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

+ W.P.(C) 2176/2022

DEVSHI EARTHMOVERS PRIVATE LIMITED ..... Petitioner

Through Mr.Salil Kapoor, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL  
CIRCLE-8, DELHI & ANR. .... Respondents

Through Mr.Sunil Agarwal, Advocate.

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Date of Decision: 11<sup>th</sup> February, 2022

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

### **J U D G M E N T**

**MANMOHAN, J: (Oral)**

**C.M.No.6247/2022**

Exemption allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

**W.P.(C) No.2176/2022**

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the notice dated 28<sup>th</sup> March, 2021 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and the order dated 04<sup>th</sup> January, 2022, whereby the objections were disposed of. Petitioner also seeks directions to the Respondents to forebear from giving effect to and/or taking any step



whatsoever pursuant to and/or in furtherance of the said purported notice under Section 148 of the Act and/or in any proceedings initiated thereunder for the Assessment Year 2014-15.

3. Learned counsel for the Petitioner states that the impugned notice dated 28<sup>th</sup> March 2021 issued by the Respondent No. 1 under Section 148 of the Act is illegal, bad in law, barred by limitation, without jurisdiction and liable to be quashed as the same has been issued without there being any valid reasons to believe that income has escaped assessment.

4. He states that Respondent No.1 has erred in not appreciating that in accordance with Section 147, no notice under Section 148 of the Act could have been issued in the instant case after expiry of four years from the end of the relevant assessment year in the absence of any failure on part of the Petitioner to disclose truly and fully all material facts.

5. Issue notice. Mr.Sunil Agarwal, learned counsel accepts notice on behalf of the Respondents. He refers to the reasoning for re-opening of the assessment under Section 147 of the Act. The relevant portion of the said order is reproduced hereinbelow:-

***“2. Brief details of information received by the AO: .....***

*A.) M/s Anjali Supplier Pvt. Ltd. and its related entities have opened various bank accounts. Since the opening of these bank account all credit and debit transactions have been through transfer from these accounts in the name of the entities as mentioned below in the range of Rs.20 lacs to Rs. 90 lacs.*

- 1. Shivarpan Vanijya Pvt. Ltd.*
- 2. Safalata Infotech Pvt. Ltd.*
- 3. Nivaanam Tie up Pvt. Ltd.*
- 4. Sapphire Global Finance Ltd.*
- 5. Avenue Dealers Pvt. Ltd.*
- 6. Amity Dealcom Pvt. Ltd.*
- 7. Sincere Vintrade Pvt. Ltd.*



8. Frankdeal Marketing Pvt. Ltd.

9. Devatma Distributors Pvt. Ltd.

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**3) Analysis of information collected/received: .....**

d) It is seen that bank accounts of suspicious entities got credited through cash and subsequent debited by transferring funds to intermediaries, some of which are paper companies which are formed with the intent to layering of funds leaving minimum balance in the accounts. During the process of layering funds are transferred to real beneficiaries through intermediary companies.

After identifying beneficiaries to whom the funds were transferred through some intermediary companies, it was found that M/s Devshi Earthmovers Pvt. Ltd. is one of the beneficiary company and the following bank entry shows the same.

<i>Date</i>	<i>Shell Entity</i>	<i>Beneficiary</i>	<i>Amount</i>	<i>FY</i>
3/26/2014	ADVANCE SHOPPERS PVT LTD, IDBI, 60102000114035	DEVSHI EARTHMOVERS PVT LTD	3,000,000	2014
3/27/2014	ADVANCE SHOPPERS PVT LTD, IDBI, 60102000114035	DEVSHI EARTHMOVERS PVT LTD	1,000,000	2014

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**4) Finding of AO:** On perusal of the information received, analysis of the information as well bank accounts, it is found that M/s Devshi Earthmovers Pvt. Ltd. is the real beneficiaries of the fund which has been layered through various intermediaries some of which are paper company form with the intent of layering of funds. It is in this manner of layering of the funds by which the beneficiaries have brought their unaccounted income into the books of accounts.

**5) Basis of forming reason to believe of escapement of income:** It is evident the assessee, M/s Devshi Earthmovers Pvt. Ltd. is one of the beneficiary company and the fund transfer from Advance Shoppers Pvt. Ltd., IDBI, 60102000109864, amount of Rs. 40,00,000/-.



*In view of these facts, I have reasons to believe that the income of the assessee by more than 1 lakh has escaped assessment as defined by section 147 of the Act for assessment year 2014-15. The income chargeable to tax has escaped assessment for this year by the reason of the failure on the part of the assessee to disclose fully and truly all material facts. Therefore, it is a fit case for the issuance of notice u/s 148 of the Act for the Financial Year 2013-14 relevant to assessment year 2014-15.”*

6. Mr.Agarwal is directed to file a counter-affidavit within four weeks. Rejoinder-affidavit, if any, be filed before the next date of hearing.

7. It is directed that though the Assessing Officer may pass the assessment order, yet the same shall be subject to the further orders to be passed by this Court. List on 06<sup>th</sup> October, 2022.

**MANMOHAN, J**

**NAVIN CHAWLA, J**

**FEBRUARY 11, 2022**  
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