

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA**

**BEFORE SHRI SANJAY GARG, JM  
AND  
SHRI RAJESH KUMAR, AM**

**ITA No. 1642 & 1643/KOL/2024  
(Assessment Years: 2018-19 & 2021-22)**

**M/s Diach Chemicals &  
Pigments Pvt. Ld.**  
NH-6, Jaladhulagori, Dhulagarh,  
Indusrail Park, Howrah,  
Kolkata-711302, West Bengal

**Vs.**

**DCIT, Central Circle 4(2),  
Aaykar Bhawan Poorva, 110,  
Shanti Pally, E.M. Bypass,  
Kolkata-700007, West Bengal**

**(Appellant)**

**(Respondent)**

**PAN No. AACCD1101A**

**Assessee by** : Shri S.M. Surana &  
Shri Sunil Surana, ARs  
**Revenue by** : Shri Prakash Nath Barnwal, DR

**Date of hearing:** 08.10.2024  
**Date of pronouncement :** 20.12.2024

**ORDER**

**Per Rajesh Kumar, AM:**

These appeals are preferred by the assessee against the order of the Commissioner of Income-tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)") even dated 29.06.2024 for the AYs 2018-19 & 2021-22.

**ITA No. 1642/KOL/2024**

02. In ground no. 1 to 4, the assessee has challenged the validity of reassessment proceedings on the ground that the assessee was not having any transactions with any party as mentioned in show cause notice u/s 148A(b) of the Act and that the order passed u/s 148A(d) of the Act, initiated the reassessment proceedings in respect of that



issue for which no explanation was called for u/s 148A(b) of the Act and therefore, the entire reassessment proceedings is invalid and nullity in the eyes of law.

03. The facts in brief are that the assessee filed the return of income on 29.09.2018, declaring total income of ₹3,24,05,910/-, which was selected for scrutiny and assessment was completed vide order dated 23.04.2021 passed u/s 143(3) by assessing the total income at ₹4,75,81,150/-. Thereafter, search operation u/s 132 of the Act was conducted on 07.12.2021 on Diach Group. M/s Diach Chemicals & Pigments Pvt. Ltd. is a Kolkata based manufacturer and supplier of pure lead and lead alloys such as Antimonial Lead Alloy, Calcium Lead Alloy, High Tin Lead Alloy, Lead Oxide, High Antimonial Lead and Lead tin Alloy. The notice u/s 148 of the Act was issued on 31.03.2022, after the prior approval of the competent authority the said notices were complied with by filing the return of income on 04.05.2022. Therefore, the statutory notices issued u/s 142(1) of the Act dated 29.09.2022 along with questionnaire. Finally, the assessment was completed u/s 147 of the Act vide order dated 28.03.2023, making an addition of ₹9,68,45,467/- and addition on account of PF and ESI contribution ₹ 7,34,624/-. The assessee challenged the validity of the reassessment proceedings for which CIT (A) after taking into consideration the contention and submission of the assessee, dismissed the appeal of the assessee by observing and holding as under:-

*"5.2.2. The AO had passed order u/s 148A(d) saying that the ass assessee has obtained bogus bills from Mr. Deepak Upadhaya who was having more than two dozens dummy companies. However, the AO mistakenly communicated reasons u/s 148A(b) of the Act to the assessee with the facts of unrelated party which is a mistake happened inadvertently. But the AO has communicated proper reasons while passing*



*order u/s 148A(d) of the Act. The AO corrected his inadvertent mistake crept into his order u/s 148A(b). The AO has corrected his inadvertent mistake before issuing notice u/s 148 of the Act by himself. Therefore, the assessee's allegation of missing link between reasons for reopening and formation of belief were corrected voluntarily. Hence, the grounds raised by the assessee by questioning the validity of proceedings u/s 147/148 is not acceptable. Therefore, these grounds raised by the assessee are dismissed."*

04. The Id. AR vehemently submitted before us that the reassessment proceedings were invalidly initiated and therefore, the assessment order framed is in valid and nullity in the eyes of law. The Id. AR while referring to the notice issued under clause (b) of Section 148A of the Act dated 17.03.2022, wherein at page no. 4 of the notice the Id. AO has stated that M/s Saviri Ispat India Pvt. Ltd. has taken accommodation entry and brought back their unaccounted income into their regular books of accounts in the guise of bogus share/ share premium, unsecured loans etc. amounting to ₹50,00,000/- as escaped assessment during F.Y.2017-18 relevant to A.Y. 201-19 in the hands of Savitri Ispat India Pvt. Ltd. Accordingly, the Id. AO issued a show cause notice to the assessee and asked, as to why the notice u/s 148 of the Act should not be issued on the basis of the above narrated evidence-based information which suggests income chargeable to tax has escaped assessment. Therefore, the Id. AR referred to the order passed by the Id. AO u/s 148A(d) of the Act dated 31.03.2022, wherein the Id. AR pointed out in Para 9 of page 5, the Id. AO has stated that based on the information received a show cause notice u/s 148A(b) of the Act was issued to the assessee on 17.03.2022 with prior approval of the competent authority and in response to the said show cause the assessee submitted that it had no transactions as mentioned in the notice. Hence, reassessment proceedings may kindly not be initiated against the assessee. However, the Id. AO thereafter noted that the sum of ₹1,69,40,316/- as escaped assessment in the



hands of the assessee and accordingly, issue notice u/s 148 of the Act. The Id. AR vehemently submitted that notice u/s 148A(b) and order u/s 148A(d) of the Act would show that the Id. AO has clearly taken different issues. In 148A(b) the AO states that Savitri Ispat India Pvt. Ltd has taken accommodation entries and brought back own money in the form of share capital/share premium into the books of accounts and thus the income has escaped assessment whereas in 148A(d) the assessee has taken accommodation entries through bogus billing amounting to Rs. 1,69,40,316/- and accordingly the income has escaped assessment. Therefore, the AO now seeks propose reassessment on the reasons which was not subject matter of the original notice issued u/s 148A(b).

05. After hearing the rival contentions and perused the materials available on record. We find that undisputedly the notice u/s 148AB of the Act has been issued by the Id. AO on the ground that transactions worth ₹50,00,000/- with M/s Savitri Ispat India Pvt. Ltd. were made which were alleged to be bogus, therefore, order u/s 148A(d) was passed on 31.03.2022, wherein sum of ₹1,69,40,316/- as escaped assessment in the hands of the assessee and accordingly, issue notice u/s 148 of the Act was issued and finally, the Id. AO after making enquiries in the assessment proceedings made addition of ₹9,68,45,467/- u/s 69C of the Act by disallowing the entire purchase which relates to non-failure of return of income.
06. In the appellate proceedings, the Id. CIT (A) after examining the details and evidences furnished by the assessee came to the conclusion that the assessee had filed the copies of ledger account of the parties, copy of bill issued by them, bank statement showing



payments, GST number, stock register month wise and year wise details of purchases, raw materials consumption, transportation details of the goods purchase etc. and accordingly, there is no discrepancy found in the books of account maintained by the assessee which were satisfactorily audited also. Besides, the Id. CIT (A) noticed that the stock details were mentioned in the tax audit report and finally net profit of 2% on the total purchases were applied for estimating the income of the assessee. Now, the issue present before us, whether the re-assessment proceedings are itself valid or not, especially in view of the fact that in the original notice issued u/s 148A(b) of the Act dated 17.03.2022, the Id. AO alleged as under:-

"6. The details of such beneficiary which was identified from the analysis of HDFC a/c no. 00082340013465 of M/s Betastar Consultancy Services LLP and a/c no. 00082340021615 of M/s Ratnanidhi Advisory Services LLP was as under:

Sl No.	Beneficiaries Name	Amount	F.Y.	PAN	Jurisdiction
1.	Savitri Ispat India Pvt. Ltd.	₹50,00,000	2017-18	AAICS3905R	Central Circle-4(2) Kolkata

7. In view of above evidences on records, it is seen that M/s Savitri Ispat India Pvt. Ltd. has taken accommodation entry and brought back their unaccounted income into their regular books of accounts in the guise of bogus share/share premium, unsecured loans etc., amounting to Rs.50,00,000/- during the F.Y. 2017-18 relevant to the A.Y. 2018-19. In view of the above, income chargeable to tax of Rs.50,00,000/- has escaped assessment in A.Y. 2018-19 in the hands of M/s Savitri Ispat India Pvt. Ltd.

8. You are therefore requested to show cause as to why a notice u/s 148 of the I.T. Act should not be issued on the basis of the above narrated evidence-based information which suggests that income chargeable to tax has escaped assessment in your case for the A.Y. 2018-19 amounts to Rs.50,00,000/-.

9. Your reply should reach this office by 21.03.2022 positively failing which it will be presumed that you have no objection if notice u/s 148 of the Income-tax Act, 1961 (the Act) be issued on the basis of the above stated reasons."

07. Therefore, the order u/s 148A(d) of the Act was passed dated 31.03.2022, wherein the Id. AO noted as under:-



"8. Necessary enquiry has already been made in these cases and information is available on INSIGHT portal and since in the instant cases, the information flagged in respect of the assessee for the relevant assessment year is in accordance with the Risk Management Strategy, enquiry u/s 148A(a) is not considered necessary.

9. Based on the information received as stated above a show cause notice u/s 148A(b) of the IT Act was issued to the assessee on 17.03.2022 with the prior approval of the specified authority requesting the assessee to submit the explanation by 24.03.2022. In response to show cause, the assessee only submitted that we do hereby state that we have no transactions as mentioned in above notice. Hence, reassessment proceedings may kindly not be initiated against us..." The assessee failed to substantiate its claim without any documentary evidence and the claim of the assessee is not accepted. Therefore, it is considered to be a fit case for issuing notice u/s 148 of the IT Act. In this case, a sum of Rs. 1,69,40,316/- has escaped assessment in the hand of the assessee and therefore, the case stands the merit of reopening the assessment. Accordingly notice u/s 148 of the IT Act is being issued to initiate the proceedings u/s 147 of the IT Act."

08. Finally, the addition was made of ₹9,68,45,467/- in respect of purchases made from non-filing of IT return. In our view, the very initiation of proceedings u/s 148B of the Act are itself flawed and full of infirmities and the issue for which the notice was issued were not carried into the order passed u/s 148A(d) of the Act on 31<sup>st</sup>.03.2022 as is apparent from the above. We note that in Para 6 of the order issued u/s 148A(d) of the Act, the AO noted that the assessee has taken accommodation entry for bogus billing amounting to ₹1,69,43,316/- and accordingly, the income has escaped assessment. In our opinion, the casualness in issuance of notice u/s 148A(b) of the Act and then passing the order u/s 148A(d) of the Act is apparent from the above. Therefore, re-assessment proceeding is flawed and cannot be stayed. The case of the assessee find force from the decision of Hon'ble Delhi High Court in the case of *Banyan Real Estate Fund Mauritius Vs. ACIT in WP(c) 10485/2023, CM Appeal, 40640/2023 (Direction) & C Appl 40642/2023*, wherein similar issue has been decided in favour of the assessee. Similarly, Hon'ble



Karnataka High at Bengaluru Bench in case of Smt. Vasanthi Ramdas Pai Vs. ITO in W.P. No. 8797/2022 has held as under:-

*"(iii) A perusal of the impugned orders issued under Section 148A(d) clearly shows that these contentions of the assesses have not been addressed at all. In fact, at paragraph 6 of the order, non-disclosure of the said transactions has been noted as one reason for re-opening. It is also found that there is a definitive finding that the entire scheme of demergers, merger and amalgamation is done with a sole intention of avoiding tax liability and that the transactions were independently verified to be nothing but 'round trip financing lacking commercial substance and not for bonafide purposes'. This finding is clearly well beyond what is contained in the notice issued under Section 148A(b) and could not have been rendered without giving the petitioners adequate opportunity to rebut the assertion. In fact, coming to a definitive conclusion that there is avoidance of tax liability through independent verification but not disclosing the reasons or materials based on which such findings could be rendered and without giving an opportunity to the petitioners to put their case clearly. Thus, there is a gross violation of the principles of natural justice.*

*(iv) It hardly needs to be stated that the order to be passed under Section 148A(d) cannot transcend the scope of proposal notice under Section 148A(b) inasmuch as such a notice happens to be the foundation on the basis of which such an order can be passed, and not otherwise. That is how the statutory scheme is devised. Definitive conclusions as to grounds that are not indicated in the proposal notice cannot be said to be in line with the scheme and purpose of Section 148A. This apart, non-consideration of the reply relating to Section 56 and Section 47 would make the order also violative of the mandatory requirements of Section 148A. This view is supported by the latest Division Bench decision of Calcutta High Court in SOMNATH DEALTRADE PRIVATE LIMITED. VERSUS UNION OF INDIA & ORS [2023] 455 ITR 720 (Cal) wherein it has been observed as under:*

*"...The assessing officer no doubt has referred to the assessee's reply dated 9th April, 2022 but there is no discussion as to the objection raised by the assessee in their reply. There is no discussion on the documents, which were placed by the assessee along with the reply with soft copies uploaded in the e-proceeding. Though the assessing officer states that "in the light of the discussion and material available on record he was of the opinion that income chargeable to tax has escaped assessment", there is no discussion on any of the materials, which were placed by the assessee along with the reply dated 9th April, 2022. Thus, it can be safely held that the order dated 13th April, 2022 passed under Section 148A(d) of the Act is not sustainable and liable to be set aside.'*

*A bit earlier, similar view has been taken by the Division Bench decision of Gujarat High Court in SHRENIK SUDHIRVIMAWALA vs. ACIT, 2022 (5) TMI 528 - GUJARAT HIGH COURT.*

*(v) It is true that the Statements of Objections have been filed in these petitions and they are supported by affidavits. Several contentions have been taken up by the*

respondents supportive of the impugned notices & orders. However, that would not come to their rescue. It hardly needs to be reiterated that the validity of the orders made by the statutory authorities has to be adjudged on the basis of the reasons contained in the womb of these orders; such reasons cannot be supplemented by way of affidavit or otherwise. What the Apex Court said in COMMISSIONER OF POLICE vs. GORDHANDAS BHANJI AIR 1952 SC 16, wherein it was observed as under:

*"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." Referring to said decision, Krishna Iyer J., in MOHINDER GILL supra, has wittily observed: 'Orders are not like old wine becoming better as they grow older.*

*" (I) AS TO WHETHER MATTER MERITS REMAND OR CLOSURE HERE ITSELF:*

*(i) Both the sides having argued at length have also filed the Written Submissions touching merits of the matter that would belong to the domain of Assessing Officer. There is no need for this court to undertake a deeper examination of the aspects argued at the Bar namely whether the transactions in question amounted to transfer at all in view of section 47(vid) of the 1961 Act which enacts a fiction as to what is not a 'transfer' which otherwise in common parlance would have amounted to. Similarly, it was also debated at the Bar that as to whether the transactions in question were chargeable to income tax under the head 'income from other sources' under section 56(2). In addition, it was also fiercely argued as to whether the subject transactions amounted to short term or long term capital gains.*

*(ii) All the above aspects do not merit consideration in view of this court specifically faltering the impugned notices & orders, inter alia on the ground of lack of jurisdictional facts. For the same reason, the matter does not warrant remand; the lis should attain finality at the hands of this court itself, all contentions having been argued at the Bar, have duly been considered on merits. Even otherwise, the remand would prove futile.*

*In the above circumstances, these Writ Petitions having been allowed, a Writ of Certiorari issues quashing the impugned orders both dated 31.3.2022 under Section 148A and also the two impugned notices both dated 31.3.2022 issued by the answering respondent under Section 148 of the Income Tax Act, 1961. Costs made easy."*

09. Accordingly, we quash the notices issued re-assessment proceedings as well as the consequent order passed. The appeal of the assessee is allowed.

**ITA No. 1643/KOL/2024**

010. The issue raised in this appeal is against the assessment order passed by the Id. AO being invalid and bad in law. Since, the issue raised in this appeal for A.Y. 2021-22 is similar to ITA No.1642 for A.Y. 2018-19 as decided above. Therefore, our decision would apply, mutatis mutandis, to ITA No. 1643/Kol/2023 A.Y. 2021-22. Hence, the appeal of assessee in ITA No.1643/KOL/2023 is allowed.

011. In the result, both the appeals of the assessee are allowed. Order pronounced in the open court on 20.12.2024.

Sd/-  
(SANJAY GARG)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 20.12.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata