

\$~64

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

% **Date of Decision: 27.03.2023**

+ **W.P.(C) 3800/2023 & CM APPL. 14816-14817/2023**

DRAKEN METALS TRADING PRIVATE LIMITED..... Petitioner

Through: Mr Abhishek Garg, Mr Yash Gaiha &
Mr Ranesh Mankotia, Advocates.

versus

INCOME TAX OFFICER, WARD 7(1), DELHI
& ANR.

..... Respondents

Through: Mr Vipul Agrawal, Sr. Standing
Counsel with Mr Gibron Naushad &
Ms Shakshi Shoirwal, Jr. Standing
Counsels.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

RAJIV SHAKDHER, J.: (ORAL)

CM No. 14817/2023

1. Allowed, subject to just exceptions.

W.P.(C) 1922/2022 & CM APPL. 14816/2023 [*Application filed on behalf
of the petitioner seeking interim relief*]

2. This writ petition seeks to challenge the order dated 26.03.2022 passed under Section 148A(d), and the consequential notice of even date i.e., 26.03.2022 issued under Section 148 of the Income Tax Act, 1961 [in short 'the Act']. Besides this, challenge is also laid to the show-cause notice dated

15.03.2022 issued under Section 148A(b) of the Act.

2.1 The impugned notices and order concern Assessment Year (AY) 2018-19.

3. Although the order and the show cause notice, to say the least, lack an element of clarity, Mr Vipul Aggarwal, learned senior standing counsel, who appears on behalf of the respondents/revenue, has tried to explain, as to what the Assessing Officer (AO) sought to convey *via* the impugned notices and the order.

4. It is Mr Aggarwal's contention, that transactions were shown as having been entered into by the petitioner with RCI Industries and Technologies Limited [in short "RCI"], by way of increase in share capital and generation of purchase bills; both of which were bogus.

5. A perusal of the Annexure appended to the notice issued under Section 148A(b), *inter alia*, shows that the allegation made against the petitioner is principally contained in paragraphs 2, 3 and 4 of the annexure appended to the show-cause notice dated 15.03.2023. For the sake of convenience, the same is extracted hereafter:-

"2. In this case information was received through insight portal from the office of Investigation Wing, Delhi wherein it has been stated that information has been received from CBIC in the case of M/s RCI and Technologies Limited which was involved in the practice of availing/issuing bogus sales/purchases bills for those entities which were non-exist and having negligible income. M/s Draken Metals Trading Pvt Ltd has undergone transaction of Rs. 20,43,99,525/- with M/s RCI and Technologies Limited

3. Further, it is noted that assessee company has filed its return of Income for A.Y. 2018-19 declaring income at Rs.1,08,192/-. ITR filed by the assessee for AY 2017-18 and 2018-19 were analysed. It was observed that assessee has shown income of Rs 120/- and Cash & Cash equivalent at Rs.1,11,150/- in previous year which does not support huge purchases of Rs.51,54,97,554/- in the year under consideration. Further, it is observed that there is huge increase of Rs 24,95,00,000/-in Authorised Share Capital

of the company over the year. This implies that assessee has raised fund through bogus share capital and subsequently made bogus purchases, which further strengthen the information received that assessee has undergone transaction of Rs 20,43,99,525/- with M/s RCI Industries and Technologies Limited.

4. It has been noticed that an amount of Rs. 20,43,99,525/- in AY. 2018-19 is unverified. Therefore, you are show caused why the proceedings u/s 148 r.w.s 148A of the I.T. Act 1961 may not be initiated against you for income escaping assessment for A.Y. 2018-19.”

5.1 This very allegation was, broadly, replicated by the AO in the order passed under Section 148A(d) of the Act. The relevant extract is set forth hereafter:

“3. Further, it is noted that assessee company has filed its return of Income for A.Y. 2018-19 declaring income at Rs.1,08,192/-. ITR filed by the assessee for AY 2017- 18 and 2018-19 were analyzed. It was observed that assessee has shown income of Rs 120/- and Cash & Cash equivalent at Rs.1,11,150/- in previous year which does not support huge purchases of Rs.51,54,97,554/- in the year under consideration. Further, it is observed that there is huge increase of Rs.24,95,00,000/- in Authorised Share Capital of the company over the year. This implies that assessee has raised fund through bogus share capital and subsequently made bogus purchases, which further strengthen the information received that assessee has undergone transaction of Rs.20,43,99,525/- with M/s RCI Industries and Technologies Limited.

4. Further, on perusal of the information received and verification of records available. It was not considered necessary for conducting enquiry in this case. Thus, an opportunity of being heard as per provision of section 148A(b) of the Income Tax Act, 1961 was provided to the assessee with prior approval from competent authority vide DIN ITBA/AST/F/148A(SCN)/2021-22/1040734109(1) dated 15.03.2022 wherein the assessee was given a show-cause as to why the amount of Rs.20,43,99,525/- shall not be treated as income chargeable to tax which has escaped the assessment within the meaning of provision of section 147 of the IT Act, 1961 for the assessment year 2018-19.”

6. The record shows, something which Mr Abhishek Garg, learned counsel who appears on behalf of the petitioner, does not dispute, that the petitioner did not file a reply to the notice issued under Section 148A(b) of the Act. Mr Garg, however, says that after the AO had passed the order

dated 26.03.2022 under Section 148A(d) of the Act, a reply dated 06.03.2023 was filed.

7. It appears, that thereafter, a show-cause notice dated 11.03.2023, proposing variation in the income was issued to the petitioner. Mr Agarwal points out, that there is no challenge to the show-cause notice dated 11.03.2023.

8. We may note, that Mr Garg has stated, that the relevant GST returns have been placed on record before the AO, concerning transactions with RCI. It has also been pointed out by Mr Garg, that a perusal of the consequential notice dated 26.03.2022 issued under Section 148 of the Act, and the order dated 26.03.2022 passed under Section 148A(d), along with the notice dated 15.03.2022 issued under Section 148A(b) of the Act would show, that the approval was taken even before order under Section 148A(d) of the Act was passed.

8.1 In support of this plea, Mr Garg has drawn our attention to the reference number, which appears to be common to the two notices and the order.

9. Mr Agarwal, on the other hand, defends this position, by drawing our attention to the fact that the approval was taken on 24.03.2022, prior to the issuance of the order dated 26.03.2022 under Section 148A(d) of the Act. Mr Agarwal says, that this approval was also taken both *vis-a-vis* the order, as well as the consequential notice issued under Section 148.

10. However, this submission still does not completely clear the doubt, as to why the reference number for the consequential notice issued under Section 148 of the Act, the order passed under Section 148A(d) of the Act, and the notice issued under Section 148A(b) of the Act is common.

10.1 That being said, since the petitioner chose, for whatever reason, not to file a reply to the show-cause notice dated 15.03.2022 issued under Section 148A(b) of the Act, it is, perhaps, responsible for its own woes.

11. As indicated above, the AO has gone further, to issue a show-cause notice dated 11.03.2023, for proposed variation of income.

12. Since the reply of the petitioner dated 06.03.2022 is already on record, we would urge the AO to take this into account.

13. At this stage, Mr Garg says, that besides the reply dated 06.03.2023, the petitioner also filed a reply on 17.03.2023. [See Annexure 19 appended on page 172 of the case file].

14. We may note, that it is the petitioner's case, that insofar as the allegation with regard to the increase in share capital was concerned, this aspect was scrutinized by the AO while passing the order dated 19.10.2020, under Section 143(3) of the Act.

15. We may also note, that the allegation made in the notice issued under Section 148A(b) of the Act, and the order passed under Section 148A(d) of the Act does not seem to have etched out clearly, as to what is the connection in increase in share capital, and the transaction that the petitioner allegedly has entered into with RCI.

16. Since a show-cause notice has been issued, and the reply dated 06.03.2023 is stated to be on the record, the AO will take the same into account, before he proceeds further in the matter.

17. As noticed above, Mr Garg says, that a further reply was filed on 17.03.2023. In case the said reply is not on the record, the AO will give leave to the petitioner to have the aforesaid reply placed on record. The AO will take the said reply into account as well.

18. Furthermore, since the period for completing the assessment, we are told, is coming to an end on 31.03.2023, eight weeks are granted to the AO, to take a decision in the matter, commencing from the date of receipt of the copy of the judgement.

19. Mr Garg, unreservedly, says that objections with regard to limitation having been passed, will not be put against the respondents/revenue.

20. Mr Agarwal and Mr Garg both say, that in view of the directions issued, the writ petition can be disposed of.

20.1 It is ordered accordingly.

21. Consequently, the pending application shall also stand closed.

22. The aforementioned directions have been issued, as we are informed by Mr Garg, that till, at least 10:30 AM today, no assessment order had been passed by the AO.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

MARCH 27, 2023/ ha