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

+ **W.P.(C) 6528/2023 & CM APPL. 25625/2023 (Interim Relief)**

VEDANTA LIMITED

.....Petitioner

Through: Mr. C.S. Aggarwal, Sr. Adv.
With Mr. Ravi Pratap Mall and
Mr. Uma Shankar, Advs.

versus

**ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE
25(1)**

.....Respondent

Through: Mr. Abhishek Maratha, Sr. SC
with Mr. Parth Samwal and Mr.
Apoorv Agarwal, JSCs with
Ms. Nupur Sharma, Mr. Gaurav
Singh, Mr. Bhanukaran Singh
Jodha, Ms. Muskaan Goel, Mr.
Kamakshraj Singh and Mr.
Himanshu Gaur, Advs. for
Revenue.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

15.01.2025

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1. The writ petitioner impugns the reassessment action as initiated by the respondents in terms of a notice under Section 148 of the **Income Tax Act, 1961**¹ dated 17 April 2023 pertaining to **Assessment Year**² 2019-20.

2. From the facts which appear on the record, and on which there is no dispute, we find that the proceedings came to be initiated in terms of a notice dated 19 March 2023 referable to Section 148A(b) of

¹ Act

² AY



the Act, based on various transactions undertaken by M/s Sterlite Industries (India) Ltd., M/s Cairn Energy (India) P. Ltd., M/s Cairn India Ltd., M/s Cairn Energy Gujarat B.V. and M/s Cairn Energy Cambay B.V.

3. As would be apparent from the facts that we propose to notice hereinafter, the challenge presently would stand confined to the alleged time deposits made by M/s Cairn Energy Gujarat B.V. and M/s Cairn Energy Cambay B.V. These time deposits are alleged to have been made with the State Bank of India and amounting to INR 25,63,67,265/- and INR 25,89,30,942/-, respectively.

4. This becomes apparent from a reading of tables (d) and (e) which form part of the original Section 148A(b) notice and are reproduced hereinbelow:-

“(d) Details of transactions by M/s Cairn Energy Gujrat B.V.

SN	Particulars	Amount
1	Made Time Deposit (other than a Time Deposit made through renewal of another time Deposit) with SBI	5,71,87,500/-
2	Purchase of Time Deposit (other than a time Deposit made through renewal of another time deposit) SBI	19,91,79,765/-
	Total (D)	25,63,67,265/-

(e) Details of Transaction by M/s Cairn Energy Cambay B.V.

SN	Particulars	Amount
1	Made Time Deposit (other than a Time Deposit made through renewal of another time Deposit) with SBI	5,77,59,375/-
2	Purchase of Time Deposit (other than a time Deposit made through renewal	20,11,71,567/-



	of another time deposit) SBI	
	Total (E)	25,89,30,942/-
	Grand Total (A+B+C+D+E)	2448,35,99,156/-

5. Upon receipt of that notice, the petitioner duly apprised the respondents of a Scheme of Amalgamation which came to be approved by the High Court of Madras on 01 April 2010, pursuant to which the businesses of the entities Cairn Energy Pty. Ltd., Cairn Energy West B.V., Cairn Energy Cambay B.V. and Cairn Energy Gujarat B.V. came to be merged with M/s Cairn India Ltd.

6. The High Court of Bombay, by a separate order, is stated to have approved a Scheme of Arrangement amongst Sterlite Industries (India) Ltd., Madras Aluminium Company Limited, Sterlite Energy Limited, Vedanta Aluminium Limited and Sesa Goa Limited, with effect from 17 August 2013. The petitioners disclose that post-merger, the name of Sesa Goa Limited was originally and with effect from 18 September 2013 changed to Sesa Sterlite Limited and later to Vedanta Limited with effect from 21 April 2015.

7. The Scheme of Arrangement ultimately came to be approved by the Bombay Bench of the **National Company Law Tribunal**³ in terms of an order dated 23 March 2017 pursuant to which M/s Cairn India Ltd. got merged with the Vedanta Limited, the petitioner herein.

8. Post the aforesaid schemes coming to be sanctioned by the respective High Courts as well as the NCLT, the petitioner filed a consolidated Return of Income for AY 2019-20. It was in connection with the aforesaid return that the notice under Section 148A(b) dated

³ NCLT



19 March 2023 came to be issued.

9. It is the admitted position before us that the factum of merger was duly disclosed by the writ petitioner while responding to the original notice under Section 148A(b). The petitioner is also stated to have provided all requisite details with respect to the transactions which had fallen for notice of the respondents and had triggered the proposed action of reassessment. The petitioner had also and in terms of its reply dated 26 March 2023 asserted that insofar as the time deposits are concerned, the material on which the reassessment notice was based was clearly erroneous since both Cairn Energy Gujarat B.V. and Cairn Energy Cambay B.V. had already amalgamated with the assessee in **Financial Year**⁴ 2011-12 itself and that the alleged time deposits pertained to a period post that amalgamation.

10. Faced with the aforesaid disclosures, the respondents proceeded to pass an order under Section 148A(d) in which they ultimately came to hold as under:-

“5. In this case, the assessee company has given detailed explanation with supporting documents to prove that the above transactions in the name of M/s Sterlite Industries (India) Ltd., M/s Cairn Energy (India) Pvt. Ltd., M/s Cairn India Ltd have been duly accounted for in the books of account and P & L account of M/s Vedanta Ltd. during the financial year 2018- 19 relevant to Asst. Year 2019-20. However, an information relates to M/s Cairn Energy Gujrat B.V. and M/s Cairn Energy Cambay B.V. in respect of time deposits with SBI Bank are not provided by the assessee company. The assessee has filed ‘an Affidavit’, in which it has been stated that as per its records, the assessee company has not made any time deposits with SBI Bank during the year. The assessee has also submitted that the company has also sent communication to State Bank India for seeking clarification as to why SBI has reported time deposits in account of non-existing companies and it has also affirmed that the company has not made time deposits with SBI Bank.

⁴ FY



5.1 On the basis of entries of transaction available in respect of M/s Cairn Energy Gujarat B.V. and M/s Cairn Energy Cambay B.V. amounting to Rs.25,63,67,265/- & Rs. 25,89,30,942/- respectively, source of the time deposits and interest accrued upon time deposits are not disclosed for taxation. Hence, the submissions made are also not acceptable in view of credible information available with us and as per comments given above. The assessee company has not disclosed its true income in its ITR for the relevant assessment year.

6. Thus, such amount of Rs. 51,52,98,207/- has remained unverified and undisclosed. Hence, in this case, the income amounting to Rs. 51,52,98,207/- has escaped assessment. Accordingly, after considering the facts of the case, credible information available with this office, it is concluded that this case is a fit case for issuance notice u/s 148 of the I.T. Act.”

11. As is evident from a reading of paragraph 5, the majority of the transactions which constituted the foundation for the issuance of the notice under Section 148A(b), ultimately came to be dropped with the **Assessing Officer**⁵ holding that they had been duly accounted for in the books of accounts as well as the Profit & Loss account of Vedanta Limited pertaining to AY 2019-20.

12. It was, however, observed that insofar as the time deposits alleged to have been made by Cairn Energy Gujarat B.V. and Cairn Energy Cambay B.V. was concerned, notwithstanding the affidavits submitted by the petitioner and in terms of which it had denied and disavowed those transactions, it was unclear from the material on record as to the source of the time deposits as well as the interest that may have accrued thereon from time to time. The AO, consequently, proceeded to reject the objections, observing that an amount of INR 51,52,98,207/- had remained “*unverified and undisclosed*”. It is this allegation alone which constitutes the basis for the formation of opinion that income had escaped assessment.

⁵ AO



13. As we go through the various disclosures that have been made by the writ petitioners, in the course of the notice proceedings, we find that it had been their categorical and unequivocal stand that neither Cairn Energy Gujarat B.V. nor Cairn Energy Cambay B.V. could have possibly made any time deposits since they already stood merged with the petitioner prior to the period when those deposits are alleged to have been made. Despite the stand so taken, the AO failed to either advert to or place reliance upon any evidence or material that may have, even prima facie, lent credence to the allegation of those time deposits having been made. This becomes more apparent from the AO ultimately coming to observe that those deposits had “*remained unverified and undisclosed*”. The said observation is clearly tenuous and unsustainable, since the initiation of proceedings under Section 148 would have had to necessarily rest on cogent material which could have established, even prima facie, that such deposits were in fact made and not reported. The aforesaid conclusion also flies in the face of the categorical assertion of the writ petitioner that the reporting details as obtained were erroneous and wrongly mapped against non-existent PAN numbers.

14. Of significant import, however, are the following additional facts which are disclosed on affidavit by the writ petitioner. From the disclosures made in terms of the additional affidavit filed by the petitioner, we find that in an identical notice issued for AY 2017-18 dated 29 March 2024, the respondents had yet again alleged that M/s Cairn India Limited [and with whom Cairn Energy Gujarat B.V. and Cairn Energy Cambay B.V. had already merged with effect from 01 April 2010] had undertaken a total of 68 transactions aggregating to INR 42,02,68,47,643/-. These 68 transactions so chronicled in the



Section 148A(b) notice referable to AY 2017-18 included the transaction of INR 5,77,59,375/- being the time deposits allegedly made by the aforementioned two entities in AY 2019-20.

15. The petitioner, while responding to that notice, had in terms of a detailed reply dated 10 April 2024 denied those transactions yet again, including the allegation with respect to the alleged time deposits having been created by the two entities. Paragraph 9 of the additional affidavit is extracted hereunder:

“9. In response to the aforesaid notice, the petitioner submitted its reply dated 10.04.2024, wherein the petitioner submitted that various transaction stated in the notice has been undertake by M/s Cairn India Limited and were offered to tax. It was also submitted that since M/s Cairn India Limited got merged with the assessee company vide an scheme of arrangement approved by National Company Law Tribunal, Mumbai on 23.03.2017 with appointed date of 01.04.2016, as such, return of income was filed by assessee by considering all transaction of aforesaid merged entity. However with respect to allegation of time deposit of Rs . 5,77,59,375/-, it was specifically submitted as under (as was submitted by the petitioner in this year):

"However, we would like to bring to your attention, transaction pertaining to time deposit with State Bank of India by Cairn Energy Camby BV amounting to INR 5,77,59,375/- , as appearing in the notice. In this regard, we wish to submit that as per the records, assessee has not made any such deposits with SBI.

We further wish to submit that same time deposit was mentioned in the 148A notice issued to the assessee for FY 2018-19. Copy of notice enclosed as Annexure-H. In response to the said notice, the assessee had submitted that it had not made any such deposit. The assessee had also submitted complete email communication with SBI to confirm whether the said transaction reported by SBI and also provided email address of SBI to the income tax authorities to independently verify the same. Copy of email communications enclosed as Annexure I. the assessee would like to highlight that despite sending several email communications, no response has been received from SBI till date."

16. The aforesaid explanation came to be duly accepted by the AO



while passing a final order under Section 148A(d) on 16 April 2024. This becomes evident from a reading of paragraph 4 of that order and which is extracted hereunder:

“4. In this case, the assessee company has given detailed explanation with supporting documents to prove that the above transactions in the name of M/s Cairn India Ltd have been duly accounted for in the books of account and P & L account of M/s Vedanta Ltd. during the financial year 2016- 17 relevant to Asst. Year 2017-18. Regarding time deposits with SBI Bank, the assessee has filed ‘an Affidavit’, in which it has been stated that as per its records, the assessee company has not made any time deposits with SBI Bank during the year. The assessee has also submitted that the company has also sent communication to State Bank India for seeking clarification as to why SBI has reported time deposits in account of non-existing companies and it has also affirmed that the company has not made time deposits with SBI Bank.”

17. In view of the aforesaid facts, it becomes apparent that the reassessment action impugned before us cannot possibly sustain. Since the entire action was premised on material which was collated on the basis of information obtained from the Insight Portal and was not supported by any independent evidence or material which may have lent credence to the allegation of the time deposits having been made, the respondents would have been well advised to bear in mind the following note of caution which came to be rendered by the Bombay High Court in **Benaifer Vispi Patel v. Income Tax Officer Ward 1 and Another**⁶:-

“23. It cannot be conceived that at all material times, the information available in the electronic mechanism/system, would be free from errors and defects, inasmuch as the basic information which is being fed into the system would certainly be filed by the manual method and thereafter such information is converted and disseminated as an electronic data.

24. In the above circumstances, it is of utmost necessity that before any action prejudicial to the assessee, like in the nature of issuance

⁶ 2024 SCC OnLine Bom 2411



of a show-cause notice under Section 148 of the Act is resorted, it would be the duty and obligation of the respondents to verify or to have a basic scrutiny whether such information when cross checked with the materials furnished by the assessee, in the returns or otherwise would lead to a prima facie conclusion that income has escaped assessment, for further action to be taken under Section 148 of the Act. Thus, necessarily when electronic information is available under the faceless mechanism and there is other material available, as may be gathered by the Assessing Officer or furnished by the assessee, it would be incumbent on the Assessing Officer to apply his mind to all such materials and only thereafter take a well considered view of the matter to issue a notice under Section 148 of the Act by dispensing the provisions of Section 148A of the Act. Any failure or overlooking of these considerations in a given situation, may result in the assessee, being put to an unwarranted prejudice, by a defective action being resorted by the respondents resulting into the assessee facing an ordeal of a notice under Section 148 of the Act. It is hence the duty of the Assessing Officer to ensure that the assessee is not confronted with such undesirable situations on account of defective data being applied to initiate proceedings under Section 148 of the Act, failing which the first proviso below Section 148 would be rendered negatory.

25. We thus find substance in the contentions as urged on behalf of the Petitioner that merely because a faceless collection of information is provided under Section 148A of the Act, and the entire information is electronically generated on the electronic portal being required to be answered by the assessee, as in the present case, the operation of such electronic regime cannot create arbitrary consequences. To prevent such situation, the department needs to have a mechanism of having some safeguards. Even if any defective information is generated, the provisions of Section 135A of the Act as incorporated under the provisions of Section 148A of the Act, ought not to lead to a situation that the Assessing Officer receiving such defective information under Section 135A of the Act or any such information as may be gathered under Section 133(6) of the Act, he is not required to apply his mind to the other information and the comments received from the assessee. These circumstances necessarily require application of mind by the concerned officer to the relevant and necessary facts and documents, which may be either pointed out by the assessee in response to any intimation as may be demanded or a notice for providing such information as may be received from the electronic portal, or by virtue of any notice received under Section 133(6) of the Act.

26. Thus, to presume that the scheme of Section 148 read with Section 148A and Section 135A of the Act in all cases would



operate on defect-free information cannot be accepted, even when information under Section 135A of the Act is available and the electronic mechanism requiring it to be processed further, for any action to be taken under Section 148 of the Act. It is difficult to accept that in every case “any information” which is derived from Section 135A of the Act would be sacrosanct and/or would be free of defects. Hence, once a defect is pointed out on such information as available on the portal, it would be certainly the duty of the Assessing Officer to examine whether the version of the assessee in pointing out that the information is not correct, would require due consideration for any further action to be taken to issue notice under Section 148 of the Act.

27. We observe so, as we find that in the present case, the assessee in fact had pointed out in her remarks that what has been disclosed by the assessee in the return of income was the correct income derived by the Petitioner in regard to the interest earned by the petitioner on deposits with the Canara Bank. Thus, such remarks or explanation as offered by the assessee necessarily was required to be considered, before the Assessing Officer could proceed to obtain approval from the Commissioner of Income-tax and for the purpose of issuance of impugned notice under Section 148 of the Act.”

18. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and quash the impugned order under Section 148A(d) dated 17 April 2023 as well as the consequential notice issued under Section 148 of even date.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J
JANUARY 15, 2025/kk