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

% *Date of Decision: 24.03.2025*

+ **W.P.(C) 13687/2024 & CM No.57322/2024**

ERNST AND YOUNG EMEIA SERVICES LIMITED.....Petitioner

Through: Mr. Kamal Sawhney, Mr. Nikhil
Agarwal & Mr. Nishank Vashistha,
Advs.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX

CIRCLE-INTERNATIONAL TAX-1-2-2, DELHIRespondent

Through: Mr. Sunil Agarwal, Mr. Shivansh B.
Pandya, Mr. Viplav Acharya, Ms. Priya
Sarkar & Mr. Utkarsh Tiwari, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition impugning a notice dated 20.06.2024 issued under Section 148A(b) of the Income Tax Act, 1961 [**the Act**]; an order dated 29.08.2024 passed under Section 148A(d) of the Act; and a notice dated 29.08.2024 issued under Section 148 of the Act initiating reassessment proceedings for assessing the petitioner's income chargeable to tax for Assessment Year [**AY**] 2018-19.

PREFATORY FACTS

2. The petitioner [**Assessee**] is a foreign company and a tax resident of United Kingdom. It is engaged in providing common area services, market



development support services to various group entities of Ernst and Young Network (EY Network) including Indian entities, which are part of the EY Network.

3. The Assessee filed its income tax return for the AY 2018-19 on 31.10.2018 declaring a total income of ₹5,14,21,33,981/- and claimed that the said income was exempt under the provisions of India-UK Double Taxation Avoidance Agreement [**India-UK DTAA**]. The Assessee claims that it does not have any permanent establishment [**PE**] in India and its receipts for rendering services to constituent entities of the EY Network, do not constitute fees for included services [**FIS**] or royalty under the India-UK DTAA. Thus, the same are not chargeable to tax under the Act.

4. The Assessee also claims that the question regarding taxability of such services as are rendered by the Assessee was also subject matter of consideration before the Authority for Advance Ruling [**AAR**] in an application preferred by Ernst and Young Pvt. Ltd. – a company incorporated in India – which is part of the Ernst and Young Global Network. And, the AAR had found the same be not chargeable to tax in *In Re: Ernst & Young (P.) Ltd.: [2010] 189 Taxman 409 (AAR)*.

5. The Assessee responded by a letter dated 15.07.2024 contesting the impugned notice issued under Section 148A(b) of the Act. Thereafter, the AO issued a letter dated 25.07.2024 setting out certain information reflecting information regarding remittances received by the Assessee, which were set out in Form 15CA. Concededly, these remittances were disclosed by the Assessee in its income tax return.



6. The Assessee responded to the said letter on 29.07.2024. Thereafter, the AO passed an impugned order under Section 148A(d) of the Act.

REASONS AND CONCLUSION

7. At the outset, it would be relevant to refer to the notice dated 20.06.2024 issued under Section 148A(b) of the Act. We consider it apposite to set out the same in entirety:

“To, ERNST & YOUNG (EMEIA) SERVICES LIMITED 1 MORE LONDON PLACE, LONDON LONDON, FOREIGN United Kingdom	
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PAN: AACCE3942J	Assessment Year 2018-19	Dated: 20/06/2024	DIN & Letter No.: ITBA/COM/F/17/2024- 25/1065872954(1)
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Sir/Madam/M/s.

Subject: Online service of Orders - Letter

Sub: Show Cause NOTICE u/s 148A(b) of the Income Tax Act in the case of Ernst & Young(Emeia)Services Ltd. (PAN: AACCE3942J) for A.Y 2018-19-reg

Kindly refer to the above

1. In the instant case, information has been received as High Risk Cases (VRU/CRU) on INSIGHT PORTAL of Income Tax Department. Brief details of information received are as under:

2. The assessee Ernst & Young (Emeia)Services Ltd is assessed to tax with the charge of Circle 1(2)(2), and during the year under consideration assessee company received foreign remittance for Rs10,63,384/-on account of professional services through remitter M/s.S.R Batliboi & Associates LLP. Information has been received



to this office from Ward 3(1)(2) (IT), Delhi along with Order passed u/s 201 for above said Remitter.

3. **Further, as per the ITR of the assessee, the assessee has claimed exempt income Rs.5,14,21,33,981/- during the AY 2018-19. It has claimed it as exempt income as per its ITR.** The assessee is required to furnish detailed explanation alongwith relevant contract agreement, and documentary evidence as to why the said income should not be taxed in India. The assessee is required to furnish all documentary evidences available with it to substantiate its claim.

4. Based on above analysis, it is clear that assessee should have offered said receipts for taxation, and It can be said that prima facie the remittance received by the assessee company are either in the nature of Royalty/FTS(Fee for Technical Services) or Business income as per DTAA and Income Tax Act.

5. On the basis of above information it is clearly established that although the assessee should have offered said receipts to its total income to tax, the assessee has failed to comply with the statutory provisions of the Income Tax Act. Therefore, I have reason to believe that income has escaped assessment in the case of the assessee.

6. The assessee is hereby issued a show-cause notice under section 148A (b) of the income tax Act, 1961, as to why proceedings under section 147 of the Act should not be initiated against the assessee for the reasons mentioned above. The show cause notice is being issued after taking prior approval of the specified authority. Kindly note that, the response to the show-cause notice should be e-filed on or before 15/07/2024. Further, the assessee may avail personal hearing in the case on the due date of submission.

If no response is submitted, it shall be concluded that assessee has nothing to say in the matter and proceedings under section 148 shall be initiated against the assessee.

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CIRCLE INT TAX 1(2)(2)''



8. It is at once clear from the above that the said notice under Section 148A(b) of the Act does not refer to any information, which would even remotely suggest that the Assessee's income for AY 2018-19 had escaped assessment. The notice merely mentions that the Assessee had claimed that its income of ₹5,14,21,33,981/- during the AY 2018-19 was exempt from charge of tax under the Act. The aforesaid notice does not set out any reasons why the Assessee's claim is considered suspect.

9. Undisputedly, there is a distinction between initiation of proceedings for scrutiny of income tax return to assess the assessee's income chargeable to tax and initiation of proceedings for reassessment for the reason that the income of an assessee has escaped assessment. Recourse to the provisions for reassessment under Section 147 of the Act is not a substitute for the assessment proceedings. Whilst the return furnished by an assessee may be picked up for a scrutiny on any of the parameters that may be selected by the concerned authorities, the proceedings for initiation of reassessment can be initiated only if the AO finds that there is information, which suggest that the income of the assessee had escaped assessment. In the present case, the fact that the Assessee had claimed that its income was exempt from tax, absent any other reason, is not suggestive of the Assessee's income for AY 2018-19 escaping assessment.

10. In *Banyan Real Estate Fund Mauritius v. ACIT & Anr.: 2024 SCC OnLine Del 5312*, this Court had observed as under:

“23. ...Regard must also be had to the fact that undisputedly the financial transactions which were spoken of were duly disclosed in the return which had been submitted for AY 2016-



17. **Merely because the petitioner had taken the position that the income was not taxable under the Act, that would not constitute a basis for the respondent forming the opinion that income had escaped assessment.** The question of income being voluntarily offered to taxation would ultimately depend upon an assessee conceding to its exigibility to tax. **In order to sustain a proposed reopening, it was incumbent upon the respondent to have formed an opinion that the financial transaction was in fact liable to be taxed under the Act and thus, resulting in income having escaped assessment. However, and as is manifest from a reading of the original show-cause notice, no such allegation stood levelled against the petitioner.**”

[emphasis added]

11. As noted above, the Assessee had responded, *inter alia*, by contesting the issuance of notice under Section 148A(b) of the Act. Thereafter, the AO sent a letter dated 25.07.2024 enclosing therewith information as available on the insight portal. The said information merely indicated that the remittances made to the Assessee as furnished in Form 15CA. Notwithstanding the same, the AO had observed that it was evident from the said information that the Assessee had not offered its income to tax in India and that its income for AY 2018-19 had escaped assessment. This conclusion is *ex facie* perverse. There is no cavil that the Assessee had received the remittances from entities in India. It had disclosed its income in its income tax return. There is no allegation that Form 15CA, disclosed the information as to remittance to the Assessee, which was not disclosed by the Assessee in its return or that such remittances – which were admitted and claimed as exempt – constituted any evidence of income escaping assessment.

12. Thereafter, the Assessee submitted its reply dated 29.07.2024 and also



forwarded copies of the agreements, pursuant to which it had received the remittances, as sought by the AO. The Assessee claimed that its receipts were exempt from charge of tax for the reason as set out in paragraph no. 6 of the reply, which is set out below:

“6. Without prejudice to the above, it is respectfully submitted that the entire receipts of the assessee have been claimed as exempt by the assessee for the reasons stated below:

- The assessee had entered into an agreement with Ernst & Young LLP (earlier known as Ernst & Young Private Limited (“EYPL”)). It may be noted that with respect to the said contract with EYPL, EYPL had taken an advance ruling with respect to the payments being made to the assessee.
- As per the Advance Ruling, the services for which the payments so received by the assessee from EYPL do not fulfill the “make available clause” condition as mentioned in Article 13 of the Fees for Technical Services of the Double Taxation Avoidance Agreement between India-UK tax treaty. Hence, in absence of Permanent Establishment (“PE”) of the assessee in India, the receipts of the assessee were held to be non-taxable in India.
- The nature of services provided by the assessee to various other Indian member firms under other agreements is same as the nature of services as dealt and adjudicated by the Hon’ble AAR in case of EYPL.
- As the assessee does not have any fixed place at its disposal in India through which it carries on its business in India, and therefore the assessee does not have a PE in India. Further, the assessee does not have any dependent agent in India and nor does it have a service PE in India. Therefore, in light of Article 5 of India – UK tax treaty read with Income Tax Act, 1961, the assessee does not



have a PE in India.”

13. Thereafter, the AO passed an order under Section 148A(d) of the Act holding that it was a fit case of issuance of notice under Section 148 of the Act. The AO observed that *prima facie* the Assessee’s income was taxable under Clause 2(k) of the India-UK DTAA where managerial services were taxable as PE in the State, if they were rendered for more than ninety days in a year. Paragraph 5(e) of the order passed under Section 148A(d) of the Act, which encapsulates the said reason is set out below:

“5(e)Based on the conjoint reading of the contract agreement, AAR ruling decision and Information as available on the Insight portal, *prima facie* it is evident that the assessee’s income should be taxable as per Clause 2(k) of India -UK DTAA, wherein the managerial services are taxable as Permanent establishment in the state if they are rendered for more than 90 days in a year.”

14. It is at once apparent from the above that the reasons as set out in the impugned order passed under Section 148A(d) was not the information as set out in the notice under Section 148A(b) of the Act. There was no allegation in the said notice that the Assessee had a PE in India, which forms the entire basis of the order under Section 148A(d) of the Act. The decision to issue notice under Section 148 of the Act cannot be based on information and grounds that were not set out in notice under Section 148A(b) of the Act. In ***Banyan Real Estate Fund Mauritius v. ACIT & Anr.*** (*supra*), this court had observed as under:

“28.A decision to reopen or reassess cannot be based or sought to be justified either on additional reasons or those which may be supplied subsequently while disposing of objections preferred by an assessee. The statutory scheme of reassessment



neither sanctions vacillation nor can a decision to trigger reassessment be sustained based upon an attempted supplementation aimed at bolstering or buttressing the original opinion....”

15. The learned counsel appearing for the Revenue submits that the impugned order dated 29.08.2024 may be set aside. He, however, submits that the rights of the Revenue to re-initiate proceedings if otherwise permissible in law, be preserved.

16. In view of the above, the impugned notice issued under Section 148A(b) of the Act; the impugned order passed under Section 148A(d) of the Act and the impugned notice under Section 148 of the Act are set aside. However, we clarify that this order would not preclude the Revenue from initiating fresh proceedings, if otherwise permissible in law.

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

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 24, 2025

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[Click here to check corrigendum, if any](#)