply is to be submitted electronically in e- proceedings facility through your account in e-filling portal of Income Tax Department.
> 2. Your reply, if any, will be considered before passing order u/s 148A(d) of the Act, if deemed fit."

3. The said notice also set out the information details as available on the insight portal. A tabular statement briefly setting out the entries as forwarded to the petitioner along with the said notice is set out below:

Information Details

S. No.	Source PAN	Source PAN Name	Information FY	Information Type	Information Value	Information Date	Remarks
1	AAFCA3263M	Anupam Buildmart Pvt. Ltd.	2014-15	Fictitious Loan	9000000		Beneficiary
2	AAACN3607P	Nicky Marmo Ltd.	2014-15	Fictitious Loan	5000000		Beneficiary
3	AAACB2764K	Bell Indus Fibrecom Pvt Ltd.	2014-15	Fictitious Loan	3000000		Beneficiary
4	AAECB6648Q	Bij Buildcon Pvt Ltd	2014-15	Fictitious Loan	3000000		Beneficiary
5	AAACE0766E	RSKM Traders Pvt Ltd	2014-15	Fictitious Loan	2500000		Beneficiary
6	AAFCA3263M	Anupam Buildmart Pvt Ltd	2014-15	Fictitious Loan	2800000		Beneficiary
7	AADCA4442Q	Olwin Garments Pvt Ltd	2014-15	Fictitious Loan	5000000		Beneficiary

4. The petitioner responded to the said notice raising several objections including that the information reflecting an amount of ₹90,00,000/- as fictitious loan transaction with M/s Anupam Buildmart Pvt. Ltd. was incorrect as no loan was taken from the said entity. The petitioner also stated that the total amount of the transactions, which is alleged to have escaped assessment, was also incorrect.

5. The petitioner acknowledged that it had received advances but claimed that it had repaid the same and therefore, there was no credit outstanding at the end of the financial year 2014-15. The petitioner also forwarded copies of the ledger accounts of various entities. In addition, the petitioner claimed that the assumption of the jurisdiction was invalid. The petitioner claimed that since the proceedings were based on information collected during the search of a person other than the petitioner, the only recourse available to the Assessing Officer (AO) was to proceed under Section 153C of the Act.

6. During the course of arguments, the learned counsel for the petitioner confined its arguments to the question of jurisdiction of the AO to proceed under Section 147/148 of the Act in respect of material/information unearthed in search proceedings under Section 132 of the Act. According to the learned counsel for the petitioner, the assessment could be opened only under Section 153C of the Act.

7. The arguments in the present petition were heard along with ITA 401/2022 captioned *Principal Commissioner of Income Tax v. Naveen Kumar Gupta* as a similar issue was raised in the said appeal as well. It was contended on behalf of the petitioner that the provisions of Section 153C of the Act override the provisions of Section 147/148 of the Act and thus, any information obtained by the AO, which is based on the material found during the search conducted under Section 132 of the Act or requisition made under Section 132A of the Act, could only form the basis of assessment under Section 153C of the Act and not under Section 147/148 of the Act.

8. It is not disputed that in the present case, the AO was not handed over any books of accounts or material by the AO of the searched person (Sh. Joginder Pal Gupta of DAG Group). Thus, the necessary threshold condition for the AO of the Assessee, initiating the proceedings under Section 153C of the Act was not satisfied. Thus, in any event the AO was not precluded from initiating proceedings under Section 148A of the Act on the basis of the information available on the insight portal, which is suggestive of the fact that the petitioner's income for AY 2015-16 had escaped assessment.

9. The present case is covered squarely by the decision of the Supreme Court in ***Principal Commissioner of Income Tax v. Abhisar Buildwell (P.) Ltd.: (2023) 149 taxmann.com 399 (SC)*** as the jurisdictional condition for the AO of the Assessee to assume jurisdiction under Section 153C of the Act was not satisfied

10. The question whether the provisions of Section 153C of the Act precludes recourse to reopening assessments under Section 147/148 of the Act, on the basis of information found during the search conducted under Section 132 or requisition made under Section 132A of Act in respect of another person, is also covered against the petitioner by the decision of this Court in ITA 401/2022.

11. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 20, 2024/RK