

Delhi High Court Quashes SCN under section 148A and Notice under section 148

Divya Capital One Private Limited Vs Assistant Commissioner of Income Tax Circle (Delhi High Court) (W.P.(C) 7406/2022)

Delhi High court in the case of DIVYA CAPITAL ONE PRIVATE LIMITED Dated 12.05.2022 has made significant observations regarding new reassessment procedure. In this case the proposal was to reassess income to the tune of around Rs. 100000 crore only.

(a) Whether it is “information to suggest” under amended law or “reason to believe” under erstwhile law the benchmark of “escapement of income chargeable to tax” still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act. Merely because the Revenue-respondent classifies a fact already on record as “information” may vest it with the power to issue a notice of re-assessment under Section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under Section 148 post an order under Section 148A(d).

(b) Information culled out from Petitioner’s own return and records (namely Form 10DB, GST return, Form 26AS) have been used to issue notice under Section 148A(b) of the Act without mentioning as to what is wrong in these transactions, what are the apprehensions of the Assessing Officer and what are the points on which clarification is required. It is not understood as to how expenditure incurred by the Petitioner on salaries, payment of professional fees and purchases can amount to income having escaped assessment without there being any allegation that the employees/professionals to whom salaries and fees had been paid are dummies or fictitious entities.

(c) Further, the information/material stated in the impugned show cause notice dated 17th March, 2022 issued under Section 148A(b) of the Act have not been shared with the Petitioner, despite specific request made by the Petitioner thereby denying the Petitioner an effective opportunity to file a response/reply. The non-sharing of the information is violative of the rationale behind the judgment of this Court in Sabh Infrastructure Ltd. vs. Asst. CIT, 398 ITR 198 (Del)

(d) Section 148A©□ , by using the expression 'shall', to consider the reply of the Petitioner/assessee in response to notice under Section 148A(b) before making an order under Section 148A(d) of the Act has mandated an objective consideration of reply of the assessee.

(e) Significance of issuance of a show cause notice at a stage prior to issuance of a reassessment notice under Section 148 of the Act has been lost on the Respondents. Court took a judicial notice that in a majority of reassessment cases post 1st April, 2021, the orders under Section 148A(d) of the Act use a template / general reason to reject the defence of the assessee on merits, namely, "found devoid of any merit because the assessee company has failed to produce the relevant documents in respect of transactions mentioned in show cause notice.....it is established that the assessee has no proper explanation....." Consequently, court was of the opinion that a progressive as well as futuristic scheme of re-assessment whose intent is laudatory has in its implementation not only been rendered nugatory but has also had an unintended opposite result.

(f) Consequently, the impugned order dated 04th April, 2022 issued under Section 148A(d) of the Act and the notice dated 04th April, 2022 issued under Section 148 of the Act were quashed and the matter was remanded back to the Assessing Officer for a fresh determination.

Facts:

1. Total transactions of Rs.10,07,05,88,04,543/-(Rupees One lakh seven hundred and five crores eighty-eight lakhs four thousand five hundred and forty-three only) are on account of business of share trading and are alleged to have escaped assessment. In reality, (around 99%) are on account of sale of equity shares or equity oriented units otherwise than by way of actual delivery.

2. A show cause was issued U/S 148A(b) in respect of the above transactions. In reply the assessee objected to the legal validity of the notice under Section 148A(b) on the ground that there was no information that suggested that income had escaped assessment. The assessee petitioner further requested the respondent to provide the information/documents, relied upon for assuming jurisdiction, which suggest that income had escaped assessment and further requested a week's time from date of sharing such information so that the petitioner could file a detailed para wise response.

3. Although the information requested for was not shared with the petitioner, yet the petitioner filed a detailed para wise response dated 31st March, 2022 in respect of each of the transaction stated by the respondent in the show cause notice dated 17th March, 2022. The petitioner further submitted voluminous documentary evidences along with the said reply.

4. Thereafter order u/s 148A(d) dated 4th April, 2022 was passed by the AO and the consequential notice u/s 148 dated 4th April, 2022 was issued by the AO, without considering the response of the petitioner on 31st Mar.

The Hon Delhi HC held as under:

1. The information/material stated in the impugned show cause notice dhave not been shared with the Petitioner, despite specific request made by the Petitioner, thereby denying the Petitioner an effective opportunity to file a response/reply. The non-sharing of the information is violative of the rationale behind the judgment of this Court in Sabh Infrastructure Ltd. vs. Asst. CIT, 398 ITR 198 (Del).

2. The petitioner-assessee has a right to get adequate time in accordance with the Act to submit its reply. In the present case, the impugned order under Section 148A(d) of the Act has been passed in great haste and in gross violation of principle of natural justice as the Petitioner was not given reasonable time to file a reply.

3. The Assessing Officer is directed to pass a fresh reasoned order under Section 148A(d) of the Act after considering the Petitioner's detailed reply dated 31st March, 2022 in accordance with law within eight weeks