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

% *Date of Decision: 07.07.2025*

+ **W.P.(C) 1155/2024 & CM No.4824/2024**

BABA GLOBAL LTD

.....Petitioner

Through: Mr. Ved Jain, Mr. Nischay Kantoor
& Ms. Soniya Dodeja, Advs.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX,

CENTRAL CIRCLE 29 & ORS.

.....Respondents

Through: Mr. Shlok Chandra, Ms. Nancy Jain,
and Ms. Madhavi Shukla, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner [**Assessee**] has filed the present petition, *inter alia*, impugning the following notices/orders:

- (i) Notice dated 31.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [**the Act**];
- (ii) Corrigendum letter dated 28.04.2023;
- (iii) Order dated 27.04.2023 under Section 148(d) of the Act sent by e-mail dated 28.04.2023 at 12:31 AM; and
- (iv) Notice dated 27.04.2023 sent by e-mail dated 28.04.2023 at 12:08 AM.

2. It is the petitioner's case that the notice dated 27.04.2023 issued under Section 148 of the Act [**impugned notice**] for Assessment Year [**AY**]



2019-20 is invalid as it was issued beyond the period of limitation. The last date for issuance of the notice was 31.03.2023. After accounting for the exclusion/extensions in terms of provisos to Section 149 of the Act, the period to issue such a notice expired on 27.04.2023 and the impugned notice was sent on 28.04.2023.

3. It is also the petitioner's case that the impugned notice is invalid as the Assessing Officer [AO] had decided that it was not a fit case for issuance of such a notice and had, on 27.04.2023, passed an order under Section 148A(d) of the Act dropping the said proceedings. However, the AO had further reviewed the said order – as it appears at the instance of the 'specified authority' – and had thereafter, issued another order dated 27.04.2023 under Section 148A(b) of the Act, which was received on 28.04.2023 at 12:31 AM, holding that it was a fit case for issuance of notice under Section 148 of the Act. However, the AO does not have any power to review an order under Section 148A(d) of the Act.

4. Briefly stated the relevant facts necessary to address the issue involved in the present case are as under:

4.1 The petitioner filed its return of income for AY 2019-20 on 08.11.2019. Thereafter, on 10.06.2020, it filed a revised return declaring a total income of ₹1,63,07,320/-.

4.2 On 31.03.2023, the AO issued a show cause notice under Section 148A(b) of the Act calling upon the petitioner to show cause why a notice under Section 148 of the Act not be issued. The said notice indicated that the AO had information to the effect that the petitioner had remitted amounts through its saving bank accounts and the same were not commensurate with



the income tax returns filed for the relevant assessment year. The petitioner was called upon to furnish a reply to the notice on 28.04.2023.

4.3 The petitioner responded to the said notice on 12.04.2023, *inter alia*, explaining the account on which the remittances were made. The Assessee also pointed out that some of the remittances did not pertain to the previous year relevant to AY 2019-20.

4.4 On 27.04.2023, the AO passed an order examining the information available on record as well as the petitioner's response to the notice under Section 148A(c) of the Act and accepted the same. The relevant extract of the said order is reproduced below:

“Comments of the AO

5.1 Reply furnished by the assessee has been considered u/s 148A(c) of the Act and found to be tenable as per the facts and findings of the case discussed in foregoing paras.

5.2 The assessee contended that the transactions under consideration were its business payments/receipts and were duly accounted for in its books of accounts relating to the AY 2019-20.

From the perusal of the invoices raised by the assessee, bank statements and ledgers of concerned parties, the claim of the assessee has been found correct.

5.3 The contentions of the assessee are examined and found tenable. In view of the above factual and legal position, the initiation of proceeding u/s 147 is not warranted in this case.

5.4 In view of the above facts as discussed, and on the basis of material available on record and submission of the assessee, it is suggested that the issuance of notice u/s 148 of the Act is not required. Hence, the proceedings u/s 148A are being



dropped.

This order is being passed after obtaining prior approval F.No. Pr.CIT(C)-3/148A(d)/2023-24/218 dated 27.04.2023 of the Principal Commissioner of Income Tax (Central)-3, New Delhi as per section 151 (i) of the Act.”

4.5 Thereafter, the petitioner received an e-mail, which was sent at 12:08 AM on 28.04.2023. The said e-mail included the following attachments:

- A covering letter dated 28.04.2023, which was digitally signed at 12:05 AM on 28.04.2023, which reads as:

“Please find attached notice”

- A scanned notice under Section 148 of the Act, which was signed manually. The said notice did not bear either the DIN or the notice number.

4.6 Thereafter, at 12:22 AM on 28.04.2023, the AO sent an e-mail enclosing therewith a corrigendum dated 28.04.2023, which was digitally signed at 12:20 AM on 28.04.2023. The contents of the said corrigendum are reproduced below:

“Corrigendum

The letter issued vide DIN ITBA/COM/F/17/2023-24/105209366(1) dated 27.04.2023 may kindly be treated as null and void.”

4.7 The aforesaid e-mail was followed by an e-mail sent at 12:31 AM on 28.04.2023 enclosing therewith an order under Section 148A(d) of the Act [impugned order]. In terms of the impugned order, the AO held that it was a fit case for issuance of a notice under Section 148 of the Act. Paragraph 5 of the said order, which was completely contrary to the earlier order passed



under Section 148A(d) of the Act, is reproduced below:

“5. The rebuttal of objections raised by the assessee

5.1 Reply furnished by the assessee has been considered u/s 148A(c) of the Act and found not on merit as per the facts and findings of the case discussed in foregoing paras.

5.2 The assessee contended that the transactions under consideration were the business receipts / payments against export / import of goods during the FY 2018-19 (i.e. AY 2019-20).

5.3 The information received consisting of details of Inward / Outward Remittances indicates to a difference between the aggregate Invoice Value and the actual amount received in assessee's bank. From the perusal of the ITR filed the assessee for the AY 2019-20, it is observed that the assessee has declared the Profit of Rs. 38,393/- on account of foreign exchange fluctuation. However, it failed to produce the detailed reconciliation of all such transactions relating to the concerned AY in his reply. Thus, the issue needs to be examined for initiating remedial action in this case.

It is observed that the difference due to currency fluctuation varies from 1%-2% of the transaction value. The total value of such transactions is Rs. 10,27,99,796/-. 2% of this amount comes to be Rs. 20,55,995/-.

In view of the above factual and legal position, the initiation of proceeding u/s 147 is warranted as per statute. Thus, the contention of the assessee does not hold any ground and is hereby dismissed.

5.4 In view of the above facts as discussed, on the basis of material available on record and submission of the assessee, it is suggested that the profit on account of currency fluctuation of Rs. 20,55,995/- has escaped assessment for AY 2019-20. Hence, it is a fit case for issuance of notice u/s 148 of the



Act.”

5. It is clear from the facts as narrated above the AO had sought to review its earlier order passed under Section 148A(d) of the Act. Whereas in terms of the order dated 27.04.2023, the AO had accepted the explanation provided by the Assessee; it had rejected the same by the impugned order. It is contended on behalf of the Revenue that the impugned order had merely corrected the earlier order issued on 27.04.2023. However, we find no merit in the said contention as the plain reading of the order dated 27.04.2023 indicates that the AO had accepted the Assessee’s contention for the reasons as are articulated in the said order. However, the reasoning in the impugned order is completely different and the AO has now sought to provide reasons to support a contrary conclusion. Clearly, this is not a case of an inadvertent typographical or a clerical error. The reasons for which the AO had concluded that it was not a fit case for issuance of notice under Section 148 of the Act is well articulated in the first order.

6. The explanation provided by the Revenue in its counter affidavit is to the effect that the AO had passed an order dropping the proceedings. However, it had subsequently realised that its order was contrary to the merits and contrary to the approval of the Principal Commissioner of Income Tax [PCIT] granted for re-opening of the assessment and issuance of the notice under Section 148 of the Act. The relevant extract of the counter affidavit filed on behalf of the Revenue is set out below:

“7. Consequently the assessee filed its reply on 12.04.2023 in response to notice dt. 31.03.2023 issued u/s 148A(b) of the Act. Thereafter, an order u/s 148A(d) of the Act was



passed on 27.04.2023 dropping the proceedings. However, subsequently it was realised that the order of dropping the proceedings u/s 148A(d) of the Act was erroneously passed contrary to the merits of the case and contrary to the approval of the PCIT for reopening of assessment and issuance of notice u/s 148 of the Act in this case issued vide letter dated 27.04.2023. The approval of PCIT is attached herewith as Annexure 1.

8. Thereafter, rectifying the mistake, immediately a fresh order dated 27.04.2023 with DIN and letter No. in ITBA/COM/F/17/2023-24/1052409458(1) was passed rebutting the objections of the assessee and holding that the case of assessee was a fit case for issuance of notice u/s 148 of the Act on the ground that profit on account of currency fluctuation of Rs. 20,55,995/- has escaped assessment for AY 2019-20. Consequently, notice u/s 148 of the Act dated 27.04.2023 was issued to the assessee. A corrigendum dated 28.04.2023 was also issued for treating the (erroneous) order dated 27.04.2023 passed u/s. 148A(d) as null and void. The above corrigendum was served to the assessee vide email dated 28.04.2023.”

7. It appears from the above that the AO had passed an order holding that it was not a fit case for issuance of a notice under Section 148 of the Act. However, this order was, subsequently, altered as according to the AO, it was not in conformity with the approval obtained.

8. It does *prima facie* appear that the procedure adopted by the AO is contrary to law. At this stage, it would be relevant to refer to Section 148A of the Act as was applicable at the material time. The same is reproduced below:

“148-A. *Conducting inquiry, providing opportunity before issue of notice under Section 148.*—The Assessing Officer



shall, before issuing any notice under Section 148,—

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

- (a) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A in the case of the assessee on or after



the 1st day of April, 2021; or

- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under Section 132 or requisitioned under Section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee; or
- (d) the Assessing Officer has received any information under the scheme notified under Section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in Section 151.”

9. A plain reading of Section 148A(d) of the Act indicates that the AO has to decide on the basis of material on record including the reply of an Assessee whether or not it is a fit case to issue a notice under Section 148 of the Act by passing an order with the prior approval of the specified authority. The AO is a deciding authority.

10. In the present case, it is apparent that the AO had decided that it was not a fit case for issuance of a notice under Section 148 of the Act but had,



thereafter, revised the said decision apparently on the basis of an approval of the specified authority.

11. We also find merit in the petitioner's contention that the impugned notice has been issued beyond the period of limitation. It is not disputed that the present case does not fall under clause (b) of sub-section (1) of Section 149 of the Act. Thus, in terms of clause (a) of sub-section (1) of Section 149 of the Act, the AO was proscribed from issuing a notice after three years from the end of the relevant assessment year. It follows that the last date for issuance of a notice under Section 148 of the Act was 31.03.2023. The AO had issued a notice under Section 148A(b) of the Act on the last date of expiry of the period of limitation and had afforded the petitioner an opportunity to respond to the said notice by 20.04.2023. In terms of the Fifth proviso to Section 149(1) of the Act, the time allowed to an Assessee to respond to the notice under Section 148A(b) of the Act is required to be excluded. Further, in terms of the Sixth proviso to Section 149(1) of the Act if the time available to the AO for passing an order under Section 148A(d) of the Act does not exceed seven days, the same was required to be extended to a period of seven days. Since the notice under Section 148A(b) was issued on 31.03.2023 – that is, the last date of expiry of limitation – the AO did not have seven days' time to pass an order under Section 148A(d) of the Act and the period for passing an order was required to be extended by a period of seven days from 20.04.2023. This period expired on 27.04.2023. Therefore, in terms of Section 149(1)(a) of the Act, the impugned notice was issued beyond the period of limitation, notwithstanding the time available to the AO for passing an order under Section 148A(d) of the Act. Concededly,



this issue is covered by the decision of this Court in *Raminder Singh v. Assistant Commissioner of Income Tax Circle 52(1) New Delhi: Neutral Citation No.:2023:DHC:6672-DB*.

12. In view of the above, the impugned order and the impugned notice are set aside.

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

VIBHU BAKHRU, J

TEJAS KARIA, J

**JULY 07, 2025
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Click here to check corrigendum, if any