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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 22.05.2025

+ W.P.(C) 14258/2024 & CM APPL. 59722/2024DEVAT AND RAM COMPANY PRIVATE
LIMITED

.....Petitioner

Through: Mr. Ved Jain, Mr. Nischay
Kantoor, Ms. Soniya Dudeja, Mr.
Sarthak Abrol, Advocates.

versus

INCOME TAX OFFICER WARD 7(1) DELHI
& ORS.

.....Respondents

Through: Mr. Sanjay Kumar, SSC with Ms.
Monica Benjamin, JSC and Ms.
Easha, JSC.**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 the notice dated 21.03.2024 [**impugned notice**] issued under Section 148A(b) of the Income Tax Act, 1961 [**the Act**]; an order dated 31.03.2024 [**impugned order**] passed under Section 148A(d) of the Act, which was issued pursuant to the aforesaid notice dated 21.03.2024; and a notice dated 31.03.2024 issued under Section 148 of the Act in respect of Assessment Year [**AY**] 2020-21.



2. It is the petitioner's case that the impugned notice under Section 148A(b) of the Act was issued without the Assessing Officer [AO] having any particular information, which suggested the petitioner's income for AY 2020-21 had escaped assessment. The petitioner also claims that the proceedings initiated in respect of the petitioner were not dropped despite the Principal Director of Income Tax (Inv.), Kanpur recommending that no action be taken in respect of the petitioner as well as one M/s Gold Feather Pvt. Ltd. [GFPL]. He states that pursuant to the said recommendation, the proceedings against GFPL – which were commenced on the basis of the same information – were dropped. However, the proceedings against the petitioner are continuing.

3. The impugned notice issued under Section 148A(b) of the Act indicates that it was issued on the basis of certain information available on the insight portal. The AO found that the said information suggested that the petitioner's income for AY 2020-21 had escaped assessment. We consider it apposite to set out the said information, which is reproduced below:

“..Information was received in this office duly sent by DDIT(INV.), Rourkela in the case of **M/s Devat Ram and Company Pvt. Ltd.** as per the case Related information Details” wherein the beneficiary has bogus purchases from dummy companies/entities as mentioned in the “Verification Report” AY 20-21 wherein it is found that during the FY19-20(AY-20-21) **M/s Devat Ram and Company Pvt. Ltd.** made bogus purchasing of Rs.2,93,020,72/- as per the GST department has shared the information regarding the said entity, wherein it is seen that the said entity was involved in bogus purchases from M/s Madhumita Steel Industries Pvt.



Ltd. PAN AAMCM1052H in AY20-21 on perusal of insight database, it was observed that Rs.2,93,020,72/- remained unverified and unexplained.”

4. The petitioner replied to the said notice acknowledging that the petitioner had purchased MS Ingot from M/s Madhumita Steel Industries Pvt. Ltd. [MSIPL] aggregating ₹2,93,02,072/- (Rupees two crores ninety-three lacs two thousand seventy-two only). However, it denied that the purchases were bogus and claimed that the same were duly recorded in the books of accounts. To allay any apprehension that the transaction was not genuine, the petitioner asserted that MSIPL was duly registered with the Goods and Services Tax Department and was allocated the Goods and Services Tax Identification Number [GSTIN]: 21AAMCM1052H1ZU. The petitioner also sets out a comparative table giving details of the purchases and the direct sales made to various parties, which were directly linked to the purchases. The tabular statement sets out the date; invoice numbers; the vehicle number in which the goods were transferred; the quantity of the goods; the value and the input Integrated Goods and Services Tax [IGST] paid on the said purchases. On the sale side, the petitioner provided details of the purchases setting out the dates; the names of the parties to whom the sale was made; the invoice numbers; the quantity of goods sold, the value at which sales were effected; and the Central Goods and Services Tax [CGST] as well as State Goods and Services Tax [SGST] paid on the output sales.

5. The petitioner claimed that the fact that the sales were genuine



would be reasonably verifiable from the transactions reported at the GST portal. In addition, the petitioner also provided (a) copies of purchase bills; (b) copies of E-way bills; (c) transporter built; (d) toll tax receipts; (e) and screen shot of GSTR-1 filed through the GST Portal. Similar details were also reported for sales.

6. In addition to the above, the petitioner also submitted a reconciliation statement of GSTR-2A with the party ledger to support the purchases made from MSIPL. The petitioner also provided a bank statement to evidence the payments made to MSIPL for the said purchases.

7. It is important to note that it is the petitioner's case that all goods that were purchased from MSIPL were directly sent on the same day through sales invoices and E-way bills to the entities to whom the goods were sold. The purchases were made on "*bill to ship to*" basis. The petitioner explained that the goods were transported directly from MSIPL to the persons to whom the goods were sold [**the purchasers**].

8. It is material to note that none of the facts as set out by the petitioner in its reply were controverted. Notwithstanding the same, the AO passed an order under Section 148A(d) of the Act holding that it was a fit case for re-opening of the assessment solely on the basis that DDIT (Inv.), Rourkela had mentioned that MSIPL was a dummy entity with no business transactions. The AO disregarded the fact that the purchase consideration had been paid to MSIPL through banking channels and that the goods had moved directly from MSIPL to the purchasers.



9. It is also necessary to note that the details of purchase and sales provided by the petitioner did indicate that the petitioner had made profits on the transactions. Since the purchases made were directly linked to the sales and the goods had moved directly from MSIPL to the purchasers, any doubt as to the purchases would also negate the sales. If the purchases were considered as non-existent, the sale of the goods purchased would also require to be considered as non-existent. Thus, in any event there would be no question of any income escaping assessment. The AO has not expressed any apprehension or doubt regarding the sales and purchases, and in our view rightly so, because both the purchase and sales transactions were through banking channels.

10. The Revenue has filed the counter affidavit, *inter alia*, affirming that the evidence furnished by the petitioner were not conclusive to establish the genuineness of the transactions. Paragraph 4 of the counter affidavit is relevant and is set out below:

“4. In this case, the AO has reasonably inferred from the information and investigation reports that M/s Madhumita Steels Industries Pvt. Ltd. is a dummy entity and involved in bogus billing. The evidences furnished by the petitioner, though submitted, were not conclusive to establish the genuineness of the transactions. The submission of invoices, bank statements, GST returns, and transport documents does not automatically validate the authenticity of transactions when the counterparty’s operations are alleged to be dubious.”

11. It is apparent from the above that the AO has completely disregarded the explanation and the evidence furnished by the petitioner



by simply accepting the information to the effect that MSIPL was a dummy entity involved in bogus billing, as correct. In our view, this approach defeats the very purpose of enabling an assessee to respond to the information, which according to the AO, may suggest that its income for the relevant assessment year has escaped assessment. The purpose of issuing a notice under Section 148A(b) of the Act is to evaluate whether the information available was adequately explained.

12. We are also hard-pressed to imagine as to what further material or evidence could be furnished by the petitioner to establish that its transactions were genuine, and in any event no income had escaped assessment. It is necessary for the AO, at the bare minimum, to examine the material placed by the petitioner and verify whether the same could be faulted. However, the AO did not undertake any such exercise but rejected the overwhelming evidence furnished by the petitioner merely on assuming that information available on the portal was correct.

13. The petitioner had also submitted that the Investigation Wing had conducted an enquiry and found that no action in the case of GFPL and the petitioner, was recommended. The letter dated 28.02.2024 sent by the Principal Director of the Income Tax (Investigation), Kanpur to other Income Tax Authorities advising that no action against the petitioner and GFPL was recommended, is set out below:

“To,

The Addl. Director of Income Tax (Inv.)

Kanpur



Sir,

Sub: Submission of inquiry report in the case of M/s Chachan Metal Pvt. Ltd. M/s. Devat Ram and Company Pvt. Ltd. and M/s. Gold Feather Pvt. Ltd. – Reg.

Kindly refer to your inquiry report bearing F. No. JDIT/KNP/TEP/2023-24/1991 dated 27.02.2024 on the REIC shared information disseminated by Commissioner, Commercial Tax, U.P.

2. In this connection, I am directed to convey that as per report, remedial action is recommended vide report in the case of M/s. Chachan Metal Pvt. Ltd. for A.Y. 2019-20 and A. Y. 2020-21 and no action is recommended in case of M/s. Gold Feather Pvt. Ltd. and M/s. Devat Ram and Company Pvt. Ltd. The Ld. Pr. Director of Income Tax (Inv.) Kanpur has approved the enquiry report. You are requested to share the actionable information to JAO as per SOP and provide feedback report in REIC cases in Form 11. **(To be submitted by the members of REICs to the Convener).**

Submitted for your kind information and necessary action at your end.

Yours faithfully,

(****)

Income Tax Officer (Inv.) (OSD)
O/o. the Pr. Director of Income Tax (Inv.)
Kanpur"

14. It was contended on behalf of the petitioner that the said letter clearly established that on further examination of the enquiry report, no further action was necessary. Additionally, the petitioner submitted that GFPL had also entered into transactions with MSIPL. On the basis of the information that MSIPL was a bogus company, the AO having jurisdiction in case of GFPL had initiated proceedings. However, on



further enquiries, it dropped the said proceedings. The aforesaid contentions were noted by this Court in the order dated 26.11.2024, which reads as under:

“3. The petitioner has filed the present petition impugning a notice dated 21.03.2024 issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*), an order dated 31.03.2024 passed under Section 148A(d) of the Act, and the consequential notice dated 31.03.2024 issued under Section 148 of the Act in respect of assessment year (AY) 2020-21.

4. The petitioner’s assessment for AY 2020-21 is sought to be reopened on the ground that there is certain information suggestive of the fact that the petitioner’s income has escaped assessment. Perusal of the impugned order indicates that the Assessing Officer (hereafter *the AO*) had information from the GST Department that certain bogus purchases were made from dummy companies, as mentioned in the Verification Report for AY 2020-21. It was found that during the financial year 2019-20, the petitioner had made purchases from M/s Madhumita Steel Industries Pvt. Ltd. (PAN AAMCM1052H) [hereafter *Madhumita Steel*], which was alleged to be a bogus company. It is the petitioner’s case that a similar allegation was also made in respect of another assessee named M/s Gold Feather Pvt. Ltd. (hereafter *Gold Feather*)

5. Accordingly, notices proposing to reopen the assessment of Gold Feather were also issued. The petitioner states that on verification, the said proceedings in respect of Gold Feather were dropped. It is contended that it is clear that Madhumita Steel was not a dummy company, as alleged, and thus the foundation for commencing the reassessment proceedings does not stand. The petitioner also relies on a letter dated 28.02.2024, issued by the Office of the Principal Director of Income Tax (Investigation), Kanpur, recommending that no action be taken in the case of the assessee and Gold Feather. The letter also indicates that the same is based on an inquiry conducted earlier.

6. The learned counsel appearing for the Revenue seeks time to file a counter-affidavit.



7. Let the same be filed within a period of four weeks from date. Rejoinder, if any, be filed within a period of two weeks thereafter.

8. In the meanwhile, further proceedings relating to the impugned notice are stayed.

9. List on 13.01.2025.”

15. The Revenue in its counter affidavit has not traversed the contention that the proceedings had been initiated in the case of GFPL on the basis of the information that MSIPL was a bogus entity, but were dropped. On the contrary, the AO affirmed an affidavit accepting the same. This is clearly implicit from the following averments made in the counter affidavit:

“The AO, after due application of mind, determined that the petitioner’s transactions with M/s Madhumita warranted further scrutiny, unlike the case of M/s Goldfeather.”

16. Clearly, if in the case of GFPL, the proceedings – which had commenced on the allegation that its dealings with MSIPL were not genuine because MSIPL was a bogus entity – were dropped, a contrary view on facts, without any further material would not be warranted.

17. Considering the letter sent by the Principal Director of Income Tax (Inv.), Kanpur as well as the fact that the proceedings in respect of GFPL were been dropped; the information to the effect that there is a report regarding MSIPL being bogus entity could not have been accepted without any substantiation as to the allegation. In any event, the material and evidence produced by the petitioner could not be rejected only on the ground that there was a report alleging that MSIPL was a bogus entity.



18. The provisions of Section 148A of the Act must be read in a meaningful manner. It must give a fair opportunity to the assessee to respond to the information which, according to the AO, suggests that the assessee's income had escaped assessment. It is necessary for the AO to thereafter, at the bare minimum, examine the evidence and material produced by the assessee to counteract the allegations. Disregarding response furnished by the petitioner solely for the reason of the information on portal and simply reiterating the information as available, would render the procedure under Section 148A of the Act meaningless.

19. In view of the above, we set aside the impugned order passed under Section 148A(d) of the Act and the impugned notice issued under Section 148A(b) of the Act.

20. We, however, clarify that this order would not preclude the AO from initiating the proceedings if it finds that any of the material furnished by the petitioner, is incorrect or if the AO finds any other material substantiating the information, which suggests otherwise.

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

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 22, 2025
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Click here to check corrigendum, if any