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

\+ W.P.(C) 13759/2018

ARIHANT BUILDCON LTD. .....Petitioner

Through: Ms. Ananya Kapoor, Mr. Sumit Lalchandani and Mr. Shivam Yadav, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-1 & ANR. .....Respondents

Through: Mr. Vipul Agrawal, SSC with Ms. Sakshi Shairwal, JSC.

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

O R D E R

% **23.01.2025**

1. The present writ petition has been preferred questioning the initiation of reassessment action referable to Section 148 of the **Income Tax Act, 1961**[1] by the respondents and pertains to **Assessment Year**[2] 2011-12.

2. Since the satisfaction to reopen appears to have been recorded prior to the amended regime of reassessment being brought into effect in terms of Finance Act 2021, the respondents appear to have followed the procedure as formulated by the Supreme Court in **GKN Driveshafts (India) Ltd. v. Income Tax Officer and Others**[3].

3. It was in compliance of the directions so framed that the petitioner was provided the reasons which formed the basis for formation of opinion that income liable to tax had escaped assessment.

4. As we read those reasons which stand placed on our record as

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1 Act

2 AY

Annexure P-4, it appears that the respondents were informed by the Noida authorities that the petitioner had paid an amount of INR 40,27,074/- as lease rent on 09 October 2010 and on which TDS had not been deducted. It was in the aforesaid backdrop that the respondents came to form the opinion that the same had led to a short levy of tax amounting to INR 12,44,366/-. It was the alleged failure to deduct tax at source which also weighed upon the respondents to allude to Section 40(a)(ia) of the Act.

5. In response to the aforesaid communication of the respondents, the petitioner furnished a detailed response asserting that the lease had in fact been executed by the Noida authority in favour of M/s Arihant Infra Pvt. Ltd. Ms. Kapoor, learned counsel for the petitioner has, in this respect, also taken us through the documents executed in favour of M/s Arihant Infra Pvt. Ltd. as well as the payment of INR 40,27,074/- by way of a challan dated 11 October 2010 by the aforenoted entity in discharge of its lease obligations. It is in the aforesaid backdrop that the petitioner appears to have contended that the payment of INR 40,27,074/- could not have possibly been matched against the bank details of the writ petitioner.

6. However, the **Assessing Officer**[4] while proceeding to dispose of those objections, has observed as follows:-

> "To,
>
> The Principal Officer
> M/s Arihant Buildcon. Pvt. Ltd.
> 149, Vigyan Vihar, Delhi-110092.
>
> Sub: In the case of M/s Arihant Buildcon Pvt. Ltd. for the A.Y. 2011-12 PAN-AABCA0184D-reg-.

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[3] (2003) 1 SCC 72
[4] AO

Sir,

Take reference of you are letter dated 07.09.2018, were in you have mentioned following-

"Reference to your notice No. ITBA/AST/F/142(1)/2018-19/1011872364(1) dated 30.08.2018 in which your goodself alleged that a sum of Rs. 40,27,074/- has been deposited in cash on account of rent paid to Noida Authority/ Greater Noida Industrial Development Authority. You are requested to provide us a copy of the abovesaid challan since, we have not made any payment in cash to Noida Authority/ Greater Noida Industrial Development Authority."

It's observed by the under singed that somehow you have misinterpreted the reasons provided to you. However for your clarification, the content for reason of re-opening are once again provided to you. The reasons are as under-

"As per information received from DCIT(TDS), Noida vide letter No- Lease Rent/Delhi/DCIT(TDS) NOIDA/2014-15/1956, 1957 dated: 18.06.2014, you have made lease rent payment on 09.10.2010 to Noida Authority/ Greater NOIDA/Yamuna Expressway Industrial Development Authority at Rs 40,27,074/-. The case of your company for the A.Y.2011-12 was not selected for scrutiny. However, on verification from ITR for the A.Y.2011-12, it was found that Rent expenses are not verifiable from ITR. Since, you have paid lease rent Rs 40,27,074/- Noida Authority/ Greater NOIDA/Yamuna Expressway Industrial Development Authority and this amount has not been disclosed in the ITR. Therefore, in this regard, information u/s 133(6) of the I.T.Act, 1961 was called from known bank account of company namely Vijaya Bank, Vigyan Vihar, Karkardooma, New Delhi. The Bank was informed that payment of Rs 40,27,074/- has not been made by you to Noida Authority/ Greater NOIDA/Yarnuna –Expressway Industrial Development Authority from Bank Account of the Company. Besides, information was also called for u/s 133(6) of the I.T.Act, 1961 from you vide notice F No. ACIT/Circle-3(1)/133(6)/2017-18/934 dated: 09.03.2018. However, you have not made compliance. Since, the aforesaid payment of Rs 40,27,074/- is not verifiable from bank account of your company, besides you have also not made compliance of notice u/s 133(6), therefore, it revealed that the aforesaid payment on account of rent has been made in cash and the same has been made from undisclosed income/sources. Please explain the sources of the same and furnish statement of bank account from which said payment has been made. Alternatively, in case you have made said payments and routed through books of accounts, please intimate under which head said expenses have been debited and whether TDS has been made on said payments u/s 1941 of the I.T.Act,1961 or not if TDS

> *has been made please furnish details. If TDS has not been made please explain as to why provision of section 40(a)(i)(a) should not be invoked."*
>
> The above information and show cause is self explanatory .The vital question in your case **is payment to Noida Authority/ Greater NOIDA/Yamuna Expressway Industrial Development Authority from Bank Account of the Company. You are requested to discharge your onus in respect of mode and source of payment made by you to these concerns.**
>
> **You are requested to comply the notices issued to you**."

7. As its manifest and ex facie evident from the above, all that the AO has chosen to observe is that the information as provided by the Noida authority was "self-explanatory" and has thus abjectly failed to allude to the explanation which had been proffered by the writ petitioners and which had referred to the lease deed as well as the challan which had been generated in evidence of the deposit of INR 40,27,074/- by Arihant Infra.

8. In view of the aforesaid, we find ourselves unable to sustain the order dated 24 September 2018 and in terms of which the objections of the writ petitioners have come to be disposed of.

9. We accordingly allow the instant writ petition and quash the order disposing of objections dated 24 September 2018. The AO shall consequently re-examine the objections as furnished as well as the material produced before taking a final view with respect to whether circumstances warrant invocation of powers conferred by Section 148 of the Act.

10. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 23, 2025/*akc*