

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

% Judgment delivered on: 10.01.2025

+ **W.P.(C) 17570/2022**

SONANSH CREATIONS PVT. LTD.

.....Petitioner

Versus

ASSISTANT COMMISSIONER OF INCOME
TAX AND ANR.

....Respondents

Advocates who appeared in this case:

For the Petitioner: Mr C.S. Aggarwal, Senior Advocate with Mr Ravi Pratap Mall and Mr Uma Shankar, Advocates.

For the Respondents: Mr Aseem Chawla, Senior Standing Counsel with Ms Monica Benjamin, Ms Priya Sarkar and Ms Pratishtha Chaudhary, Advocates.

CORAM

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MSJUSTICE SWARANA KANTA SHARMA

JUDGMENT**VIBHU BAKHRU, ACJ**

1. The petitioner has filed the present petition impugning an order dated 30.07.2022 (hereafter *the impugned order*) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) in respect of assessment year (AY) 2015-16. The petitioner also impugns a notice dated 30.07.2022 (hereafter *the impugned notice*) issued under Section 148 of the Act for the AY 2015-16.



2. The petitioner contests the assumption that there is any information, which could lead to the conclusion that the petitioner's income has escaped assessment. Additionally, the petitioner contends that the value of the transactions identified by the Assessing Officer (AO) as suggestive of the petitioner's income escaping assessment is less than ₹50,00,000/-. Thus, the impugned notice is beyond the period of limitation as specified under Section 149(1)(a) of the Act.

FACTUAL CONTEXT

3. The petitioner is a company incorporated under the Companies Act, 1956. The petitioner's former name was M/s Sonali Realtech Pvt. Ltd. However, the petitioner changed its name with effect from 30.09.2019 to its current name (M/s Sonansh Creations Pvt. Ltd.).

4. The petitioner states that it has been consistently filing its return of income for past several years. It had filed its return for the AY 2015-16 on 26.09.2015.

5. The AO had issued a notice dated 30.06.2021 under Section 148 of the Act calling upon the petitioner to deliver its return of income for the AY 2015-16 within a period of thirty days from the date of service of the said notice. The petitioner responded to the said notice by objecting to its issuance without following the procedure as prescribed under Section 148A of the Act. Thereafter, the petitioner filed a writ petition [being W.P.(C) 518/2022] in this court challenging the issuance of the notice under Section 148 of the Act without following the procedure as prescribed under Section 148A of the Act. This court,



following its earlier decision in *Mon Mohan Kohli v. Assistant Commissioner of Income Tax and Ors.*¹, allowed the petition and set aside the said notice.

6. However, in view of the subsequent decision of the Supreme Court in *Union of India & Ors. v. Ashish Agarwal*², the proceedings were revived.

7. The AO issued a fresh notice dated 25.05.2022 under Section 148A(b) of the Act calling upon the petitioner to respond to the information as available with the AO, which is suggestive of the petitioner's income escaping assessment. According to the AO, the petitioner was a party to the accommodation entries of a value of ₹66,44,134/-, from companies related to one Sh. Joginder Pal Gupta.

8. The petitioner responded to the said notice by a letter dated 30.05.2022 requesting the AO to supply the copy of the documents, which were stated to have been attached with the notice dated 25.05.2022, but were not uploaded. Thereafter, on 31.05.2022, the petitioner forwarded the ledger accounts of the three entities, namely, Nimisha Marketing and Services Pvt. Ltd., Anupam Buildmart Pvt. Ltd. and GMZ Commodities Pvt. Ltd. These were the companies which were alleged to be involved in providing accommodation entries to the petitioner. The petitioner claimed that the value of the transaction with the said companies was ₹47,39,128/-, which was less than ₹50,00,000/-. The petitioner also claimed that out of the aforesaid

¹ (2012) 441 ITR 207

² (2022) 444 ITR 1



sum, an amount of ₹9,89,128/- entered into with GMZ Commodities Pvt. Ltd. was on account of the profit on sale of shares and the petitioner had duly paid tax on the same.

9. The petitioner also sent letters dated 04.06.2022 and 07.06.2022 forwarding the ledger accounts of the parties as well as seeking material on the basis of which the AO had alleged that the petitioner's income had escaped assessment.

10. Notwithstanding the petitioner's response that the value of transactions with three entities in question, which according to the AO, was suggestive of the petitioner's income escaping assessment, were less than ₹50,00,000/-; the AO issued the impugned order under Section 148A(d) of the Act holding that it was a fit case to issue a notice under Section 148 of the Act. The said order was served on the petitioner along with notice dated 30.07.2022 issued under Section 148 of the Act.

SUBMISSIONS

11. The learned counsel appearing for the petitioner has challenged the impugned order and the impugned notice on, essentially, three fronts. First, he stated that the AO could not on the basis of the material available on record including the petitioner's response to the notice under Section 148A(b) of the Act, conclude that it had reasons to believe that the petitioner's income had escaped assessment for the AY 2015-16. Therefore, the impugned order was issued without jurisdiction.



12. Second, he submitted that the AO had not supplied the material on the basis of which the impugned order was passed, as directed by the Supreme Court in terms of its order dated 04.05.2022 passed in *Union of India & Ors. v. Ashish Agarwal*².

13. Third, he submitted that the impugned notice was issued at the behest of the superior authority without application of mind. The learned counsel for the petitioner contended that the documents furnished indicate that the AO had prepared a draft order holding that it was not a fit case for issuance of notice under Section 148 of the Act. However, the Principal Chief Commissioner had noted that it was a fit case for issuance of notice and accordingly, the impugned order was passed.

14. Lastly, it is submitted that the impugned notice has been issued beyond the stipulated period of three years under Section 149(1)(a) of the Act.

15. The learned counsel appearing for the Revenue countered the aforesaid submissions. He submitted that the Revenue had information which was suggestive of the petitioner's income escaping assessment and it was not necessary to determine the correctness of the said information at the stage of passing an order under Section 148A(d) of the Act. He submitted that so long as there was some information suggesting that the petitioner's income had escaped assessment, the order for re-opening the assessment could not be faulted.



REASONS AND CONCLUSION

16. The principal question to be addressed is whether the decision that it is a fit case for issuance of notice under Section 148 of the Act, is sustainable. As noted above, the AO had issued a notice dated 25.05.2022 under Section 148A(b) of the Act setting out the information available, which was suggestive of the petitioner's income escaping assessment. The information, which according to the AO, suggested that the petitioner's income for the AY 2015-16 had escaped assessment, as set out in the notice dated 25.05.2022 under Section 148A(b) of the Act, is reproduced below:

“Information has been received on the Insight Portal in the case of M/s Sonali Realtech Pvt. Ltd. (Sonansh Creations Pvt. Ltd.) for F.Y. 2014-15. On perusal of the information, it is found that a search & seizure operation was conducted on Sh. Jogindar Pal Gupta on 23/12/2019 in the case of DAG Group. Sh. Joginder Pal Gupta (JP) is an entry operator, who controlled several shell companies and provided accommodation entries to beneficiaries. Joginder Pal Gupta in his statement recorded u/s 132(4) on oath on 23/12/2019 stated that he is an accommodation entry provider through various paper companies wherein he is the director of companies. He gave a list of entities (including company and firm) controlled and managed by him in which M/s Anuj Buildcon Pvt. Ltd. Is one of them.

Joginder Pal Gupta elaborated on the modus operandi of accommodation entry by stating that they take cash from parties who require entries in their books through banking system. He stated that there are several companies controlled by him wherein capital was built over time by taking entries and cash deposit. Whenever a client gives cash, they send an RTGS or cheque of an equal amount to his company from one of his dummy companies. It is shown as unsecured loan by JP's company to client's company; The client company also pays



interest which ranges from 9-12% p.a and also deduct TDS on such payments. However, it is done only for statutory purposes and to make the transaction not look bogus. He was asked as to how and in which form cash was introduced in the entities controlled by JP in his statement recorded on 24/12/2019 at his business premises. He stated that cash was given to various individuals/entities related to him for deposit in their bank account from whom RTGS/NEFT were received in companies controlled by JP. It was then subsequently transferred to beneficiary parties in the form of loans and advances from whom cash was received in the first place. The cash also acquired form of share capital and securities premium in JP related companies after layering of the same through few other entities. M/s Sonali Realtech Pvt. Ltd. (Sonansh Creations Pvt. Ltd.) is one of the beneficiaries. As per information, information value involved in the case of M/s Sonali Realtech Pvt. Ltd. (Sonansh Creations Pvt. Ltd.) with Nimisha Marketing & Services Pvt. Ltd., Anupam Buildmart Pvt. Ltd. and GMZ Commodities Pvt. Ltd. during F.Y. 2014-15 is Rs.66,44,134/-.”

17. It is apparent from the above that the reassessment proceedings were proposed to be initiated on the basis that the petitioner was one of the beneficiaries of entries from three entities – Nimisha Marketing & Services Pvt. Ltd., Anupam Buildmart Pvt. Ltd., and GMZ Commodities Pvt. Ltd. during the financial year (FY) 2014-15. The value of the transactions with the said companies was quantified at ₹66,44,134/-.

18. On receipt of the said notice, the petitioner had sought further information and material on the basis of which it was suggested that the petitioner’s income being the amount reflected by the aforesaid entries relating to the aforesaid entities, aggregating a value of ₹66,44,134/-, had escaped assessment. According to the petitioner,



there was no material to establish that it had entered into the transactions with the three named companies of the value as stated in the notice issued under Section 148A(b) of the Act. However, it was admitted by the petitioner that it did have transactions with the three entities during the FY 2014-15 but the correct aggregate value of those transactions was ₹47,39,128/-. It is relevant to refer to the reply dated 31.05.2022 to the notice issued under Section 148A(b) of the Act. The same is set out below:

“31st May 2022

**To
The Deputy Commissioner of Income Tax
Circle 22(2)
C.R Building
New Delhi -110002**

Subject: Subsequent proceedings with reference to section 148A(b) in consequence to Hon'ble SC order dated 04.05.2022 in matter of M/s Sonansh Creations Private Limited for the AY 2015-16.

Dear Sir

This is in continuation to our earlier letter dated 31st May 2022 wherein certain details/documents were provided. Please find attach herewith ledger account of the following parties for the financial year 2014-2015:

Sr. No.	Name of the Party	Amount Involved
1.	Nimisha Marketing & Services Private Limited	20.55.000/-
2.	Anupam Buildmart Private Limited	16,95,000/-
3.	GMZ Commodities Private Limited	9,89,128/-
	Total	47,39,128/-



The aggregate of amount, as alleged, involved in respect of above said parties is Rs.47,39,128/, out of which transaction of Rs.9,89,128/- entered into with GMZ Commodities Private Limited is on account of profit on sale of shares. The said income is duly shown as income in the Profit and Loss Account and accordingly paid tax on said amount of Rs.989128/-. The copy of the Statement of Profit and Loss Account is already provided in our previous letter.

In view of information/explanation herein given in earlier letter and also provided herein above, it is therefore, requested to your goodself that the proceedings initiated may kindly be dropped as the alleged amount is less than Rs. 50 Lacs.

**Thanking you,
Yours faithfully
For M/s Sonansh Creations Private Limited**

Sd/-
**Satish Kumar Chandna
Authorised Signatory"**

19. Undisputedly, if the total value of transactions entered into by the petitioner, which was allegedly suggestive of the petitioner's income escaping assessment was less than ₹50,00,000/- during the FY 2014-15, no notice under Section 148 of the Act could be issued in respect of the AY 2015-16 on the said basis. In terms of clause (a) of Section 149(1) of the Act, no notice under Section 148 of the Act can be issued if three years have elapsed from the end of the relevant assessment year unless the case falls under clause (b) of Section 149(1) of the Act. Clause (b) of Section 149(1) of the Act would be applicable only in cases where the income chargeable to tax which has escaped assessment, amounts to or is likely to amount to ₹50,00,000/- or more. Thus, the first and foremost question to be addressed is



whether on the basis of material available on record, the AO could have concluded that the income chargeable to tax amounting to ₹50,00,000/- or more which had escaped assessment.

20. As noted above, the petitioner had provided ledger accounts of the three entities in question namely Nimisha Marketing & Services Pvt. Ltd., Anupam Buildmart Pvt. Ltd. and GMZ Commodities Pvt. Ltd. Thus, unless the AO had any credible material that would controvert the same, issuance of notice under Section 148 of the Act for the AY 2015-16 would not be permissible.

21. In addition, it is also relevant to note that the petitioner had asserted that the amount received from one of the entities (GMZ Commodities Pvt. Ltd.) was on account of profit on sale of shares, which had been surrendered to tax. In terms of Section 148A(c) of the Act, the AO was required to take an informed decision after considering the petitioner's response to the impugned notice issued under Section 148A(b) of the Act.

22. In the present case, the Revenue has been unable to show any documents that would establish that the petitioner had received any amount in its books of account or otherwise, which was in excess of the amount as claimed by the petitioner in its response dated 31.05.2022.

23. The contention that the AO is not required to form an opinion as to the correctness of the information available with it, is erroneous. In ***Sonansh Creations Pvt Ltd. v. Assistant Commissioner of Income***



Tax & Anr.³, this court considered a similar contention and has held as under:

“18. As noted above, the nature of proceedings under Section 148A of the Act is to enable the AO to form an opinion whether it is a fit case for issuance of notice under Section 148 of the Act. Given the nature of the proceedings under Section 148A of the Act, we are unable to accept that issuance of a notice under Section 148A(b) of the Act in the name of an entity, which had since amalgamated with the petitioner, would be fatal to the AO assuming jurisdiction by issuance of notice under Section 148 of the Act in the name of the petitioner. The nature and object of the said procedure is to enable an assessee to address objections to the information available with the AO on the basis of which it is suspected that the assessee’s income had escaped assessment. The decision whether to issue a notice under Section 148 of the Act and assume jurisdiction to assess / re-assess the income under Section 147 of the Act is required to be taken on the basis of the record available with the AO including the response filed by the assessee. In the present case, the response of the petitioner clearly indicated that Tulsi had merged with the petitioner and therefore, the petitioner as a successor-in-interest would be liable for any dues of Tulsi. Admittedly, the reassessment proceedings of Tulsi’s income for AY 2017-18 were now required to be initiated and continued in the name of the petitioner as a successor-in-interest and in terms of the scheme of amalgamation. Thus, the AO had rightly, based on the material on record, taken a decision to issue notice under Section 148 of the Act in the name of the petitioner. It is also material to note that the petitioner had responded to the information available with the AO on merits. Thus, this is not a case where the petitioner did not have the opportunity to address the information available with the AO.

19. The principal question to be addressed is whether the assumption of jurisdiction by the AO to initiate reassessment proceedings by issuance of impugned notice under Section 148

³Neutral Citation No.: 2025:DHC:78-DB [A decision rendered in the context of the petitioner’s challenge to a notice under Section 148 of the Act in respect of AY 2017-18]



of the Act can be sustained on the basis of the record as available.

20. It is relevant to construe the import of Section 148A of the Act. Section 148A of the Act is set out below:

“148A. 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.”

21. It is apparent from the scheme of Section 148A of the Act that it prescribes a procedure for enabling the AO to take an informed decision whether to issue a notice under Section 148 of the Act for assessing/reassessing an assessee’s income under Section 147 of the Act. At the first stage⁴, the AO is required to conduct an enquiry with respect to information that

⁴ Refer to clause (a) of Section 148A of the Act



suggests income of the assessee chargeable to tax has escaped assessment. By its very nature, the said enquiry is a preliminary enquiry and it is not necessary that the said enquiry yields any conclusive result as to whether the assessee's income has escaped assessment. The limited threshold of the enquiry is to ascertain whether there is any information suggestive of the income escaping assessment. Once the AO has information, which suggests that an assessee's income has escaped assessment, it is necessary for the AO to provide an opportunity to the assessee to be heard by serving a show cause notice. This is an essential step to eliminate arbitrariness in initiating reassessment proceedings. The initiation of reassessment proceedings has adverse consequences for an assessee as it seeks to reopen a concluded assessment. Thus, obviously, the assessments cannot be reopened in a cavalier or casual manner. The opportunity for an assessee to respond to the information available with the AO is to enable the AO to take an informed decision whether to reopen the assessment on the basis of information available. In terms of Section 148A(c) of the Act, the AO is required to consider the response furnished by the assessee.

22. Clause (d) of Section 148A of the Act requires the AO to take a decision on the basis of material available on record including the reply of the assessee as to whether it is a fit case for issuance of a notice under Section 148 of the Act. The said clause also provides for an additional safeguard which requires the AO to seek prior approval of the specified authority before issuance of notice under Section 148A of the Act.”

24. This court had pointedly asked the learned counsel appearing for the Revenue whether there is any credible material, which would establish that the petitioner had received any amount in excess of what had been claimed by the petitioner during the FY 2014-15. However, the learned counsel for the Revenue fairly stated that apart from the information available on the insight portal, there was no other material which would establish the same.



25. It is also material to note that it is not disputed that after receipt of the petitioner's response, the AO had on the basis of material on record found that it was not a fit case for issuance of the notice under Section 148 of the Act for the AY 2015-16. A noting to the said effect was also made in the relevant file. The relevant extract of the said noting is set out below:

“Considering the above, it is found to **be not a fit case** to issue a notice u/s 148 of the Income-tax Act, 1961 for the A.Y. 2015-16.”

26. The aforesaid conclusion was also approved by the Additional Commissioner of Income Tax. However, the Principal Commissioner of Income Tax (PCIT) did not agree with the same and found that it is a fit case for issuance of notice under Section 148 of the Act. The PCIT was of the view that the transactions as reported in insight portal needed further examination, thus, it would be a fit case for issuance of notice under Section 148 of the Act. As observed earlier, this view is unsustainable. The AO is required to form an opinion as to whether there is any credible information to substantiate that the petitioner's assertion that the aggregate value of the transactions in question is less than ₹50,00,000/-, is incorrect. Clearly, at the stage of passing an order under Section 148A(d) of the Act, the AO was not required to form any conclusive view as to whether the entries in question represented income that had escaped assessment. The question whether the said entities are accommodation entries may be a contentious issue. However, the fundamental facts – that the petitioner had transactions with the named companies of an aggregate value of ₹66,44,134/- –



was required to be determined on the basis of the record. Whilst, the petitioner had produced ledger accounts, the AO did not have any material to substantiate that deposits aggregating ₹66,44,134/- were made in the petitioner's bank account to contradict the same. The fundamental basis on which the petitioner's assessment is sought to be reopened is that it had entered into the transactions of a value of ₹66,44,134/- during the FY 2014-15. Clearly, the AO is required to be satisfied that such entries exist particularly where the petitioner had produced its accounts to show that the value of transactions is not as stated in the notice under Section 148A(b) of the Act.

27. In view of the above, the present petition is allowed and the impugned order and the impugned notice are set aside. However, we clarify that if the AO has any material to establish that the value of bank transfers in the petitioner's bank account is in excess of what is claimed by the petitioner, the AO would not be precluded from initiating fresh proceedings for reopening the petitioner's assessments *albeit* in accordance with law.

VIBHU BAKHRU, ACJ

SWARANA KANTA SHARMA, J

JANUARY 10, 2025

RK/gsr