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

\+ W.P.(C) 9477/2024 and CM APPL. 38928/2024

DWARKA DAS AND BROTHERS .....Petitioner

Through: Mr Sumit K. Batra with Mr Manish Khurana and Ms Priyanka Jindal, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 46(1), DELHI & ANR. .....Respondents

Through: Mr Shlok Chandra with Ms Naincy Jain and Ms Madhavi Shukla, Advocates.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **14.01.2025**

1. The petitioner has filed the present petition, *inter alia,* impugning a notice dated 28.03.2024 (hereafter *the impugned notice*) issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) in respect of Assessment Year (AY) 2017-18.

2. The said impugned notice was preceded by an order dated 28.03.2024 passed under Section 148A(d) of the Act which was passed pursuant to a notice dated 12.03.2024 issued under Section 148A(b) of the Act. The said order and notice are also impugned in the present petition.

3. The Assessing Officer (AO) had issued a notice dated 12.03.2024 under Section 148A(b) of the Act in respect of AY 2017-18, disclosing

therewith certain information, which according to the AO, was suggestive of the petitioner's income escaping assessment. It was alleged that the information available on inside portal reflected that the petitioner had received a payment of ₹63,97,350/- in cash for Financial Year (FY) 2016-17. Apparently, a search was conducted in the premises in connection with VKC Group including M/s. VKC Nuts Pvt. Ltd. (hereafter *M/s VKC Nuts*). It is alleged that, during the search proceedings, a hard disk was recovered which contained a ledger account of M/s Dwarka Dass & Brothers (the petitioner). Certain cash payments have been made for purchases which were not recorded in the books of accounts.

4. The petitioner responded to the said notice by stating that it had not entered to any transaction with M/s. VKC Nuts; it had neither sold any goods to the said entity nor purchased any goods from the said entity. The petitioner also denied that it had received any payments in cash. Additionally, the petitioner also forwarded an affidavit affirmed on behalf of M/s. VKC Nuts confirming the same.

5. The impugned order passed under Section 148A(d) of the Act indicates that the AO had not considered the petitioner's response dated 21.03.2024 to the said notice and proceeded on the basis that the petitioner had not availed of the opportunity to respond to the information as detailed in the notice under Section 148A(b) of the Act. The relevant extract of the said order is set out below:

> "In response to opportunity provided to the assessee u/s 148A(b) of the Act, the assessee has replied on 1803.2024, wherein the assessee denied the above said transaction of Rs. 63,97,350/- with M/s VKC Nuts Pvt Ltd. Further, the assessee has asked for the details of the information based upon which the notice u/s 148A(b) dated 12.03.2024 was issued. Detailed information has been

provided to the assessee vide letter dated 19.03.2024 vide DIN ITBA/COM/F/17/2023-24/1062895702(1). The assessee was given opportunity to present his case latest by 22.03.2024 along with all the documentary evidences. Inspite of given sufficient opportunity of being head no response/reply has been received from the assessee till date. The assessee has therefore failed to discharge his onus to provide explanation/counter to the information/material provided to him.

In view of the facts delineated in foregoing paras, the information and material on records suggests that in the case of M/s Dwarkadas and Brothers (AADFD8854E) the income of 63,97,350/- chargeable to **tax has escaped assessment for assessment year 2017-18.**

Based on the above observations which originate from the material/information available on record, it is ascertained that income chargeable to tax has escaped assessment for the assessment year under consideration. Accordingly, it is concluded vide this order as per the provisions of clause (d) of section 148A of the Income Tax Act, 1961, that this is a fit case for issuance of notice u/s 148 for the year under consideration where income chargeable to tax has escaped assessment.

This order is passed with the prior approval of the specified authority. Notice u/s 148 of the Income Tax Act, 1961 is accordingly issued after receiving prior approval of the specified authority under the Act."

6. In view of the above, it is apparent that the AO has not considered the petitioner's response to the said notice issued to the petitioner and has proceeded on an erroneous premises that the petitioner had not responded to the notice.

7. In view of the above, we consider it apposite to set aside the impugned order passed under Section 148A(d) of the Act as well as the impugned notice issued under Section 148 of the Act and remand the matter to the AO for considering afresh. The AO shall also consider the averments made by the petitioner in the present petition as a part of the petitioner's

response to the notice under Section 148A(b) of the Act. Additionally, the AO has also been entitled to call for any further information if the AO consider it necessary for issuance of an order under Section 148A(d) of the Act.

8. The petition is disposed of in the aforesaid terms. Pending application is also disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 14, 2025/tr

Click here to check corrigendum, if any