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

% ***Judgment delivered on: 17.01.2025***

\+ W.P.(C) 6253/2023 & CM APPL. 24585/2023 (STAY)

KUNTE AND DRABU CONSULTANTS PVT. LTD. .....Petitioner

Through: Mr. Percy Pardiwalla, Sr. Adv. along with Mr. Satyen Sethi, Mr. Artatrana Panda and Ms. Gargi Sethee, Advs.

versus

INCOME TAX OFFICER, WARD 14(3),DELHI AND ORS. .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. V.K. Saksena and Ms. Hemlata Rawat, JSCs, Mr. Dipak Raj, Mr. Shubham Kumar and Mr. Kuldeep Mishra, Advs.

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\+ W.P.(C) 6261/2023 & CM APPL. 24600/2023 (STAY)

KUNTE AND DRABU CONSULTANTS PVT. LTD. .....Petitioner

Through: Mr. Percy Pardiwalla, Sr. Adv. along with Mr. Satyen Sethi, Mr. Artatrana Panda and Ms. Gargi Sethee, Advs.

versus

INCOME TAX OFFICER & ORS. .....Respondents

Through: Mr. Siddhartha Sinha, SSC and Ms. Anu Priya Nisha Minz, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

YASHWANT VARMA, J. (Oral)

1. The writ petitioner has instituted these two petitions assailing the reassessment action commonly initiated for **Assessment Year**[1] 2016-17. The reasons which appear to underlie the preferment of two separate writ petitions would appear to be the allegations in the reopening notice being against **Top Most Investment Pvt. Ltd.**[2] and **YK Securities Pvt. Ltd.**[3], both of which entities ultimately merged with **Glider Investment Pvt. Ltd.**[4] and whose name now stands changed to **Kunte and Drabu Consultants Pvt. Ltd**[5]., the writ petitioner before us.

2. Although the original notice under Section 148A(b) of the **Income Tax Act, 1961**[6] does not refer to the writ petitioner as being the successor-in-interest or allege that the proceedings were being initiated against it in that capacity, from a perusal of the notice dated 31 March 2023, we find that the proceedings were based on the information received from the **Director General of Income Tax (Investigation)**[7] and its communication dated 21 March 2016 and where the following allegations were made:-

> "Information was received from DDIT(Inv.), Unit-5(4), Mumbai in

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1 A.Y.
2 Top Most Investment
3 YK Securities
4 Glider Investment
5 Kunte & Drabu
6 Act
7 DDIT

context of STR No. 10223869 dt. 21.03.2016 from FIU, as under:

> "*Top Most Investment Pvt. Ltd. is holding a current account number 663805020892 with Delhi Panchsheel Park II, branch. The account was opened on 29-04-2011. Date of incorporation is 29-04-2011. Authorized Signatories of the firm are Kuldeep Drabu and Sushma Drabu PAN as AAACT4479P. Transaction linked accounts are 663801040332, 663805013981, 663805014486 and 663805015801. An alert has been triggered in the account for large value non cash transactions in accounts. Transaction pattern shows that the account gets credited mainly through transfer from KHALIFA CONSTRUCTIONS PRIVATE LIMITED, TREND ELECTRONICS LIMITED etc., RTGS from BLACK SWAN VENTURE, TOP MOST INVESTMENT P etc., and debited through transfer to TREND ELECTRONICS LIMITED, 'VALUE INDUSTRIES L TO etc. and RTGS to BLACK SWAN VENTURES C and MOBILE SEARCH ENGINE. Total credits between 09-10-2014 to 08-10-2015 amounted to Rs. 10.68 crores, out of which Rs. 9.39 crores is through transfer, Rs. 1.25 crores is through RTGS and total debits during the same period amounted to Rs. 10. 68 crores, out of which Rs. 9.67 crores is through transfer and Rs. 1 crore is through RTGS. As per EDD, customer is in investments and financial services. Customer is operating from owned commercial premises with less than 500 square feet. On 07-10-2015, the account was credited with Rs. 1 crore through transfer from Shubhankar Nagar (022101514708 in this account funds were credited through transfer from VALUE IND. LTD) and on same .day entice amount was debited through transfer to Trend Electronics Ltd (663805014486 in this account funds were debited through transfer to KHALIFA CONSTRUCTIONS P LTD). In view of usage of account for parking of funds account it is reported in STR*"

3. Basis the above, the **Assessing Officer**[8] has proceeded to observe as follows:-

> "2.1 In response, M/s. Top Most Investment Pvt Ltd stated that it has been amalgamated with Glider Investments Private Limited (named changed to Kunte & Drabu Consultants Pvt Ltd). On perusal of submission it is seen that there are high value transactions within the said entities without any rationale behind the same. Further, M/s. Top Most Investment Pvt Ltd failed to submit complete bank statements along with the narration of Debit and Credit entries in the bank statement and supporting to that extent. The total of Debit and Credit amounts in respect of entities

[8] AO

mentioned in the STR as per the Bank Statement submitted by the bank is as under:

FY: 2015-16

S.No.	Name of entity	Debit (In Rs.)	Credit (In Rs.)
1.	Top Most Investment Pvt Ltd	7,37,06,121	7,57,40,838
2.	Value Industries Ltd	9,47,88,790	11,46,05,266
3.	Y K Securities Pvt Ltd	7,41,48,008	74238425
4.	Trend Electronics Ltd	7,28,40,359	9,44,84,431
5.	Videocon Industries Ltd	138,34,53,270	137,52,19,024
6.	Kuldeep Drabu	3,61,10,313	3,60,31,066
7.	Glider Investment Pvt Ltd	3,88,04,619	8,37,53,910
8.	Khalifa Construction Pvt Ltd	6,50,05,500	6,74,33,333

3. Upon careful perusal of bank statements, the following can be deduced:

(i) The total of Debit and Credit is almost identical without any rationale/business purpose behind such to and for transactions that too of identical amounts and within the same entities.

(ii) The assessee Videocon Industries Limited (VIL) has given interest free loans to entities mentioned above (Videocon Group entities and Entities owned by ex Board Director of Videocon industries Limited [M/s. Top Most Investment Pvt Ltd and M/s. Y K Securities Pvt Lt] in respect of Loans taken on interest.

(iii) VIL has advanced interest bearing funds to the above mentioned entities and has failed to offer any explanation behind the rationale for the same. Further, the above mentioned entities failed to reply/partial submission (M/s. Top Most Investment Pvt Ltd and M/s. Y K Securities Pvt Ltd) to the notice under section 131 issued and served on them. In view of the above facts, the credit and debit amounts remains unexplained.

4. On the basis of the above information, and as per dissemination note, the amount of Rs. 37,53,91,921/- for A.Y. 2016-17 in the form of bank credits is presumed to have escaped assessment as no regular scrutiny assessment u/s 143(3) was made for A.Y. 2016-17 in the case of the assessee company M/s Kunte & Drabu Consultants Pvt. Ltd .. The reported transactions carried out by the assessee company have not been examined deeply.

5. Accordingly, you are hereby required to show cause as to why proceedings u/s 148 of the Act should not be initiated to bring to tax the above said amount of Rs. 37,53,91,921/-."

4. While neither the tabular statement nor the various allegations which form part of that notice give us even a broad indication of how the income which is alleged to have escaped assessment had been computed at INR 37,53,91,921/-, Mr. Pardiwalla, learned senior counsel appearing in support of the writ petition submits that it is perhaps the addition of the credit and debit entries which were reflected in the accounts of Top Most Investment, YK Securities and Glider Investment (the name by which the petitioner was earlier known).

5. As we read the parts of the notice under Section 148A(b) extracted hereinabove, the principal allegation appears to be that **Videocon Industries Ltd.**[9] had utilised financing and credit facilities granted to it to provide interest free loans to various entities, including Top Most Investment, YK Securities and Glider Investment. It is these allegations which are set out in paragraph 3 (ii) of the Section 148A(b) notice.

6. Responding to the same, the petitioner appears to have asserted that the allegations as levelled were wholly vague and unfounded since although the income which is stated to have escaped assessment had been quantified at INR 37,53,91,921/-, the total credit which had been shown in the accounts of Top Most Investment and YK Securities were as per the case of respondents themselves placed at INR 7,57,40,838/- and INR 7,42,38,425/- respectively.

7. On a more fundamental plane, it appears to have been asserted that even if it were assumed that the allegation of Videocon having diverted credit facilities received by it to provide interest free loans

[9] Videocon

were accepted to be correct, there could be no plausible or justifiable reason to hold that income assessable in the hands of Top Most Investment, YK Securities or Glider Investment could be said to have escaped assessment.

8. The various objections which were made were ultimately negated in terms of the final order under Section 148A(d) which came to be passed by the respondents. We deem it apposite to extract paragraph 6 of that order and which was relied upon by and on behalf of the respondents:-

> "6. Reply furnished by the assessee has been considered and found not on merit for various reasons. The transactions can be verified from total records and bank statements ,not partial submissions. Further Investigation wing has considered it suspicious as may be not related to business transactions . As per the table in para 2 (iv), it is seen that Debit and Credit Transactions as per Books are shown NIL, however on perusal of the bank statement provided, it is evident that many transactions were carried out in the name of YK Securities Pvt. Ltd. Hence, the fact that there are no transactions with YK Securities Pvt Ltd., is clearly inaccurate.
>
> Further, from the bank statement of ICICI bank account of YK Securities Pvt. Ltd. it is observed that bank branch address is different in different pages of the statement. Therefore, it remains unproved that the copy of documents including bank statements, are genuine. Thus they require deep scrutiny and independent third party verifications are required to check the authenticity of the documents copy of which have been provided by the assessee. As the submissions are self serving, therefore they are not acceptable.
>
> In view of the facts and information available with this office as discussed above, it is established that the assessee has no satisfactory explanation with supporting documents for issue discussed above.
>
> In the light of the facts discussed in foregoing paragraphs, it is apparent that the assessee has no satisfactory explanation for these transactions to the tune of Rs. 37,53,91,921/-. These deposits in bank account and/or loan and advances are assets within the meaning of provisions of Section 149{1)(b) as it is more than Rs. 50 Lakhs. Accordingly, it is concluded that this is a fit case for issuing notice u/s 148 of the I.T. Act, 1961."

9. We find ourselves unable to either countenance or sustain the reasoning as adopted by the respondents bearing in mind the following indisputable facts which emerged from the record.

10. The respondents have proceeded to frame a Section 148A(b) notice compendiously in respect of what they alleged was income which had escaped assessment in the hands of Top Most Investment, YK Securities as well as Glider Investment. This notice was so framed despite the admitted position which emerges from the record, namely, of the **Scheme of Amalgamation**[10] of Top Most Investment and YK Securities with the petitioner having come to be approved on 27 February 2020.

11. The aforesaid Scheme in terms of the appointed date stipulated therein was to come into effect from 01 April 2018 and thus the Scheme itself coming into effect from AY 2019-20. While it could have been open for the respondents to place the petitioner on notice to respond on the basis of it being the successor in interest of Top Most Investment or YK Securities, the notice under Section 148A(b) at least fails to do so. However, we do not propose to hold against the respondents solely on this technicality.

12. We find the challenge raised by Mr. Pardiwalla, namely, of the alleged income not being taxable in the hands of either Top Most Investment, YK Securities or Glider Investment to be more potent. This since the solitary allegation which is levelled is a diversion of funds by Videocon to YK Securities, Top Most Investment and Glider Investment. Even if it were assumed to be correct that the Videocon had diverted funds and credit facilities provided by banks and

[10] Scheme

financial institutions to third party entities, it would have at best and perhaps led to the deletion of any claims towards interest paid that may have been made by that entity. We fail to comprehend how such a diversion of funds could have led to the formation of opinion that income taxable in the hands of Top Most Investment, YK Securities and Glider Investment could have escaped assessment. The notice under Section 148A(b) dated 31 March 2023 and the order under Section 148A(d) dated 20 April 2023 fails to provide any clue as to how such an opinion could have been formed even on a prima facie basis.

13. In view of the aforesaid facts, we find ourselves unable to sustain the impugned order of reassessment. We accordingly allow these two writ petitions and quash the impugned order dated 20 April 2023 under Section 148A(d) and consequential notice under Section 148 of even date.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 17, 2025/nd