



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

% Judgement delivered on: 15.04.2025

+ **W.P.(C) 13669/2024 & CM APPL. 57292/2024**

J. G'S DEPARTMENTAL STORE Petitioner

versus

INCOME TAX OFFICER WARD 60(1)
& ORS. Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Ved Jain, Mr. Nischay Kantoor,
Ms. Soniya Dodeja, Mr. Divyansh Dubey
and Mr. Govind Gupta, Advocates.

For the Respondents : Mr. Shlok Chandra, Standing Counsel with
Ms. Naincy Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner [**the Assessee**] has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning (i) notices dated 01.02.2024 and 14.02.2024 issued under Section 148A(b) of the Income Tax Act, 1961 [**the Act**]; (ii) an order dated 19.03.2024 passed under Section 148A(d) of the Act [**impugned order**]; (iii) a notice dated 19.03.2024 issued under Section 148 of the Act [**impugned notice**]; and (iv)



the impugned approval purportedly granted by respondent no.2 [CCIT] under Section 151 of the Act. The above-mentioned notices and order were issued in respect of the assessment year [AY] 2017-18.

2. The Assessee is essentially aggrieved by the reopening of its assessment in respect of AY 2017-18 pursuant to the impugned notice issued under Section 148 of the Act. Although the Assessee has raised several grounds for assailing the impugned notice, Mr Ved Jain, learned counsel appearing for the Assessee, confined the challenge in the present petition to the ground that the order passed under Section 148A(d) of the Act is beyond the scope of the notice issued under Section 148A(b) of the Act. However, he also reserved the Assessee's right to urge other grounds in appropriate proceedings. Thus, the principal question to be addressed is whether the impugned notice is liable to be set aside, as it is premised on an order dated 19.03.2024 passed under Section 148A(d) of the Act, which is beyond the scope of the notice under Section 148A(b) of the Act.

FACTUAL CONTEXT

3. The Assessee is a partnership firm engaged in the business of operating a chain of departmental stores. The Assessee asserts that during the relevant assessment year (AY 2017-18), it was running seven departmental stores in Delhi and held the necessary licenses for the sale of wine and beer. Being involved in retail trade, more than 90% of its sales were made in cash, which the Assessee regularly deposited into its bank accounts.

4. The Assessee filed its return of income on 30.10.2017 for AY 2017-



18 declaring a total income of ₹26,30,730/-. In its return, the Assessee disclosed that an amount of ₹6,23,39,100/- was deposited in the bank during the period from 09.11.2016 to 30.12.2016 [**the demonetization period**].

5. The Assessee's return for AY 2017-18 was selected for scrutiny and the Assessing Officer [AO] issued a notice dated 24.09.2018 under Section 143(2) of the Act. One of the reasons for selecting the case for scrutiny was to examine the cash deposits made by the Assessee during the demonetization period.

6. During the assessment proceedings, the AO examined various issues, including the source of the cash deposits made by the Assessee during the demonetization period. To examine the genuineness and source of the cash deposited, the AO issued notices under Section 142(1) of the Act, seeking details from time to time.

7. In response to the aforesaid notices, the Assessee submitted replies and provided details of monthly cash deposits, cash sales for the period 2016, and other relevant information. The Assessee explained that it is engaged in retail trade and operates seven departmental stores in Delhi, where more than 90% of the sales are made in cash. The Assessee clarified that the source of the cash deposits was the receipts from sales made in the normal course of business. The Assessee explained that cash sales are a routine feature of retail business. In this regard, the Assessee also provided details of monthly cash deposits, cash sales, and an analysis of month-wise cash sales and cash deposits for the year 2015 and year 2016, among other relevant information.



8. After reviewing the responses and the details submitted by the Assessee, the AO passed the assessment order dated 21.12.2019 under Section 143(3) of the Act, accepting the Assessee's contentions. Consequently, the Assessee's income was assessed at ₹30,94,684/-, as against the declared income of ₹26,30,730/-. The addition was on account of disallowance of ₹4,59,954/- in respect of certain expenses.

9. On 01.02.2024 and 14.02.2024, the AO issued show cause notices to the Assessee under Section 148A(b) of the Act, asking the Assessee to explain why the assessment in respect of AY 2017-18 should not be reopened and the income be reassessed under Section 147 of the Act.

10. Along with the notice dated 01.02.2024, the AO annexed certain information, which, according to the AO, suggested that the Assessee's income had escaped assessment. The information was related to certain transactions pertaining to financial year [FY] 2016-17. Essentially, the said information was: i) information relating to Tax Collected at Source [TCS] statement indicating the tax collected at source under Section 206CA of the Act; ii) cash deposited by the Assessee during the demonetization period; and iii) time deposits.

11. It was alleged that during the assessment year under consideration, the transactions, as mentioned, aggregating ₹17,80,23,257/-, remained unexplained and the same were not considered while passing the assessment order under Section 143(3) of the Act. It was also alleged that these transactions were not disclosed in the income tax returns filed by the



Assessee. The aforesaid notice was followed by another notice dated 14.02.2024 issued under Section 148A(b) of the Act.

12. The Assessee responded to the aforementioned notices by its letters dated 22.02.2024 and 28.02.2024. The Assessee claimed that it has been regularly filing its return of income and had also done so in respect of AY 2017-18. The said return was picked up for scrutiny and during the assessment proceedings, the Assessee was called upon to furnish all details, which were examined by the AO.

13. Further, the Assessee stated that, in fact, it had deposited ₹18,74,14,600/- (Rupees Eighteen Crores Seventy Four Lacs Fourteen Thousand and Six Hundred only) in his bank account during the period from 01.04.2016 to 31.03.2017 as against the amount of ₹7,03,20,600/- (Seven Crores Three Lacs Twenty thousand and Six hundred only) as mentioned in the said notice. The Assessee claimed that these transactions were duly disclosed and were examined during the proceedings under Section 143(3) of the Act. The Assessee also raised various objections including that the notices were premised on a change of opinion and it was impermissible to reopen its assessments on the said basis. The Assessee also submitted another letter dated 28.02.2024 in response to the show cause notice under Section 148A(b) of the Act. It claimed that due to the Assessee's nature of business, it had purchased liquor on which TCS was deducted. The Assessee stated that the said purchases were duly accounted for in the books of account and also furnished the reconciliation statement in respect of the TCS as mentioned in Form 26AS and its books of account.



14. In regard to the time deposit of ₹10,00,000/-, the information of which was provided by the Reserve Bank of India, the Assessee claimed that during the year, it had declared a sum of ₹40,00,000/- under the Pradhan Mantri Garib Kalyan Yojana [PM-GKY] and, on 30.03.2017, had made a fixed deposit of ₹10,00,000/- under the said scheme. Insofar as the cash deposit in its bank account is concerned, the Assessee claimed that the cash deposited were the sale proceeds of the goods sold, which were received in cash. The Assessee also furnished the statement of cash deposited in bank, along with details of its cash sales.

15. On 19.03.2024, the AO passed an order under Section 148A(d) of the Act, which is impugned in the present petition.

REASONS AND CONCLUSIONS

16. As stated above, the notices issued under Section 148A(b) of the Act set out information on three counts, which, according to the AO, suggested that the Assessee's income had escaped assessment. The first related to the TCS collected by various entities under Section 206CA of the Act. Admittedly, the deposit of the TCS was in respect of the transactions in relation to alcoholic liquor. The second information relates to deposit of ₹6,23,39,100/- (Rupees Six Crore Twenty-Three Lacs Thirty-Nine thousand and One hundred only) during the demonetization period. The information had also noted that a total cash deposit during the FY 2016-17 was ₹7,03,20,600/-. And the third information, relates to the time deposit of ₹10,00,000/-.



17. As noted above, the Assessee provided its explanation for the said information. In regard to the TCS, the Assessee explained that same was related to the transaction of purchase of liquor, which was duly accounted for in its books of account. In regard to the cash deposit, the Assessee had explained that the cash deposited during the demonetization period was the sale proceeds of goods. It is material to note that the Assessee disclosed that it had deposited ₹18,74,14,600/- during FY 2016-17 which was much larger than a sum of ₹7,03,20,600/- information of which was available with the AO. Thus, the allegations of bulk cash deposit by the Assessee during the demonetization period was contested. The said allegation was premised on the basis that the total cash deposit during the period was ₹7,03,20,600/-, however, the Assessee had clarified that said figure was much higher.

18. There is also no cavil as to the explanation regarding the time deposit of ₹10,00,000/-.

19. The AO had considered said responses and accepted the Assessee's explanation regarding the reconciliation of TCS with proceeds of sales reflected in the books of account and the time deposit made under PM-GKY. The AO had held that no adverse inference is to be drawn on account of such information. However, with regard to the deposit of cash in the bank account, the AO noted that an audit objection had been raised by the Revenue Audit to the effect that the assessment had not been made in accordance with the existing law. The AO held that the said information suggested that the income had escaped assessment within the meaning of clause (ii) of Explanation 1 to Section 148 of the Act.



20. The AO thereafter proceeded to compare the cash deposited by the Assessee in its bank account during the FY 2015-16 and noted that the total cash deposited was ₹10,70,27,070/-. The AO further analysed the aforesaid deposits by comparing the amount deposited during the period from 01.04.2015 to 08.11.2015 and 09.11.2015 to 31.12.2015, that is, the period in FY 2015-16 corresponding to the demonetization period in the next financial year. The AO found that there was huge increase in ratio of the cash deposit during the demonetization period.

21. The relevant extract of the order passed under Section 148A(d) of the Act setting out the AO's reasoning regarding the cash deposited during the demonetization period being disproportionate to the cash deposits made during the corresponding period in FY 2015-16, is set out below: -

“Conclusion on cash deposit: As per assessee's reply submitted during the current proceedings and information with the department following pattern of cash deposit in his account during F.Y. 2015-16 and F.Y. 2016-17 is observed:

			Amount
1	a	Total Cash Deposit in Bank in FY 2015-16	10,70,27,070
	b	Total Cash Deposit in Bank from 01.04.2015 to 08.11.2025	7,91,03,980
	c	Total Cash Deposit in Bank from 09.11.2015 to 31.12.2025	86,79,200
2	a	Total Cash Deposit in Bank in FY 2016-17	18,74,14,600
	b	Total Cash Deposit in Bank from 01.04.2016 to 08.11.2016	10,50,84,730
	c	Total Cash Deposit in Bank from 09.11.2016 to 31.12.2016	6,23,39,100
3	a	% increase b/w 1 (a) and 2(a)	75.11%



b	% increase b/w 1 (b) and 2(b)	32.84%
c	% increase b/w 1 (c) and 2(c)	618.25%

From the above observation, it can be clearly concluded that during the period of 9th Nov, 2016 to 30 Dec, 2016 huge cash was deposited in assessee's bank account which shows a drastic % increment (618.25%) in comparison to the cash deposited during the same period in previous year. Further, on perusal of information and reply furnished by the assessee, it is seen that during the financial year 2016-17, assessee has deposited total cash amounting to Rs.18,74,14,600/- in his account. Out of this Rs.12,50,75,500/- was deposited over a period of 10 months at an average of Rs.1.22 Cr. per month, whereas in period from 9th Nov, 2016 to 31 Dec, 2016, Rs.6,23,39,100/- was deposited as cash at an average of Rs.3.56 Cr. per month approx., which shows increment of 300% approx. in cash deposits during the period of 9th Nov, 2016 to 31 Dec, 2016 in comparison to cash deposited in remaining period of more than 10 months. Hence, in view of the above, objection raised by the Revenue Audit Party found correct and justified.

8. In view of the above analysis of facts show that C & AG has raised an objection in this case that assessment has not been made in accordance with the law to the extent of cash deposited amounting to Rs.6,23,39,100/- during 09.11.2016 to 30.12.2016 which is justified as per discussion in preceding paragraph. In such scenario, objection of revenue audit becomes an information suggesting that cash deposits of Rs.6,23,39,100/- represents assessee's income escaping assessment which is more than Rs.50 Lakh. Accordingly, it is concluded that this is a fit case for issuing notice u/s 148 of the Act for A.Y. 2017-18."

22. Concededly, there was no allegation in the notice issued under Section 148A(b) of the Act that the cash deposited by the Assessee in its bank account during the demonetization period was disproportionately



higher in comparison with the cash deposited during the corresponding period in the previous financial year. Thus, the Assessee had no opportunity to provide any explanation in respect of such allegation.

23. In view of the above, we find merit in the contention that the impugned order passed under Section 148A(d) of the Act had travelled beyond the information furnished to the Assessee, which, according to the AO, was suggestive of its income escaping the assessment. Thus, the impugned order passed under Section 148A(d) of the Act cannot be sustained and is set aside.

24. Accordingly, the impugned notice is set aside. We remand the matter to the AO to consider the question afresh. The Assessee is at liberty to respond to the information as set out in the impugned order passed under Section 148A(d) of the Act. In the event, the Assessee responds to the said information as set out in the impugned order passed under Section 148A(d) of the Act within the period of two weeks from date, the AO shall consider the same and pass the appropriate order within the period of two weeks thereafter.

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

VIBHU BAKHRU, J

TUSHAR RAO GEDELA, J

APRIL 15, 2025

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