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

% *Date of Decision : 17.04.2025*

+ W.P.(C) 4845/2025 and CM APPLs. 22179-80/2025

M/S L-1 IDENTITY SOLUTIONS OPERATING COMPANY
PRIVATE LIMITEDPetitioner

Through: Mr Shankey Agrawal with Mr
Siddarth Agrawal, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE – 25Respondent

Through: Mr Gaurav Gupta, SSC with Mr
Shivendra Singh and Mr Yojit Pareek,
JSCs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. Issue notice. Mr Gaurav Gupta, the learned counsel for the Revenue accepts notice. With the consent of the parties, the present petition has been finally heard.
2. The petitioner [Assessee] has filed the present petition, *inter alia*, impugning notices dated 21.03.2024 and 28.03.2024 [impugned notices] issued under Section 148 of the Income Tax Act, 1961 [the Act] in respect of Assessment Year [AY] 2018-19. It is the Assessee's case that no such notices could have been issued, as according to the Assessing Officer [AO] the income of the Assessee which has escaped assessment for the relevant



assessment year [AY 2018-19] is less than ₹50 lakhs. In terms of Section 149(1)(a) of the Act, as applicable at the material time, no such notices could be issued beyond the period of three years from the end of the relevant assessment year, save and except in cases where the conditions specified in Section 149(1)(b) of the Act were satisfied.

3. The Assessee contends that in the present case the income alleged to have escaped assessment is less than ₹50 lakhs and therefore, the principal condition specified under Section 149(1)(b) of the Act is not satisfied.

Factual context

4. The Assessee is a private company, *inter alia*, engaged in providing certain services to its foreign associated enterprises [AEs]. During the period 21.03.2023 to 25.03.2023, the Income Tax Department had conducted search and seizure operations under Section 132 of the Act, in the premises of the Assessee and other related entities. The impugned notices were issued pursuant to the said search.

5. The Assessee was provided reasons for reopening of the assessment and on 03.06.2024, the Assessee filed its detailed objections for reopening of the assessment, contending that the impugned notices issued under Section 148 of the Act were barred by time. Notwithstanding the said objections, the Assessee also filed its return of income on 17.06.2024 pursuant to the impugned notice *albeit* without prejudice to its rights and contentions.

6. Thereafter, the AO had issued a notice under Section 143(2) of the Act which was also responded to by the Assessee. However, the AO did not dispose of the Assessee's objections for reopening of the assessment including that the impugned notices are barred by time.



7. The reasons for initiating reassessment proceedings furnished by the AO to the Assessee, indicate that the AO was of the view that the Assessee had undercharged its AE for the R&D Services provided by it to the extent of 0.27 crores during the Financial Year [FY] 2017-18 which is relevant to AY 2018-19.

8. The AO referred to the policy of the Assessee's AE, which according to the AO, required the group companies rendering services to charge a markup of 50%. The AO was, *prima facie*, of the view that the markup charged by the Assessee for FY 2017-18 was less to the extent of 0.27 crores, and thus, the said income to the said extent had escaped assessment. In addition, the AO was also of the view that the Assessee had paid a higher amount as management fees for other intragroup services to the extent of ₹0.21 crores during the financial year relevant to AY 2018-19.

9. The AO was also of the view that the Assessee had similarly undercharged its AE for the other assessment years as well, and cumulatively the amounts undercharged for the services rendered, were to the extent of Rs. 0.73 crores. Paragraph 4 of the reasons for issuance of impugned notices under Section 148 of the Act are relevant and are set out below:

“4. In view of the above, the assessee has misrepresented the amount of **₹0.73 Crores** [In the series of year's i.e. Rs.0.18 Cr. in FY 2016-17, Rs.0.27 Cr. in FY 2017-18 and Rs.0.28 Cr. in FY 2018-19 for provisions of R&D services at high charged markup represented in the form of entry] and **₹0.65 Crores** [In the series of year's i.e. Rs.0.34 Cr. in FY 2016-17, Rs.0.21 Cr in FY 2017-18 and Rs.0.10 Cr in FY 2018-19 for excess payment of management fees and fees for other intra-group services by L-1 India] to its AEs represented in the



form of expenditure) in its ITR filed for F.Y. 2016-17 to FY 2018-19 relevant to AY 2017-18 to AY 2019-20 by way of various tax-avoiding arrangements and shifting profits to their Associated Enterprises (AEs) especially Idemia France SAS and Idemia Germany GmbH outside India. Therefore, as specified *u/s* 149(1)(b) of the Income-tax Act, 1961 read with explanation thereto which suggests that income exceeding Rs.50 lakh chargeable to tax has escaped assessment in this case which is represented in the form of an entry and expenditure. The total amount of escapement for A.Y. 2017-18 to A.Y. 2019-20 is above Rs.50 lakh. Hence, in view of provisions of section 149(1A) of the Income Tax Act 1961, all the conditions of section 149(1)(b) are satisfied in this case for AY 2018- 19.”

10. There is no cavil that the income alleged to have escaped assessment for the AY 2018-19 is under ₹50 lakhs. However, it is contended that the same would not preclude the AO from issuing a notice under Section 148 of the Act as cumulatively the income that is alleged to have escaped assessment is to the extent of 0.73 crores which is in excess of ₹50 lakhs. Mr Gupta, the learned counsel appearing for the Revenue has referred to Section 149(1A) of the Act in support of his contention.

11. Before proceeding further, it would be relevant to refer to Section 149 of the Act. The relevant extract of Section 149 of the Act is set out below:

“149. *Time limit for notice.* – (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or



(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.”

12. It is apparent from the opening sentence of Section 149(1) of the Act that a notice under Section 148 of the Act for an assessment year cannot be issued beyond the period of three years unless the conditions under Section 149(1)(b) of the Act are satisfied. Thus, one of the said conditions is that the income alleged to have escaped assessment exceeds ₹50 lakhs or is likely to exceed ₹50 lakhs. Undisputably, the threshold amount of ₹50 lakhs of the income that has escaped assessment or is likely to escape assessment, is to be reckoned in respect of the specified assessment year. We say so because the conditions as set out in clause (b) of Section 149(1) of the Act are required to be read in conjunction with the opening sentence of Section 149(1) of the Act. The same is also made amply clear by use of the *non obstante* clause in Sub-section (1A) of Section 149 of the Act. A plain reading of Sub-section (1A) of Section 149 of the Act indicates that the condition of a minimum amount of ₹50 lakhs of income escaping assessment, may be satisfied by the cumulative amount that has escaped



assessment or is likely to escape assessment in respect of more than one assessment year exceeding the said amount. However, the same is subject to the condition that the income chargeable to tax is represented in the form of an “asset” or “expenditure in relation to an event or occasion”. Thus, in cases where the income that has escaped assessment is represented by ‘an asset’, notwithstanding that the said asset is on account of income that escaped assessment for more than one previous years, the condition under Section 149(1)(b) of the Act would be satisfied, if the value of the asset exceeds ₹50 lakhs. The same would hold true if there is an expenditure in relation to an ‘event’ or ‘occasion’, which exceeds the value of ₹50 lakhs. In this case as well as notwithstanding that the expenditure has been incurred in different previous years, the condition under Section 149(1)(b) of the Act would be satisfied if the cumulative value of the expenditure exceeds ₹50 lakhs, provided that the same is related to an event or occasion.

13. In the present case, it is apparent that there is no singular occasion or event which has resulted in the income of more than one previous year exceeding the sum of ₹50 lakhs. As noted above, the allegations against the Assessee are that it has undercharged its AE for the R&D Services rendered by it, and therefore, the income is required to be adjusted to the extent of ₹27 lakhs. Additionally, it is alleged that the Assessee has overpaid for certain managerial and group related services to the extent of ₹21 lakhs. None of these two adjustments can be stated to have been a part of a singular event or occasion spanning more than one previous year.

14. In our view, the AO has erred in proceeding on the basis that it was open for the AO to issue a notice under Section 148 of the Act bearing in mind the cumulative income that has escaped assessment in respect of FYs



2016-17, 2017-18 and 2018-19. It is impermissible for the AO to add income which is alleged to have escaped assessment for different previous years for determining the threshold figure of ₹50 lakhs as specified under Section 149(1)(b) of the Act.

15. In view of the above, we find merit in the contention that the impugned notices have been issued beyond the period of limitation as prescribed under Section 149(1) of the Act. Accordingly, the impugned notices and all proceedings commenced pursuant thereto, are set aside.

16. The petition is allowed in the aforesaid terms. Pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 17, 2025/tr

Click here to check corrigendum, if any