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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5178/2024 & CM APPL. 21176/2024 (STAY)**
KUNTE AND DRABU CONSULTANTS
PVT LTDPetitioner

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) &
ORS.Respondents

Through: Ms. Shlok Chandra, SSC with
Ms. Naincy Jain and Ms.
Madhavi Shukla, JSCs.

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

ORDER
17.01.2025

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1. The petitioner impugns the reassessment action which has been initiated by the respondents pertaining to **Assessment Year¹ 2017-18** in terms of a notice under Section 148A(b) of the **Income Tax Act, 1961²** dated 28 February 2024.

2. From a perusal of that notice we find that the proposal to commence reassessment emanated from information which was received by the **Assessing Officer³** from the **Director General of Income Tax (Investigation)⁴** in terms of a letter dated 21 March 2016. The said information pertained to various transactions which were undertaken between entities which were stated to be part of the Vodafone Industries Limited Group and related to the period 09

¹ AY

² Act

³ AO



October 2014 to 08 October 2015. The AO appears to have called for further information from both **Top Most Investment Pvt. Ltd.**⁵ and **YK Securities Pvt. Ltd.**⁶ and which came to be merged with **Glider Investment Pvt. Ltd.**⁷, the name by which the present petitioner was known earlier.

3. Basis the above and further material that it received from banks, it came to conclude as follows:-

“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, the AO came to form the opinion that an amount of INR 4,62,84,008/- appeared to have a escaped assessment for AY 2017-18. While it is not so clearly spelt out, we are informed that the aforesaid figure has been arrived at by adding together the debit and credit entries which stood reflected in the

⁴ DDIT

⁵ Top Most Investment

⁶ YK Securities



accounts of Top Most Investment, YK Securities and Glider Investments.

5. Insofar as this issue is concerned, we have by way of a separate judgement rendered today on **Kunte & Drabu Consultants Pvt. Ltd. v. Income Tax Officer, Ward 14(3), Delhi and Ors.**⁸ tested the validity of such reasoning and whether the same would justify an action under Section 148. While dealing with the aforesaid, we had held as follows:-

“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. 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 were accepted to be correct, there could be no plausible or

⁷ Glider Investment

⁸ 2025:DHC:965-DB



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 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 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.”

6. We find no material on the record of this writ petition which would convince us to take a different view.

7. We further note that in paragraph 5 of the notice under Section 148A(b), the AO had additionally in this case alluded to various high risk transactions and which were categorised as being referable to the purchase of mutual fund units and sale of equity shares. In this



respect, it was alleged as follows:-

“5. Further, credible information regarding financial activities by the assessee during the year under consideration has been obtained from INSIGHT Portal under "HIGH RISK TRANSACTION" category wherein it has been mentioned that the above said assessee has undertaken the following financial transactions which have not been disclosed/accounted for by the assessee while filing the ITR:

				Amount in Rs.
SFT- 010	Purchase of mutual fund units in a financial year for acquiring units of one or more schemes of a mutual fund.	NIPPON INDIA MUTUAL FUND	Aggregate gross amount received from person – aggregate gross amount paid to the person.	53,72,195
STT-02	Sale of equity share		Value of taxable securities transactions (Code 02).	2,41,725
SFT-010	Purchase of mutual fund units in a financial year for acquiring units of one or more schemes of a mutual fund	HDFC MUTUAL FUND	Aggregate gross amount received from person- aggregate gross amount paid to the person.	19,02,612
SFT-010	Purchase of mutual fund units in a financial year for acquiring units of one or more schemes of a mutual fund.	FRANKLIN TEMPLETON MUTUAL FUND	Aggregate gross amount received from person- aggregate gross amount paid to the person.	50,00,000
SFT-005	Time deposits (other than a time deposit made through renewal of another time deposit)	HDFC BANK LIMITED	Aggregate gross amount received from person- aggregate gross amount paid to the person.	2,50,000
SFT-010	Purchase of mutual fund units in a financial year for acquiring units of one or more	SBI MUTUAL FUND	Aggregate gross amount received from person- aggregate gross amount paid to	-1,23,407



	schemes of a mutual fund.		the person	
SFT-010	Purchase of mutual fund units in a financial year for acquiring units of one or more schemes of a mutual fund	ICICI PRUDENTIAL MUTUAL FUND	Aggregate gross amount received from person- aggregate gross amount paid to the person	60,69,418
TOTAL				1,88,35,950

8. Responding to the same, the writ petitioner had in its reply to the Section 148A(b) notice asserted as follows:-

“Source of investment in mutual funds

15. That the source of investment in mutual funds listed above was the capital of TMIPL build over the years, as is evident from statement of investment in mutual fund in the financial years 2015-16 and 2016-17. Certainly, the source of investment in mutual funds was not VIL and/ or capital borrowed by it. It is a fact on record that except for ICDs of Rs.3.15 Cr. (1.50 + 1.65 Cr), no funds were received from VIL or its promoters and even the ICDs were paid back in the financial years 2016-17 and 2017 IS.

15.1. The transactions of purchase and sale of shares/mutual funds were made through HDFC Bank current A/c No. 05722320002171- a non-linked account. The credit entries (deposits) of Rs.4,32,95,245/- in A/c No.05722320002171 included credit of Rs. 2,77,16,72.9/- (i.e. total sale of Mutual Funds of Rs.2,94,36,342/- less switched amount of Rs. 17,19,427/- and less Demat/SIT Charges of Rs. 186/- as per detail in Annexure- 10 referred above in para 13.2) from mutual fund transactions.

15.2. That in view of the documentary evidence by way of complete disclosure in the return of income, bank statements, 26AS etc., the alleged exercise is nothing but review of the assessment already made, which is impermissible. Mere volume of transaction leading to information on INSIGHT Portal under High-Risk Transaction does not by itself be taken as a tool to issue notice under section 148A(b) of the Act, particularly where the transactions are through banking channels, duly disclosed to the department and declared to tax. It may be noted here that in 26AS of the assessee for the assessment year 2017-18, mutual fund transactions are duly reported and it is not the case of the Revenue that the transactions were partially reported or otherwise bogus/non-genuine.



15.3. That the submissions made in respect of applicability of section 68 of the Act to the alleged escapement of income of Rs.4,62,84,008/- is equally applicable to the mutual fund investments.”

9. Those objections have come to be cursorily brushed aside with the AO observing as follows:-

“8. The assessee has made certain claims w.r.t. the source of credits in the bank account to make investment in the mutual funds. However, the claims of the assessee remain unproved as the complete documentary evidence to discharge the onus u/s 68 has not been provided by the assessee. Such documents viz. the ITR, Confirmation, Bank statement, etc. of the persons/entities from the amounts were received have not been. provided by the assessee. Thus the claim of transactions require deep scrutiny and independent third party verifications are required to check the authenticity of the claims made by the assessee. In absence of complete documents, the submissions are considered as merely self-serving claims, therefore they are not acceptable.

9. 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.”

10. As is evident from the above, it was the categorical case of the writ petitioner that those investments had not been made on the basis of infusion or receipt of funds from Vodafone. They had categorically averred and provided details of the accounts from which those investments were made. The respondents had also alluded to the complete disclosure in that respect which had been made in the returns, bank as well as 26AS statements. However, those objections have come to be cursorily rejected with the respondent merely observing that a deeper scrutiny is required.

11. As is manifest from the above, the power to reassess in this regard is sought to be sustained solely on the basis of a perceived requirement of the transactions being scrutinised and examined in greater detail. This itself is demonstrative of the formation of opinion



with respect to income having escaped assessment resting more on a felt need to undertake a detailed enquiry as opposed to the formation of opinion that income liable to tax had escaped assessment. An action under Section 148, as is well settled, cannot be sustained on the mere inclination to undertake an enquiry. It must rest on a clear formation of opinion that income liable to tax would have escaped assessment.

12. We are also of the considered opinion that the impugned action appears to have been premised solely on the basis of certain alerts and inputs that were pushed towards the AO by the Insight Portal and which had alluded to these investments as high risk investments. The AO clearly appears to have failed to independently enquire or examine whether there was material warranting initiation of action under Section 148. The observation that the petitioner had failed to discharge the burden placed by Section 68 is also clearly misconceived since that was clearly not the onus or the obligation placed upon it at the stage of responding to a notice proposing reopening of an assessment which had been finalised.

13. The AO would have been well advised to bear in mind the following pertinent observations which came to be rendered in **Gandhibag Sahakari Bank Ltd. v. Dy. Commissioner of Income Tax**⁹:-

“8. In the context of entertaining a challenge to notice issued under section 148 of the Act of 1961 in a writ petition filed under article 226 of the Constitution of India we may refer to paragraph 15 of the decision in Oracle Financial Services Software Ltd. v. Dy. CIT [2022] 442 ITR 160 (Bom), which reads as under (page 170 of 442 ITR) :

"The principles which emerge from the aforesaid pronouncements and a plethora of decisions of this court and the Supreme Court, can be summarized as under :

⁹ 2023 SCC OnLine Bom 2824



'Existence of the reason to believe that income chargeable to tax has escaped assessment is a jurisdictional condition for invoking the power under section 147 of the Act, 1961, both within and beyond a period of four years from the end of the relevant assessment year. The Assessing Officer is enjoined to record reasons before a notice to reopen the assessment under section 148 of the Act is issued. In case, the assessment was completed under section 143(3) of the Act, an additional condition that the income must have escaped assessment on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment is required to be fulfilled. The existence of reason to believe is further qualified by the fact that it should be based on tangible material. Firstly, it cannot be the product of mere ipse dixit of the Assessing Officer. Secondly, it should not partake the character of a mere change in opinion as regards the same material and facts, which were considered at the time of original assessment, for the power is of reassessment and not review. Once the primary facts necessary for assessment are fully and truly disclosed and the Assessing Officer takes a conclusive view thereon, it is not permissible to reopen the assessment based on the very same material on the premise that it is susceptible to a different opinion favourable to the Revenue.'

In *Gian Castings Pvt. Ltd.* (supra), the hon'ble Supreme Court refused to interfere with the order passed by the High Court of Punjab and Haryana whereby the High Court declined to entertain a challenge to the notice issued under section 148 of the Act of 1961 after noting the difference between a jurisdictional error and error within jurisdiction. In *Gopal Tukaram Bitode* (supra) the fact that the petitioner did not challenge the reopening notice on the premise that it had to be only under section 153C of the Act of 1961 was the reason not to interfere in writ jurisdiction. In *Greatship (India) Ltd.* (supra), challenge was raised to the assessment order in writ petition which was entertained on merits. The hon'ble Supreme Court held that such challenge to the order of assessment ought not to have been entertained by the High Court. The ratio of the decisions relied upon by the learned counsel for the respondents cannot be applied to the facts of the present case."



9. Having found that it would be permissible for entertaining a challenge to the notice issued under section 148 of the Act of 1961 on jurisdictional aspects we would proceed to adjudicate such challenge. Reopening of the assessment is sought to be assailed on the ground that during the course of the original assessment proceedings various details had been sought from the petitioner by issuing notices dated August 30, 2019 and October 21, 2019. The details sought were duly supplied to the respondents including the details of the bank statements of various customers. It was thereafter that the assessment order under section 143(3) of the Act of 1961 came to be passed on December 22, 2019. It was thus urged that in these facts issuance of notice under section 148 of the Act of 1961 was not warranted.

On perusal of the notice dated March 31, 2021 issued under section 148(1) of the Act of 1961 coupled with the reasons assigned by the respondents for seeking to reopen the proceedings it becomes clear that it is on the basis of the information shared on the Insight Portal with regard to high value cash deposits that has prompted the Assessing Officer to have a "reason to believe" that the said amount in the hands of the petitioner had escaped assessment. Except for stating that such information was available on the Insight Portal it has not been indicated in the said reasons as to how there was formation of belief by the Assessing Officer that income had escaped assessment. The reasons supplied do not indicate that any exercise of independent verification thereafter was undertaken resulting in consideration of the same with due application of mind by the Assessing Officer so as to reopen the completed assessment. Only by stating that information was available on the Insight Portal, belief has been formed by the Assessing Officer that the stated amount had escaped assessment at the hands of the petitioner. In Shodiman Investments Pvt. Ltd. (supra) it has been held that the words "reason to believe" would mean cause or justification. It can only be the basis of forming such belief. However, the belief must be independently formed in the context of the material obtained that there was escapement of income. The facts in the said decision indicate that the reasons made available to the assessee indicate that the information was received from the Director of Income-tax (Investigation) about a particular entity entering into suspicious transactions. The said material however was not further linked by any reason to come to the conclusion that the assessee had indulged in any activity that could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax had escaped assessment. Further there was absence of application of mind to the information received and the re-opening notice was issued merely on the basis of such information received. It was held that such action was in breach of the settled position of law that the reopening notice was required to be issued by the Assessing Officer on his own satisfaction and not



on borrowed satisfaction. We find that in the present case except for referring to the information available on the Insight Portal, the Assessing Officer has proceeded to reopen the assessment without indicating any independent application of mind to the said information that was available on the Insight Portal for satisfaction to be recorded. It would thus be a case of issuing the reopening notice on borrowed satisfaction.”

14. Reference can also be made to the decision of the Bombay High Court in **Anwar Mohammed Shaikh v. Assistant Commissioner of Income Tax**¹⁰ where after taking into consideration the various decisions rendered on the issue of “reason to believe” and “information” as appearing in Section 148 of the Act, the Court had held as follows:-

“24. After considering all the above case law on the issues raised before us, we are clear in our mind that the impugned notice, other than merely quoting that the Insight portal contains information as stated by the Assessing Officer in his reasons for the reopening, does not further investigate the information or come to an independent assessment connecting the petitioner to the particular transactions specified in the information. The entire notice proceeds on the basis of suspicion that the petitioner has entered into the fictitious transactions of the scrip of M/s. Confidence Finance and Trading Ltd. The Assessing Officer has not even bothered to compare the information furnished by the petitioner in its reply or go through the Income-tax return of the petitioner, which was before the Assessing Officer, wherein long-term capital gains transactions of securities were specifically disclosed.”

15. Accordingly, and for all the aforesaid reasons, the writ petition is allowed. The impugned order referable to Section 148A(d) dated 22 March 2024, as well as consequential notice under Section 148 of even date, is set aside.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.
JANUARY 17, 2025/nd

¹⁰ 2023 SCC OnLine Bom 2823