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

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Date of Decision : 21.11.2024

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W.P.(C) 15876/2024 & CM APPL. 66691-92/2024

MAJESTIC HANDICRAFT PRIVATE LIMITED

.....Petitioner

Through: Mr Prakash Sinha, Advocate.

versus

**DY. COMMISSIONER OF INCOME TAX
CIRCLE -16(1) NEW DELHI**

.....Respondent

Through: Mr Abhishek Maratha, SSC, Mr Apoorv Agarwal, Mr Parth Samwal, JSCs, Ms Nupur Sharma, Mr Gaurav Singh, Ms Muskaan Goel, Mr Himanshu Gaur and Mr Kamakshraj Singh and Mr Yamit Jetley, Advocates for the Revenue

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, impugning a notice dated 22.03.2024 (hereafter *the impugned notice*) issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) as well as the order dated 31.03.2024 (hereafter *the impugned order*) issued under Section 148A(d) of the Act. Additionally, the petitioner also impugns the



notice dated 31.03.2024 issued under Section 148 of the Act seeking to reopen the petitioner's assessment for the assessment year (AY) 2018-19.

2. The petitioner claims that during the financial year (FY) 2017-18, it had entered into transactions of making purchases for export of garments to Brazil and the same were exported through the export invoices dated 18.09.2017, 27.09.2017, and 28.09.2017. The petitioner filed its income tax returns (ITRs) for the AY 2018-19 on 17.10.2018 and the same was processed under Section 143(1) of the Act.

3. The Assessing Officer (AO) had certain information to suggest that the petitioner's income for the FY 2017-18 relevant to AY 2018-19 escaped assessment. Accordingly, the AO issued a notice dated 21.03.2022 under Section 148A(b) of the Act. One of the principal information as set out in the said notice indicated that the Investigation Wing had found that one of the entities (Balaji Enterprises) had purportedly supplied the goods to the petitioner, was found to be non-existing at the principal place of business. The petitioner responded to the said notice furnishing on record certain documents regarding the export of the goods. It is the petitioner's case that its purchases were genuine and therefore, there were no grounds to suspect that the petitioner's income escaped the assessment. However, the said explanation was not accepted and the AO passed an order dated 28.03.2022 under Section 148A(d) of the Act and also issued the notice dated 28.03.2022 under Section 148 of the Act seeking to reopen the assessment for the AY 2018-19.

4. The petitioner challenged the said order dated 28.03.2022 and the



notice dated 28.03.2022 by filing a writ petition before this court being W.P.(C) No.3797/2023. The said petition was disposed of by an order dated 27.03.2023.

5. This court had noted that the petitioner had placed on record the returns filed in GSTR-2A, which had disclosed inward supplies. The supplies were from the dealers, which were registered under the relevant Goods and Services Tax Act. The Goods and Services Tax Identification Number (GSTIN) of the suppliers also matched with the GSTIN printed on the invoices issued by Balaji Enterprises and another entity namely, Dev Sales Corporation.

6. This court found that the order passed under Section 148A(d) of the Act did not deal with the aforesaid aspect of the matter. So far as the allegations that the supplier was not found at the given address, this court noticed that there could be several reasons for the same. Accordingly, the AO was directed to conduct the *de novo* exercise.

7. Thereafter, the AO issued the impugned notice dated 22.03.2024. The said notice indicates that the information was received in regard to one Sanjeev Sharma, who is stated to be the sole proprietor of the concern namely – Balaji Enterprises. The bank accounts for the FY 2017-18 and 2018-19 of the said person were analysed and it was found that the credits and debits were almost matching. Summons under Section 131(1A) of the Act were issued by the Investigation Wing to Balaji Enterprises on all available addresses. However, the addresses were found to be fake and no person by the name of Sanjeev Sharma was found residing at the addresses



nor was there any trace of the entity named Balaji Enterprises. The analysis of the bank accounts of Balaji Enterprises indicated that there were several debit entries, which were followed by credit entries of almost the same amount on the same date or the next date.

8. The matching of the inflow and outflow suggested that the same pertains to the accommodation entries. It is also noted that the balance in the bank account was minimal and there was exceptionally high turnover in a short span. The bank account also indicated that the entries pertaining to the petitioner. The Investigation Wing informed that Balaji Enterprises (proprietor – Sanjeev Sharma) was not engaged in any genuine business activities.

9. In addition, it is also alleged that the entry pertaining to the transaction entered into by the petitioner with Balaji Enterprises is for a sum of ₹1,44,56,180/-. It was also stated that they have the information that the petitioner had taken an accommodation entry of ₹61,34,006/- from one Dev Sales Corporation, which was a sole proprietorship concern of one Suresh Kumar. This was also found to be one of the entities, which is linked with Balaji Enterprises.

10. In view of the above, the AO stated that there was an amount of ₹2,05,90,186/-, which appear to have escaped the assessment during AY 2018-19.

11. The petitioner had responded to the said notice reiterating that its purchases were genuine and also provided the documents as have been provided in the earlier round. However, the AO was not persuaded to drop



the proceedings and passed the impugned order dated 31.03.2024 under Section 148A(d) of the Act concluding that it was a fit case for reopening the assessment for the AY 2018-19.

12. The petitioner has assailed the impugned notice and the impugned order on the ground that the AO has not followed the directions issued by this court in order dated 27.03.2023 passed in W.P.(C) No.3797/2023. It is earnestly contended by the learned counsel for the petitioner that the ground for passing an order under Section 148A(d) of the Act remains the same and the AO has not considered the documents, which established that the petitioner had exported the goods in question. It is contended that the AO has also not examined the GST returns filed by the petitioner, which reflect that its purchases were genuine.

13. The learned counsel for the petitioner contends that the impugned notice and impugned order suffers from the same vice as the notice and order issued in the earlier round, which was the subject matter of challenge in W.P.(C) No.3797/2023.

14. We are not persuaded to accept the aforesaid contention. A plain reading of the impugned order indicates that the AO has examined the relevant material and in particular the petitioner's contention that its purchases were genuine. The AO had noted that the petitioner had reflected that the purchases made from the concerns Balaji Enterprises and Dev Sales Corporation. The GST returns, also reflected the same.

15. The vendor – Balaji Enterprises had filed its monthly GST returns (GSTR-01) – for output sales, and therefore, the same were reflected in the



petitioner's GST returns (GSTR-2A) as inward purchases. Similar is the case with the purchases made from Dev Sales Corporation. The AO had noted that the report was received from Investigation Wing [DDIT (Inv) Unit 6(2), New Delhi] in regard to Balaji Enterprises. The AO had extensively set out the finding /information of the said report, which indicated that Balaji Enterprises was not engaged in genuine business activities. A similar information was also received in regard to Dev Sales Corporation.

16. Additionally, the AO had also made telephone call in the presence of the learned counsel for the petitioner to the telephone numbers for the said entities (Balaji Enterprises and Dev Sales Corporation) and the person answering the telephone call responded by stating that he has no knowledge of Balaji Enterprises or Dev Sales Corporation. The said conversation was also heard by the learned counsel for the petitioner.

17. We have also considered the petitioner's contention that the transactions were through banking channel. Plainly, if the entries are accommodation entries as suspected then at least one limb of the transaction would necessarily be through banking channel. The petitioner had not produced any material to establish the credibility of Balaji Enterprises or Dev Sales Corporation.

18. The learned counsel for the petitioner submits that since the goods have been exported, it was also necessary to make the Customs department a party as the petitioner had availed duty drawback. This contention is also insubstantial.



19. At the stage of issuance of notice under Section 148 of the Act, the AO is required to have reasons to assume that the income of the assessee has escaped assessment. Section 148A of the Act sets out a mechanism for ensuring that the AO's decisions are not based on any unfounded suspicion. The scheme thus, entails a preliminary enquiry, which in this case was done by the department. It is then followed by a notice under Section 148A(b) of the Act to enable the assessee to respond to the information that is available. The AO is required to consider the assessee's response under Section 148A(c) of the Act in taking an informed decision whether it is a fit case to reopen the assessment by passing an order under Section 148A(d) of the Act. This exercise is for a limited scope of merely determining whether the assessment is required to be reopened. It does not foreclose the assessee's contention regarding the genuineness of the ITRs. All rights and contentions of an assessee to support its declaration of ITR is available to the assessee.

20. At the stage of Section 148A of the Act, the AO is merely required to form a view whether he has reasons which indicate that the assessee's income has escaped assessment. In the present case, there is material on record – the sufficiency of which, this court is not required to examine – which bears a live nexus to the opinion that the petitioner's income has escaped assessment. The material indicates that there is evidence that two of the entities from whom the petitioner had procured materials are not genuine. The bank accounts indicate matching of inflows and outflows coupled with the high turnover in a short span of time. This provides the reasons for the AO to question the purchases that are declared by the petitioner.



21. In view of the above, there are no grounds to interfere with the impugned order, the impugned notice and the notice issued under Section 148 of the Act. The petition is, accordingly, dismissed. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 21, 2024

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Click here to check corrigendum, if any