



2025:DHC:1938-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18.03.2025

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W.P.(C) 8230/2023 CM APPL. 31581/2023(Stay)

GYAN MARKETING ASSOCIATES PVT. LTD.

.....Petitioner

Through: Mr. Gaurav Jain, Mr. Shubham Gupta,
Ms Shalini and Mr Rahul Prabhakar,
Advocates

versus

INCOME TAX OFFICER, WARD - 10(3), NEW DELHI

.....Respondent

Through: Mr Siddhartha Sinha, SSC, Ms
Dacchita Shahi, Ms Anuja Pethia,
JSCs, Mr Srikant Singh and Ms Anu
Priya Nisha Minz, Advocates.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning a notice dated 10.04.2023 [**the impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of the assessment year [**AY**] 2016-17.

2. The petitioner also impugns a notice dated 20.03.2023 issued under Section 148A(b) of the Act and the order dated 10.04.2023 [**the impugned order**] passed under Section 148A(d) of the Act, pursuant to the impugned



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notice. It is the petitioner's case that notice issued under Section 148A(b) of the Act does not set out any information that is suggestive of petitioner's income escaping assessment. Thus, the reassessment proceedings initiated are wholly without jurisdiction.

3. The Assessing Officer [AO] had issued the aforementioned notice under Section 148A(b) of the Act setting out certain information which, according to the AO was suggestive of the petitioner's income escaping assessment. The plain reading of the said notice indicates that it is premised on the investigation carried out by the Securities and Exchange Board of India (SEBI). SEBI (CIEB) had sent a letter dated 28.07.2022 sharing certain information, which related to company named Jalan Cement Works Limited [now known as Aashrit Capital Limited – hereafter **ACL**]. The said information is to the effect that ACL and its related parties had entered into the non-genuine transactions and misused the funds/accounts of the company. According to the AO, the said communication indicated that ACL had resorted to misrepresentation of accounts and had failed to present a true and fair view of the state of affairs of the said company.

4. The AO noted that the petitioner company had entered into certain transactions with immovable properties with ACL and also borrowed certain funds. The relevant extract of the said allegations in respect of the petitioner are set out below: -

“2. Transaction in immovable properties

Transaction in immovable properties during F.Y 2015-16, details are as under: -

Name of party	Date	Property Description	Area	Rate	Amount	Buy/ Sate
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Gyan Marketing Associates Pvt Ltd	31.03.2016	Space at 5 th Floor	1200	6000	72,00,000	Buy
Gyan Marketing Associates Pvt Ltd	28.03.2016	Space at 5 th Floor	800	6000	48,00,000	Sale
Gyan Marketing Associates Pvt Ltd	30.03.2016	Space at 5 th Floor	800	6000	48,00,000	Sale

Further, it is also noticed that ACL has purchased space from M/s. Gyan Marketing Associates Pvt. Ltd. for Rs. 96 lakhs. However, no TDS has been deducted on the said transactions and to avoid TDS, purchases were shown on different date; where each transaction has been kept below Rs. 50 lakhs. Further to this, financials of Gyan were examined for F.Y 2015-16 wherein it is noticed that there were negative Reserves and Surplus of Rs. (77,98,554); PBT of Rs. 14.53 lakhs. Details of borrowing of Gyan are as under: -

Long Term borrowings

Particulars	As on 31.03.2016	As on 31.03.2015
1. Secured Loan		
1. Unsecured Loans		
1. From Others		
GamerFinance and Securities Pvt. Ltd.		2,97,07,210
Hanuraug Vinimay Pvt. Ltd.	75,00,000	--
Jalan Cement Work Limited		
Sindhwal Metal Engg. Pvt. Ltd.		
Select Infinlease Pvt. Ltd.	2,31,94,470	3,00,39,330
		80,85,370
		25,45,900
Total	3,06,94,470	7,03,77,810

On perusal of the above, it can be noted that Gyan has received unsecured loan of Rs.75 lakhs from Hanurang Vinimay Pvt Ltd (PBT Rs. 11.63 lakhs) which too lacks creditworthiness.

ACL has also shown sale of space for Rs. 72 lakhs to Gyan but payment of Rs. 60 lakhs shown to be adjusted in loan account. The Stamp Papers in the Case of M/s. Gyan Marketing Associates Pvt. Ltd. have been examined. The facts are as under: -



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Transaction dated 28.03.2016 was done on Stamp paper dated 11.03.2016 05.15 PM purchased by M/s. Gyan Marketing Associates Pvt. Ltd. for General Agreement wherein no detail of second party is mentioned and similar situation is in transaction dated 30.03.2016 wherein Stamp Paper dated 11.03.2016 5.18 PM was used.

For sale transaction dated 31.03.2016, Stamp Paper dated 30.12.2015 12:00 PM was used by M/s. Gyan Marketing Associates Pvt. Ltd. wherein no details of Second Party was mentioned and Stamp Paper was for general agreement. It is also noticed that ACL has purchased immovable properties i.e Space at Cyberwalk @ 6000 per sq. ft.”

5. A close examination of the above information indicates that the AO had found that the petitioner had purchased certain space in a real estate project named Cyberwalk from ACL and also entered into the transaction to sell space at the said building. It is noted that the petitioner had sold space admeasuring 1600 square feet at a value of ₹96,00,000/-, however, no tax had been deducted from the transaction and the value of said transaction has been split to avoid Tax Deducted at Source (TDS).

6. The second allegation made is regarding the availing of loan of ₹75,00,000/- from Hanurang Vinimay Private Limited [HVPL], which according to the AO lacked credit worthiness.

7. The assessee had responded to the said notice and had explained the transactions entered into by ACL. The learned counsel for the petitioner has handed over a tabular statement indicating the transaction relating to immovable properties. We consider it apposite to set out the said tabular statement. The same is reproduced below: -

“Details of sale land to ACL

Virtual space purchased from Madhu Soni in Ever Green Tower A (Unrelated Party) <u>Note 15 of Balance sheet, [Pg 170]</u>	Rs 3,60,00,000/- [16000 sq. ft @ Rs 2250/- per sq. ft.]	Agreement P- 6 (176-180) Ledger P-7 (181)
Proportional Cost of 1600 sq. virtual space	Rs 36,00,000 /-	



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sold during the year through two separate agreements of 800 sq. feet each.	[1600 sq. ft @ Rs 2250/- per sq. ft.]	
<u>28.03.2016 & 31.03.2016</u> Sale of above said virtual space sold to ACL <u>Note 13 of Balance sheet, [Pg 170]</u>	Rs 96,00,000 /- [1600 sq. ft. @ 6000/- per sq. ft.]	Agreement P8/P9 (182-208) Ledger P 10 (209)
Profit earned from sale of land to ACL during the year duly credited to P/L Account.	Rs 60,00,000/-	Balance Sheet P4 (170)

Schedule of Payment of land purchased from ACL during the year

<u>31.03.2016</u> Cost of virtual space purchased from ACL in Eco Tower 1, <u>Note 15 of Balance sheet, [Pg 170]</u>	Rs 72,00,000 /- [1200 sq. ft *Rs 6000 /- per sq. ft.]	Agreement, P11 (210-214) Ledger P 12 (215)
Less: TDS @ 1%	Rs 72,000 /-	Ledger P 12 (215)
Less: Payment made via banking channel	Rs 11,28,000 /-	Ledger P 12 (215)
Remaining payment made along with interest @ 9.5%, on 15.07.2017 (AY 2018-19), after deducting TDS on interest payments	Rs 60,00,000/-	Ledger P 5 (174)

8. A plain examination of the said transactions – which are not disputed by the Revenue – indicates that the petitioner had entered into the transactions for sale of 1600 square feet of space to ACL at value of ₹6000 per square feet. The said space of 600 square feet is a part of a larger space of 16000 square feet, which the petitioner had purchased from one Madhu Soni. The said transaction has resulted into the profit of ₹60,00,000/-, which was duly disclosed by the petitioner in its profit and loss account for the financial year relevant to AY 2016-17 and surrendered to tax.

9. The petitioner also purchased 1200 square feet of space in one of the towers of Cyberwalk from ACL at the rate of ₹6,000/- per square feet and part consideration of ₹11,28,000/- was paid through banking channels. The



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petitioner also deposited the TDS of ₹72,000/-. The balance consideration of ₹60,00,000/- was not paid in cash or through banking channels but was reflected by the petitioner as outstanding and payable to ACL. The said amount was paid in the following financial year (on 15.07.2017) along with interest at the rate of 9.5 per cent per annum.

10. The learned counsel for the petitioner submits that the space purchased from ACL was not in the same tower of Cyberwalk as the space purchased from Ms Madhu Soni (a part of which was sold to ACL).

11. In so far as unsecured loan of ₹75,00,000/- from HVPL is concerned the petitioner had explained that HVPL was a Non-Banking Finance Company (NBFC) registered with the Reserve Bank of India (RBI) and also provided certain details regarding the said company as is evident from paragraph no.29 of the reply furnished by the assessee to the notice under Section 148A(b) of the Act, which is set out below:-

“29. In this connection we very humbly submit that M/s Hanurang Vinimay Private Limited is a Non-Banking Finance Company, registered with RBI.

- having a Paid up Capital and Reserves of Rs.20.74 crores
- Turnover of Rs. 10.20 crores
- Profit Before Tax of Rs.11.63 Lacs
- Holding PAN AAACH6707Q
- Regularly filing its Income Tax Return & RBI Return
- Loan has been taken through RTGS's
- The loan has been given out of their own funds held as fixed deposits.”



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12. In view of the above, the AO was required to take a decision whether it is a fit case for reopening of the assessment for AY 2016-17. The said decision is necessarily required to be founded on whether there is any material to indicate that the income of the assessee escaped assessment. The impugned order passed under Section 148A(d) of the Act indicates that the AO had repeated the allegations as made in the notice issued under Section 148A(b) of the Act. Additionally, it noted that the transactions entered into between the petitioner and ACL were not registered but were on stamp paper which was purchased for a general agreement. The AO had also faulted the assessee for not entering transactions on the basis of the valuation reports. And, also made observations to the effect that the transactions of immovable properties carried out by ACL and its related parties appeared to be an afterthought. However, the same do not lead to the conclusion that the petitioner's income for the relevant assessment year (AY 2016-17) had escaped assessment

13. Although, the impugned notice passed under Section 148A(b) of the Act and the impugned order under Section 148A(d) of the Act are largely premised on the order passed by the SEBI in case of ACL and others related persons. The same does not take into account the SEBI's findings that the petitioner is not a related party of ACL. The order passed by the SEBI was the subject matter of appeal before the Securities Appellate Tribunal (SAT) which reduced the penalty imposed on ACL and other related parties on the ground that there was no misappropriation of the said funds of the said company nor was there any manipulation of share price. However, it upheld the finding that there was a violation of Listing Obligation and Disclosure



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Requirements Regulation, 2015 [LODR], but also noted that same violation did not give any disproportionate gain nor created any unfair advantage to the appellants in that case (ACL and other related entities) nor any specific loss was caused to the investors. Accordingly, the penalty imposed was reduced.

14. It is apparent from the impugned order and impugned notice that the order of the SAT dated 17.11.2022 has not been considered.

15. The principal question that requires to be addressed is whether there is any ground to believe that the assessee's income escaped assessment. The transaction of immovable properties, as explained by the assessee had resulted in a profit of ₹60,00,000/- during the previous year relevant to the AY 2016-17. Thus, the transaction of sale of 1600 square feet space to ACL cannot be stated to have resulted in any income of the assessee escaping assessment. In any view the impugned order does not indicate as to how any income of the assessee had escaped assessment on account of the said transaction. The observation that no TDS was deducted on the said transaction, may not be material to reopen the assessment of the assessee. Apart from the fact that the petitioner disputes that any TDS was required to be deducted, the obligation to deduct the TDS was on the purchaser and, therefore, assessee cannot be faulted for non-deduction of TDS assuming that any such obligation existed.

16. The petitioner also purchased 1200 square feet of space in another tower of the same project at the same rate at which it sold the space to ACL. The petitioner had discharged its obligation of deducting TDS at source and



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also made the part payment by the banking channel. The AO has also not controverted that the balance amount of ₹60,00,000/- was paid in subsequent financial year (on 15.07.2017) along with interest at the rate of 9.5 per cent per annum).

17. We are unable to ascertain as to how these transactions have resulted in assessee's income escaping assessment. There is no explanation in the impugned order as to how such transactions would lead to this conclusion. Even assuming that the transactions were found to be non-genuine or non-existent, the same would not result in petitioner's income escape assessment as the petitioner has in fact declared a profit of ₹60,00,000/- on sale of 1600 square feet to ACL and surrendered the same to tax. Thus, even these transactions are held to be paper transactions, as is contended by the learned counsel for the Revenue, the same would not result in petitioner's income escaping assessment. The learned counsel for the Revenue was also unable to explain as to how the facts as narrated in the notice under Section 148A(b) of the Act could lead to the conclusion that the petitioner's income for AY 2016-17 had escaped assessment.

18. In so far as the question of availing of loan from HVPL is concerned, the impugned order does not indicate as to why such loan transaction is required to be considered as bogus considering that the petitioner has disclosed that HVPL was a NBFC having a paid up capital and reserves of ₹20.74 Crores and the turnover of ₹10.20 Crores.

19. In view of the above, the impugned order passed under Section 148A(d) of the Act cannot be sustained. Accordingly, the impugned notice



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and impugned order are set aside.

20. We, however clarify that this will not preclude the AO to re-initiate reassessment proceedings in the event the AO finds any further material which either in conjunction with the information referred to in the impugned order or otherwise, is suggestive of petitioner's income escape assessment.

21. The petition is allowed in the aforesaid terms. Pending application is disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 18, 2025

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Click here to check corrigendum, if any