



2025:DHC:986-DB



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

+ W.P.(C) 1662/2025 & CM APPLN. Nos.8125-26/2025

VIVO MOBILE INDIA PRIVATE LIMITED ...Petitioner
Through: Mr. Ajay Vohra, Sr. Advocate
alongwith Mr. Aditya Vohra and
Mr. Shashvat Damija, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME
TAX & ANR. ...Respondents
Through: Mr. Shlok Chandra, sr. SC
alongwith Ms. Naincy Jain and
Ms. Madhavi Shukla, JSCs for
Revenue.

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Date of Decision: 14th February, 2025

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J : (ORAL)

1. Present writ petition has been filed, *inter alia*, seeking the following prayers:-

*“a) writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing the **notice dated 09.08.2024** issued under section 148A(b) of the Act for assessment year 2018-19;.*

*b) writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing the **order dated 31.08.2024** passed by Respondent No.1 under section 148A(d) and the consequent*



*initiation of reassessment proceedings vide **notice dated 31.08.2024** issued under section 148 of the Act for assessment year 2018-19;*

*c) grant ad-interim stay of the reassessment proceedings undertaken by Respondent No.1 under section 148 read with section 148A pursuant to the **notice dated 31.08.2024** issued under section 148 of the Act for the assessment year 2018-19 pending final disposal of the present writ petition; and*

d) Such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. We have heard the learned counsel for the parties.

3. The impugned show cause notice dated 09.08.2024 (hereafter referred to as “*impugned notice*”) was issued under section 148A(b) of the Income Tax Act, 1961 (hereafter referred to as “*Act*”) to the petitioner on the basis of High Risk CRIU/VRU information available on ‘Insight Portal’.

4. Pursuant to the impugned notice, the petitioner had by its communication/reply dated 16.08.2024, informed the respondent/Revenue that it had not incurred any transactions with M/s. Zhongmao (India) Eng. Pvt. Ltd. for the Assessment Year (AY) 2018-19. It was also informed that the petitioner infact had transactions with a contractor by the name M/s. Zhonghua (India) Eng. Pvt. Ltd. in the relevant AY. In support thereof, a number of documents were also furnished.

5. The respondent/Revenue had issued Clarificatory Letter dated 22.08.2024 noting the correction in the name of the entity as M/s. Zhonghua (India) Eng. Pvt. Ltd. It was also clarified that the said entity had not responded to the summons under Section 131(1A). That apart it was further informed that during a physical verification at the time of pre search enquiries, no entity by the said name was found carrying out



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activities at 2F, Elegance, Mathura Road, Jasola, Delhi-110025. On that basis, the respondent/Revenue concluded that M/s. Zhonghua (India) Eng. Pvt. Ltd. was a paper entity used for the purpose of accommodation entries by entities like M/s. OPPO Mobiles India Pvt. Ltd and the petitioner.

6. The respondent/Revenue had passed the impugned order under Section 148A(d) of the Act on 31.08.2024, concluding that a transaction amounting to Rs.7,35,47,572/- shown as expenses being bogus purchases made during FY 2017-18 should be disallowed and would be liable to be added to the total income of the petitioner for AY 2018-19 suggesting escapement of income of the aforesaid sum. Predicated on the said premise, the respondent/Revenue issued the impugned notice dated 31.08.2024 under Section 148 of the Act.

7. We have heard Mr. Vohra, learned senior counsel for the petitioner and Mr. Shlok Chandra, learned senior Standing Counsel for the respondent/Revenue.

8. It is not disputed that the assessment proceedings for AY 2018-19 had concluded and the present proceedings initiated under Section 148A(b) of the Act was in respect of re-opening of the assessment proceedings. The show cause notice issued under Section 148A(b) of the Act was premised on accommodation entries in the form of bogus capital expenses from fictitious entity, namely M/s. Zhongmao (India) Eng. Pvt. Ltd., to the extent of Rs.7,35,47,572.22/-. It was only upon the clarification issued by the petitioner in its reply dated 16.08.2024, that the respondent/Revenue came to be informed of the correct name of the



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entity i.e. M/s. Zhonghua (India) Eng. Pvt. Ltd. Pursuant thereto, the respondent/Revenue appears to have conducted a physical verification which was confirmed *vide* the Clarificatory Letter dated 22.08.2024. However, without issuing a further notice in respect of the alleged non-existence of the said entity at the Jasola address and calling for an explanation in that regard, the respondent/Revenue passed the impugned order under Section 148A(d) of the Act dated 31.08.2024. This procedure, to our mind, is abject violation and infraction of the principles of natural justice, inasmuch as, the conclusion regarding the said entity being a non-existent bogus entity was never put to the petitioner in the show cause notice dated 09.08.2024 issued under Section 148A(b) of the Act. In other words, the petitioner was never afforded an opportunity to respond to the said allegation. It is trite that principles of natural justice inhere in all administrative and quasi judicial actions, particularly in taxing statutes, unless expressly barred by legislative intent. {*See Sahara India (Firm) vs. CIT; (2008) 14 SCC 151*}

9. The aforesaid infraction gathers great significance having regard to the fact that the original assessment proceedings for the AY 2018-19 stood closed. It was only by the impugned notice under Section 148A(b) of the Act dated 09.08.2024, the initiation of re-assessment proceedings were to commence. Ordinarily, after the closure of the assessment proceedings, the Assessing Officer (AO) would be *functus officio* and to re-confer jurisdiction upon the AO to initiate re-assessment proceedings, relevant incriminating material ought to be put to the assessee before any such re-commencement can be sought. The view expressed by the learned Division Bench of the High Court of Calcutta in *Grindlays Bank*



Plc. v. Commissioner of Income-Tax reported in ***1990 SCC OnLine Cal 396***, in this context would be relevant. The relevant paragraphs read thus:

“7. I am of the view that the contention of the assessee must be upheld. The writ petitions were filed challenging the validity of the initiation of proceedings under section 148 of the Income-tax Act, 1961. After the assessment is over, the Income-tax Officer becomes functus officio and he cannot reopen the assessment except under very limited circumstances. In order to initiate reassessment proceedings, the Income-tax Officer has to issue a proper notice under section 148. In order to acquire jurisdiction, he has to fulfil all the conditions laid down in section 147 or section 148 of the Act. The reasons for initiating reassessment proceedings will have to be recorded and then a proper notice will have to be served upon the assessee.

8.The questions raised in the writ petition were more fundamental in nature. Did the Income-tax Officer have jurisdiction to reopen a completed assessment? This jurisdiction could only be acquired in accordance with the procedure laid down by the statute and after fulfilling the conditions laid down in the statute.....”

It is thus clear that the facts obtaining in the present petition get covered under the ratio laid down by the Calcutta High Court, though the same was rendered in the previous tax regime. Ergo, in the absence of such material being put to the petitioner, it was deprived of a valuable opportunity to explain the existence or otherwise of the entity i.e. M/s. Zhonghua (India) Eng. Pvt. Ltd. Thus, on the aforesaid analysis, we find that the said infraction has deprived the petitioner of an opportunity to offer proper explanation.

10. In view of the above, we have no hesitation in setting aside the impugned order under Section 148A(d) of the Act dated 31.08.2024 as also the notice under Section 148 of the Act of the even date.

11. In view of the aforesaid, we allow the present petition and the



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same is disposed of alongwith pending applications, if any.

12. The respondent/Revenue is at liberty, if so advised, to proceed in the matter afresh, *albeit*, in accordance with law.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

FEBRUARY 14, 2024/rl