



2025:DHC:78-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.01.2025

+ **W.P.(C) 12316/2022**

SONANSH CREATIONS PVT LTD.

..... Petitioner

versus

**ASSISTANT COMMISSIONER OF
INCOME TAX AND ANR.**

..... Respondents

Advocates who appeared in this case:

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

For the Respondents :Mr. Sunil Agarwal, Mr. Shivansh B.
Pandya, Mr. Viplav Acharya & Mr. Utkarsh
Tiwari, Advocates.

**CORAM
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

JUDGMENT

VIBHU BAKHRU, ACJ

1. The petitioner has filed the present petition impugning a notice dated 01.06.2022 issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*); an order dated 30.07.2022 (hereafter *the impugned order*) passed under Section 148A(d) of the Act; and a notice dated 30.07.2022 issued under Section 148 of the Act seeking to reopen the petitioner's assessment for the assessment year (AY)



2025:DHC:78-DB



2017-18. The said notices under Sections 148A(b) and 148 of the Act are hereafter also referred as the impugned notices.

FACTUAL CONTEXT

2. The petitioner is a company incorporated in India. Prior to 30.09.2019, the petitioner was known as Sonali Realtech Pvt. Ltd. (hereafter *Sonali*). The impugned notices have been issued to initiate proceedings for re-assessment of income of M/s Tulsi Tracom Pvt. Ltd. (hereafter *Tulsi*). Tulsi was merged with the petitioner with effect from 01.04.2018 pursuant to an order dated 26.09.2019 passed by the National Company Law Tribunal (NCLT). As noted above, the petitioner was then known as Sonali.

3. Tulsi had filed its return of income on 30.10.2017 for the AY 2017-18 declaring an income of ₹12,96,130/-. The petitioner claims that it had informed respondent no.1 regarding the amalgamation of Tulsi with the petitioner company by a letter dated 24.12.2019.

4. The Assessing Officer (AO) had information, which suggested that Tulsi's income for AY 2017-18 had escaped assessment and accordingly, the AO issued a notice dated 29.06.2021 under Section 148 of the Act. As on the date of issuance of the said notice, Tulsi did not exist as an independent company as it had merged with the petitioner with effect from 01.04.2018. The notice was also served electronically at the e-mail address of the chartered accountant associated with Tulsi. The said chartered accountant sent a response dated 19.07.2021 informing the AO that Tulsi had ceased to exist as it



2025:DHC:78-DB



was amalgamated with the petitioner. He also informed the AO that he was no longer authorized to represent Tulsi.

5. The petitioner company, being aggrieved by the initiation of proceedings for reopening the assessment of Tulsi, filed a writ petition [W.P.(C) No.3418/2022], *inter alia*, on the ground that the notice had been issued without following the procedure as prescribed under Section 148A of the Act. The petitioner also claimed that the notice was invalid as it had been issued to an entity that was no longer in existence.

6. The issue whether the notice under Section 148 of the Act could be issued on the basis of the statutory provisions as in force prior to 31.03.2021 was concluded by this court in ***Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr.***¹ and thus, this court following the said decision passed a common order dated 25.02.2022 in a batch of petitions including W.P.(C) No.3418/2022 preferred by the petitioner for setting aside such notices including the notice dated 29.06.2021 issued under Section 148 of the Act.

7. Subsequently, the reassessment proceedings were revived in terms of the judgment rendered by the Supreme Court in ***Union of India & Ors. v. Ashish Agarwal***². The AO issued the impugned notice dated 01.06.2022 under Section 148A(b) of the Act in the name of Tulsi. The petitioner once again responded to the said notice clarifying that Tulsi had ceased to exist as it was amalgamated with

¹ [2022] 441 ITR 207

² [2022] 444 ITR 1



2025:DHC:78-DB



the petitioner with effect from 01.04.2018. The petitioner also filed a detailed reply dated 09.06.2022 addressing the information set out in the impugned notice dated 01.06.2022. The petitioner also sought copies of the material on the basis of which the impugned notice under Section 148A(b) of the Act was issued.

8. The petitioner's response was rejected and the AO passed the impugned order holding that it was a fit case for issuance of a notice under Section 148 of the Act.

SUBMISSIONS

9. The learned counsel for the petitioner assailed the impugned notices and the impugned order on, essentially four grounds. First, he contended that the proceedings under Section 148A of the Act and the issuance of the impugned notice under Section 148 of the Act are invalid as the initial notice under Section 148A(b) of the Act was issued in the name of Tulsi, which had ceased to exist. The learned counsel appearing for the petitioner relied on the decision of the Supreme Court in **Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki (India) Ltd.**³ in support of his contention that the impugned notice issued under Section 148A(b) of the Act is *void ab initio*. He also contended that the AO's reliance on Section 170 of the Act is misplaced as the same is applicable only in cases where an assessee whose business is carried on by another entity, cannot be located.

³(2020) 18 SCC 331



2025:DHC:78-DB



10. Second, it is submitted that the AO had not supplied the necessary material on the basis of which a conclusion was drawn that the petitioner's income had escaped assessment despite the petitioner seeking the same. It is contended that failure to provide the necessary material violates the decision of the Supreme Court in ***Union of India v. Ashish Agarwal***².

11. Third, it is submitted that issuance of the impugned notices is invalid as the AO has no reason to believe that the petitioner's income had escaped assessment. It is contended that the AO has disregarded the petitioner's detailed reply contesting the information on the basis of which the impugned notice was issued.

12. Fourth, it is contended that the impugned notice issued under Section 148 of the Act is violative of Section 149 of the Act. It is contended that the said notice could be issued beyond the period of three years only in cases where the AO has evidence revealing that income chargeable to tax amounting to ₹50,00,000/- or more had escaped assessment. It is stated that in the present case, the AO had no information or material in the form of books of account or assets, which evidence that the petitioner's income is in excess of ₹50,00,000/- or more for the relevant AY had escaped assessment.

13. The learned counsel appearing for the Revenue countered the submissions advanced on behalf of the petitioner. Insofar as issuance of notice in the name of Tulsi is concerned, he pointed out that the order under Section 148A(d) of the Act as well as the notice issued under Section 148 of the Act are in the name of the petitioner and not



2025:DHC:78-DB



in the name of a non-existent entity. Insofar as the petitioner's contention regarding the merits of the information available with the AO is concerned, he submitted that the correctness of the information cannot be gone into at the stage of issuance of notice under Section 148 of the Act as the same is required to be examined during the reassessment proceedings. He submitted that if there is, *prima facie*, some material which suggest that the petitioner's income had escaped assessment, the AO has the jurisdiction to issue a notice under Section 148 of the Act to reopen the assessment.

REASONS & CONCLUSION

14. The contention that the impugned notice issued under Section 148 of the Act is invalid as the initial notice under Section 148A(b) of the Act was issued in the name of Tulsi, is unpersuasive. The petitioner is correct that a notice under Section 148A(b) of the Act was issued in the name of Tulsi which has since merged with the petitioner and therefore, was not existing at the material time. However, the AO had noted the said objection and passed an order under Section 148A(d) of the Act in the name of the petitioner. It is material to note that the proceedings under Section 148A of the Act are to enable an assessee to respond to the information as available with the AO in order to dissuade the AO from initiating reassessment proceedings under Section 147 of the Act. The procedure under Section 148A of the Act has been devised to eliminate any arbitrary reopening of assessments. In the present case, the petitioner had responded to the notice under Section 148A(b) of the Act and had explained that Tulsi



2025:DHC:78-DB



had since merged with the petitioner and therefore, is not in existence. The AO had accepted the said response and had accordingly passed an order under Section 148A(d) in the name of the petitioner. It is material to note that the reassessment proceedings were initiated by issuance of a notice under Section 148 of the Act in the name of the petitioner.

15. In the case of ***Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki (India) Ltd.***³, the Supreme Court rejected the Revenue's appeal against an order passed by this court upholding the decision of the Income Tax Appellate Tribunal holding that an assessment made in the name of Suzuki Powertrain India Ltd. (SPIL) for AY 2012-13 was a nullity as the said entity had merged with Maruti Suzuki (India) Ltd. (MSIL) in terms of an approved scheme of amalgamation. In that case, SPIL had filed its return of income on 28.11.2012, however, thereafter, SPIL was merged with MSIL with effect from 01.04.2012 in terms of a scheme of amalgamation approved by the High Court. This fact was also informed to the AO. Notwithstanding the same, the AO had issued notices under Sections 143(2) and 142(1) of the Act addressed to SPIL – the amalgamating company which had ceased to exist. A reference was also made to Transfer Pricing Officer (TPO), which had culminated in an order passed under Section 92CA(3) of the Act. Thereafter, draft assessment order under Section 144C of the Act was framed in the name of SPIL. MSIL (the amalgamated company) filed its objections before the Dispute Resolution Panel (DRP) as a successor-in-interest of SPIL.



2025:DHC:78-DB



The DRP disposed of the objections by an order dated 14.10.2016. Thereafter, a final assessment order was passed on 31.10.2016 in the name of SPIL. The said order was successfully appealed before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal set aside the assessment order holding that it was *void ab initio* as it was passed in the name of a non-existing entity.

16. In ***Principal Commissioner of Income Tax v. Maruti Suzuki (India) Ltd.***³, the AO had assumed the jurisdiction by issuance of notices in the name of a non-existent company and the assessment was also framed in the name of a non-existent company. The decision of the Supreme Court rested on the fact that jurisdictional notices had been issued by the AO in the name of the non-existent entity. The relevant extract of the said decision is set out below:

“36. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in *Spice Enfotainment* [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] on 2-11-2017. The decision in *Spice Enfotainment* [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] has been followed in the case of the respondent while dismissing the special leave petition for AY 2011-2012. In doing so, this Court has relied on the decision in *Spice*



2025:DHC:78-DB



Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353].”

[emphasis added]

17. As is apparent from the above, the decision of the Supreme Court rested on the fact that jurisdictional notice to commence proceedings for assuming the assessment was in the name of an entity that did not exist. In the present case, the notice to commence reassessment proceedings – notice under Section 148 of the Act – was issued in the name of the petitioner and not in the name of Tulsi which was merged with the petitioner.

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



2025:DHC:78-DB



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 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



2025:DHC:78-DB



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,



2025:DHC:78-DB



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 the information that 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

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



2025:DHC:78-DB



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.

23. Whilst at the stage of passing an order under Section 148A(d) of the Act, the AO is not required to conclusively establish whether the income of the assessee has escaped assessment; however, the AO is required to apply his mind on the basis of the records available to ascertain whether it is a fit case for issuance of a notice under Section 148 of the Act. The use of the word “decide” in the clause (d) clearly indicates that the AO is required to examine the material as available with him as well as the assessee’s response and determine whether there are grounds which indicate that the petitioner’s income has escaped assessment.



2025:DHC:78-DB



24. In ***GKN Driveshafts (India) Ltd. v. Income Tax Officer & Ors.***⁵, the Supreme Court had upheld the view that the correct course for an assessee to contest the ‘reasons to believe’ on the basis of which assessment was reopened is to file a return of income and thereafter seek the reasons to believe that the assessee’s income had escaped assessment and file objections to the same. Although, there is no such procedure stipulated under the Act, the same was evolved to eliminate arbitrariness and erroneous assumption of jurisdiction to assess / re-assess the income of an assessee under Section 147 of the Act. In ***Union of India v. Ashish Agarwal***², the Supreme Court had noted that the procedure evolved in ***GKN Driveshafts (India) Ltd. v. Income Tax Officer & Ors.***⁵ had been streamlined and simplified by introducing Section 148A of the Act. The relevant extract of the said judgment is set out below:

“18. But prior to pre-Finance Act, 2021, while reopening an assessment, the procedure of giving the reasons for reopening and an opportunity to the assessee and the decision of the objectives were required to be followed as per the judgment of this Court in *GKN Driveshafts (India)* [*GKN Driveshafts (India) Ltd. v. ITO*, (2003) 1 SCC 72] .

19. However, by way of Section 148-A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall:

(i) conduct any enquiry, *if required*, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

⁵ (2003) 1 SCC 72



2025:DHC:78-DB



- (ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;
- (iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and
- (iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under Section 148 of the IT Act; and
- (v) the AO is required to pass a specific order within the time stipulated.

20. Therefore, all safeguards are provided before notice under Section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per Section 148-A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under Section 148-A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.

21. Substituted Section 149 is the provision governing the time-limit for issuance of notice under Section 148 of the IT Act. The substituted Section 149 of the IT Act has reduced the permissible time-limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.

22. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been



2025:DHC:78-DB



issued on or after 1-4-2021. We are in complete agreement with the view taken by the various High Courts in holding so.”

25. The contention that at the stage of passing an order under Section 148A(d) of the Act, the AO is not required to form any opinion as to the genuineness or veracity of the information, is erroneous. Clearly, if there is information with the AO which suggests that the assessee’s income had escaped assessment, the AO is required to take a decision on the basis of material on record including assessee’s response to the notice under Section 148A(b) of the Act to ascertain whether the information is sufficient and credible. As is clear from the plain language of Section 148A(d) of the Act, the AO has to decide whether it is a fit case for issuance of notice under Section 148 of the Act. This decision would require the AO to take a view in respect of the material available and form an opinion whether there are grounds to believe that the assessee’s income has escaped assessment. As observed earlier, the entire purpose of establishing the procedure under Section 148 of the Act is to ensure that assessments are not reopened whimsically or arbitrarily. The decision to reopen the assessment must be based on cogent material that can lead to the conclusion that the assessee’s income has escaped assessment. The question whether the assessee’s income had in fact escaped assessment is a matter that would require to be determined in the reassessment proceedings, however, the question whether there is sufficient material that warrants reopening of the assessment is



2025:DHC:78-DB



required to be examined at the stage of passing an order under Section 148A(d) of the Act.

26. In the facts of the present case, it is apparent that the impugned order passed under Section 148A(d) of the Act is unsustainable.

27. The AO issued a notice dated 01.06.2022 under Section 148A(b) of the Act on the basis of the information to the effect that Tulsi was a beneficiary of accommodation entries provided by one Sh. Joginder Pal Gupta. The impugned notice setting out the information available with the AO is reproduced below:

“To, TULSI TRACOM PRIVATE LIMITED B-222 2ND FLOOR, OKHLA INDUSTRIAL AREA PHASE-1 NEW DELH 110020, Delhi	
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PAN: AACCT6121A	Assessment Year: 2017-18	Dated: 01/06/2022	DIN & Letter No. ITBA/COM/F/17/ 2022-23/1043292968(1)
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Sir/ Madam/ M/s,

Subject: Subsequent proceedings with reference to section 148A(b) in consequence to Hon’ble SC Order dated 04.05.2022- Letter

Please refer to notice u/s 148 of the IT Act, 1961 issued in your case for AY2017-18 dated 29/06/2021.

2. In reference to the above subject, please be informed that notice issued u/s 148 of the IT Act, 1961 in between the period 01/04/2021 to 30/06/2021 has been held to be a show cause notice u/s 148A(b) of the IT Act, 1961 (as substituted by the Finance Act, 2021), by the Hon’ble Supreme Court in the case of Union of India & Ors. Vs Ashish Agarwal.

3. In this regard, in complication with the subject order of the Apex Court, you are hereby provided with the information/material relied upon



2025:DHC:78-DB



by this office for issue of the show cause notice as above (relied upon documents is also attached).

S.No.	Source PAN	Source Name	PAN	Information FY	Information Value	
	AAICS3344J	MKR Trading Pvt Ltd		2016-17	Rs.11,75,000/-	It is evident that the assessee M/s Tulsi Tracom Private Limited, AACCT6121 A is a beneficiary of accommodation entries provided by Sh. Joginder Pal Gupta through its shell companies for F.Y.2016-17
2.	AACCN3107A	NCR Buildtech Pvt Ltd		2016-17	Rs.13,75,000/-	
3.	AAACN3607P	Nicky Marmo Ltd		2016-17	Rs.24,25,000/-	
4.	AADCA4442Q	Olwin Garments Pvt Ltd		2016-17	Rs.11,25,000/-	
5.	AABCW3781E	Win and Grow Investment Advisory Services Pvt Ltd		2016-17	Rs.7,50,000/-	
6.	AAGCR6130H	RNSR Infracon Pvt Ltd		2016-17	Rs.12,50,000/-	
7.	AABCO1420E	Optimal Farms Pvt Ltd		2016-17	Rs.8,00,000/-	
8.	AAACB2764K	Bell Indus Fibrecom Pvt Ltd		2016-17	Rs.13,00,000/-	
9.	AACCC8411C	Capital Infratech Pvt Ltd		2016-17	Rs.8,75,000/-	
10.	AACCCJ2239D	Jeevan Anand Multiservices Pvt Ltd		2016-17	Rs.6,75,000/-	
11.	AAACE0766E	RSKM Traders Pvt Ltd		2016-17	Rs.7,50,000/-	

Therefore, the minimum amount of Rs.1,25,00,000/- has escaped assessment for the purpose of taxation.”

4. In accordance with the aforesaid judgement, you are required to furnish the desired reply regarding why reassessment u/s 147 of the IT Act,



2025:DHC:78-DB



1961 shall not be made in your case, within 2 weeks i.e. by 15/06/2022 through your e-filing module of the Income Tax Department.

5. If you fail to submit reply within time allowed, it will be presumed that you have nothing to say in this regard and necessary proceedings as per Income Tax Act, 1961 shall be initiated.

CHHUTTAN LAL MEENA
CIRCLE 25(1), DELHI”

28. It is apparent from the above that the AO had information to the effect that Tulsi had availed of accommodation entries from certain entities during the financial year 2016-17.

29. As noted above, the petitioner had furnished a reply to the said notice raising a grievance that notice under Section 148A(b) of the Act merely alleged that Tulsi had availed of accommodation entries without providing any detailed information or material to the said effect. The petitioner submitted that the document “Enquiry Report” regarding the beneficiaries of Sh. Joginder Pal Gupta was illegible. The petitioner had sought material on the basis of which the said allegation was made. However, admittedly the said material was not furnished to the petitioner.

30. Insofar as the entries are concerned, the petitioner had in unambiguous terms claimed that no sum was received by Tulsi from any of the companies as referred to in the impugned notice dated 01.06.2022. The petitioner had also claimed that no amount had been credited to the bank account of Tulsi from the said companies. The relevant extract of the petitioner’s response on merits of the allegation is reproduced below:



2025:DHC:78-DB



“8. **There is no escapement of income and the notice has been issued on incorrect facts:** It is submitted that instant notice has been issued on wholly misconceived facts without verifying even the basic information which has come to your honour. It is submitted that in the information, your honour has tabulated the name of the 11 companies, and against the name of such companies, some amount has been mentioned which aggregated to Rs.1,25,00,000/-. It has been alleged that M/s Tulsi Tracom Private Limited, is a beneficiary of accommodation entries provided by Sh. Joginder Pal Gupta through its shell companies for F.Y. 2016-17. It is submitted with respect that though it has not been stated that aforesaid sum has been received by the assessee, however, it appears, your honour has assumed that such sum was received by the assessee from the aforesaid companies, which was credited in its bank account, and accordingly your honour has alleged that sum aggregating to Rs.1,25,00,000/- has escaped assessment for the purpose of taxation.

8.1 It is submitted with respect that no such sum was received by the assessee. In fact, the assessee M/s Tulsi Tracom Private Limited has not entered into any transaction with such companies, as such, the question of receipt of any such sum would not arise at all. To demonstrate the same, it is submitted with respect that M/s Tulsi Tracom Private Limited during the relevant assessment year was maintaining two bank accounts which are detailed hereunder:

S. No.	Name of the bank	Type of account	Account No.	Attached herewith as
A	ICICI Bank, B-78, Defence Colony, New Delhi-11 0024	Current	630005008989	Annexure-E
B	Central Bank of India D/1A, Green		3073064162	Annexure-F



2025:DHC:78-DB



	Park, New Dehi			
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- 8.2 It is submitted that except the aforesaid two bank accounts, no other bank account was maintained by M/s Tulsi Tracom Private Limited in the FY 2016-17. Further, from the perusal of the aforesaid bank accounts, it would be seen that no such amount was credited in the aforesaid two bank accounts from any of the aforesaid 11 concerns as has been tabulated in the notice.
- 8.3 In fact, assessee is also providing month wise total deposits made in the aforesaid two bank accounts in the following table:

<u>ICICI BANK LTD</u> A/C NO-63000508989		<u>Central Bank Of India</u> A/C No: 3073064162	
DETAIL OF MONTH WISE DEPOSITIN ICICI BANK FROM 01.04.2016 TO 31.03.2017		DETAIL OF MONTH WISE DEPOSITIN CENTRAL BANK OF INDIA FROM 01.04.2016 TO 31.03.2017	
MONTH	DEPOSIT AMT	MONTH	DEPOSIT AMT
APRIL	-	APRIL	23750000
MAY	-	MAY	-
JUNE	365579.00	JUNE	-
JULY	-	JULY	-
AUG	-	AUG	-
SEPT	2500000.00	SEPT	-
OCT	-	OCT	309830
NOV	1100000.00	NOV	100000
DEC	-	DEC	225000
JAN	-	JAN	17420000
FEB	1779089.00	FEB	3937761
MARCH	16943578.00	MARCH	100000.00
TOTAL	22688246.00	TOTAL	45842591.00”

31. In view of the above, the AO was required to decide whether it is a fit case for issuance of a notice under Section 148 of the Act after taking into account the material available on record including the



2025:DHC:78-DB



petitioner's response to the notice issued under Section 148A(b) of the Act. However, the AO proceeded on a palpably erroneous assumption that the petitioner did not have any explanation as to the merits of the case. The AO proceeded on the basis that petitioner had availed of accommodation entries from companies controlled by Sh. Joginder Pal Gupta. It is relevant to refer to the following extract from the impugned order passed under Section 148A(d) of the Act:

"2. In this case, information was received on Insight Portal as flagged by the Directorate of Income-Tax (System) as per risk profiling, the information relating to evasion of tax by the assessee has been disseminated brief of which are as under:

"The Information relates to the Search Operation u/s 132 A search and seizure operation was conducted on Sh. Joginder Pal Gupta on 23.12.2019 in the case of DAG group. Sh. Joginder Pal Gupta (hereinafter referred to as JP) (PAN BRBPG8269C), is an entry operator, who controlled several shell companies and provided accommodation entries to beneficiaries. During search and seizure on DAG group, residence and office premises of JP were covered. JP in his statement recorded u/s 132(4) on oath at his residence 7003, Ansal Sunshine County, Kundli, Sonipat 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 companies and firms) controlled by him out of which the following companies have provided accommodation entry to the assessee M/s Tusi Tracom Private Limited by means of fictitious loans:

S.No.	Source PAN	Source Name	PAN	Information FY	Information Type	Information Value	Remark
	AAICS3344J	MKR Pvt Ltd	Trading	2016-17	Others	Rs.11,75,000/-	Beneficiary
2.	AACCN3107A	NCR Build tech Pvt Ltd		2016-17	Others	Rs.13,75,000/-	Beneficiary
3.	AAACN3607P	Nicky Marmo Ltd		2016-17	Others	Rs.24,25,000/-	Beneficiary
4.	AADCA4442Q	Olwin Garments Pvt Ltd		2016-17	Others	Rs.11,25,000/-	Beneficiary
5.	AABCW3781E	Win and Grow Investment Advisory		2016-17	Others	Rs.7,50,000/-	Beneficiary



2025:DHC:78-DB



6.	AAGCR6130H	Services Pvt Ltd RNSR Infracon Pvt Ltd	2016-17	Others	Rs.12.50,000/-	Beneficiary
7.	AABCO1420E	Optimal Farms Pvt Ltd	2016-17	Others	Rs.8,00,000/-	Beneficiary
8.	AAACB2764K	Bell Indus Fibrecom Pvt Ltd	2016-17	Others	Rs.13,00,000/-	Beneficiary
9.	AACCC8411C	Capital Infratech Pvt Ltd	2016-17	Others	Rs.8,75,000/-	Beneficiary
10.	AACCCJ2239D	Jeevan Anand Multi services Pvt Ltd	2016-17	Others	Rs.6,75,000/-	Beneficiary
11.	AAACE0766E	RSKM Traders Pvt Ltd	2016-17	Others	Rs.7,50,000/-	Beneficiary

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8.2 The assessee company has not made any explanation on the merits of the case, so the issue is being decided on the basis of material available on record.

8.3 As per credible information disseminated by the Investigation Wing of Income Tax Department through Insight Portal, Sh. Joginder Pal Gupta is found being an accommodation entry provider. Sh. Joginder Pal Gupta, an accommodation entry provider who works on commission basis to route unaccounted cash of beneficiaries into their books through banking channels in the form of bogus unsecured loan/share premium and generate unaccounted cash for beneficiaries by providing bogus purchase bill entries. Similarly, when the beneficiaries are in need of cash for out of books transaction, they transfer money to JP's entities which then close the loan account and gives back the cash to beneficiaries.

8.4 On the basis of analysis made above after dealing with all the issues raised by the assessee on legality/technicality, it is concluded that order u/s 148A(d) of the Income-tax Act, 1961 is being passed in the case of successor company i.e. **M/s Sonansh Creations Ltd, PAN: AANCS4218C.**

9. On the basis of mentioned received and processed, it is seen that during the year under consideration, the assessee has



2025:DHC:78-DB



taken accommodation entry amounting to **Rs.1,25,00,000/-** from dummy companies of Sh. Joginder Pal Gupta, an entry provider, which represent bogus loan/sales/bogus purchases etc., which were used to reduce its taxable income. Hence, income to the tune of **Rs.1,25,00,000/-** has escaped assessment within the meaning of Section 147 of the Income Tax Act 1961 for the A.Y. 2017-18.

10. Therefore it is a fit case to issue notice u/s 148 of the Act. This order is being passed u/s 148A(d) of the Act with prior approval of the **Pr. Commissioner of Income-tax-7, Delhi** accorded vide dated 29.07.2022. Notice u/s 148 of the Income-Tax Act, 1961 is being issued along with this order.”

[emphasis added]

32. It is apparent from the above that the AO had acted on the basis of certain information that was flagged by the Directorate of Income-Tax (System) on the insight portal. The allegations being that Tulsi had received funds in its bank accounts through banking channels from eleven entities controlled by Sh. Joginder Pal Gupta and had paid cash to Sh. Joginder Pal Gupta against the said entries. As noted above, the petitioner had denied that Tulsi had received any amount in its bank accounts from the aforesaid companies and also disclosed that Tulsi's bank accounts, which were in operation during the relevant period. However, the AO proceeded on the basis of the allegations that Tulsi has received accommodation entries from companies controlled by Sh. Joginder Pal Gupta had not been controverted. The AO had no material – at any time, the AO has not referred to any such information – which would substantiate that any amount had been remitted by the entities (eleven in numbers) mentioned in the impugned notice and impugned order to the bank accounts of Tulsi. The information as available was accepted as correct notwithstanding



2025:DHC:78-DB



the petitioner's assertion that Tulsi has received no amount in its bank accounts from any of the entities as alleged.

33. The Revenue was granted sufficient opportunities to file a counter affidavit to the present petition but had failed and neglected to do so. Even before this court, the Revenue has not produced any material to establish that Tulsi has received any amount in its bank accounts from any of the entities as mentioned in the impugned notice or the impugned order. Clearly, absent any material to establish that the petitioner had received amounts in its bank accounts – the fundamental premise on which the allegation that it had received accommodation entries is founded – the petitioner's assessment could not be reopened. We are unable to accept that the reassessment can be initiated on the basis of information which is contested as palpably incorrect without examining the material giving rise to the said information. The contention that the AO does not require to take any view as to the correctness of the information available with him would render the provisions of Section 148A of the Act a dead letter and the exercise of conducting an enquiry under Section 148A of the Act an exercise in futility. The AO is required to ascertain whether the basic facts on which an assessment is sought to be reopened, are sustainable. An allegation that income has escaped assessment on account of accommodation entries availed by an assessee would be insufficient to reopen a closed assessment if the AO does not have material to establish that in fact there were entries in the bank accounts that could possibly support the said allegations. The AO is not required to



2025:DHC:78-DB



conclusively decide whether the entries are accommodation entries. But the AO has to be reasonably certain that the alleged entries exist that could be possibly be accommodation entries.

34. In view of the above, the petition is allowed and the impugned notices under Sections 148 and 148A(b) of the Act and the impugned order under Section 148A(d) of the Act are set aside. It is however clarified that if the AO finds any material to establish that Tulsi had availed of any entries which could possibly prove to be accommodation entries, the AO would not be precluded from issuing a fresh notice under Section 148A(b) of the Act in accordance with law.

VIBHU BAKHRU, ACJ

SWARANA KANTA SHARMA, J

JANUARY 10, 2025

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