

\$~A-3

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6905/2022 & CM APPLs.21038-21039/2022 and
21119/2022

INDUS TOWERS LTD (EARLIER KNOWN AS BHARTI
INFRATEL LTD) Petitioner

Through: Mr.Rohit Jain, Advocate with
Mr.Aniket D.Agarwal, Advocate.

versus

INCOME TAX OFFICER & ORS. Respondents

Through: Mr.Ajit Sharma, Sr.Standing Counsel
with Mr.Amrit Pradhan, Advocate.

% Date of Decision: 10th May, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order dated 31st March, 2022 passed by Respondent No.1 under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and the consequent initiation of reassessment proceedings under Section 147 vide notice dated 31st March, 2022 issued by Respondent No.1 under Section 148 of the Act for the assessment year 2018-19, and all proceedings/actions consequent thereto.

2. Learned counsel for the Petitioner states that Respondent No.1 has ignored the preliminary objection of the Petitioner that there was no valid jurisdiction with Respondent No.1 (located at Jaipur) for issuance of notice dated 14th March, 2022 or proposed initiation of reassessment proceedings, since jurisdiction over the Petitioner (and the erstwhile amalgamating entity) lies solely with Respondent No.3 at New Delhi). In support of his contention, learned counsel for the petitioner relies on the notice dated 13th March, 2022 issued by Circle 10(1), Delhi under Section 142(1) of the Act .

3. Learned counsel for the Petitioner further states that Respondent No.1 has issued the impugned notice under Section 148 of the Act initiating reassessment proceedings in case of the erstwhile non-existing entity, bearing PAN AABCI7776B, for the assessment year 2018-19, without furnishing the approval of Respondent No.2.

4. Learned Counsel for the Petitioner states that the impugned notice has also been issued on factually incorrect grounds, since the Petitioner had not purchased the immovable property located at Barmer – in fact, during the relevant year, the said property had only been taken on a lease for a period of 19 years and 11 months for installation of tower, as the assessee is engaged in providing passive infrastructure telecom services.

5. Issue notice. Mr.Ajit Sharma, learned counsel for the respondents, accepts notice.

6. Today, in Court, learned counsel for the respondents has handed over the letter dated 9th May, 2022 received from the Income Tax Officer Ward 6(2), Jaipur, which is taken on record. The said letter reads as under:

To
Sh Ajit Sharma
Sr. Standing Counsel,
Income-tax Department, New Delhi

Sir,

Sub: Writ Petition (Civil) No. of /2022 filed by the assessee before the Hon'ble Delhi High Court, New Delhi in the case of Indus Towers Ltd. (earlier known as Bharti Infratel Ltd.) (PAN-AADCB0274F) Vs. Income Tax Officer and Ors. for A.Y. 2018-19 -reg.

The information was received on INSIGHT portal in High Risk Non PAN CRIU/VRU pertaining to the FY 2017-18 and Actionable Assessment Year 2018-19 uploaded by the DIT(I&CI), Jaipur and flagged by RMS regarding that assessee entering into a transaction of purchase of immovable property worth Rs.91,15,000/- situated at patta no.69 V.P.O. Nagar, tehsil Gudamalani, Barnmer. The information did not have PAN of the assessee and the address of the assessee mentioned as D34, Subhash Marg, G Business Park, 3rd Floor, C Scheme Jaipur pertains to the territorial jurisdiction of the undersigned AO. Further, the information was marked on INSIGHT Portal by the office of the PCIT2, Jaipur to the undersigned for further processing. The information on INSIGHT Portal was visible only to the undersigned AO and not to the JAO i.e. DCIT, Cir- 10(1), Delhi as the information was disseminated under the non PAN Category and was sent to the AO having jurisdiction as per the territorial address mentioned as above. JAO i.e. DCIT, Cir- 10(1), Delhi could not view the information as it was not shared with him through INSIGHT portal. Hence, no action could be initiated at his end by that time. When the assessee informed its PAN and it was found to be with DCIT, Cir- 10(1), Delhi but there was no such functionality on the INSIGHT portal to transfer the information from the undersigned AO to the concerned JAO i.e. DCIT, Cir- 10(1), Delhi immediately. Due to paucity of time order u/s 148A(d) and notice u/s148 were therefore passed by the undersigned AO with the approval of the specified authority, The undersigned AO has to initiate proceedings on the information provided under legal time frame.

In view of the above it is clear that in the absence of PAN the jurisdiction over the assessee has to be ascertained on the basis of territorial address of the assessee. The notice was issued to the existent entity i.e. Indus Towers Ltd in whose name the information was received on INSIGHT.

Now since the correct PAN has been intimated and the JAO has been identified as DCIT, Cir-10(1), New Delhi the case has already been transferred vide this office letter no. ITO/W-6(2)/JPR/2022-23/41 dated 11.04.2022 (copy enclosed) for assessment proceedings and sent to the concerned AO through speed post which stands delivered to him on 18.04.2022 (copy of tracking of speed post is enclosed).

The order u/s 148A(d) was drafted after due application of mind by the undersigned which was then sent for the approval of the PCIT2, Jaipur through proper channel. In this process the Addl.CIT, Range 6, Jaipur has also applied his mind and recommended the case as fit for reopening of the assessment. The specified authority accorded her approval vide letter no.Pr.CIT-2/ITO(Tech)/JPR/2021-22/2469 dated 31.03.2022 and forwarded to office vide letter of the Addl.CIT, Range-6, Jaipur vide no. Addl.CIT/R-6/JPR/2021-22/2319 dated 31.03.2022 after proper examination of the facts of the case as well as the detailed reply filed by the assessee. A copy of the approval letter is also enclosed.

*Yours faithfully,
(Sukumar Jain)
Income tax Officer
Ward-6(2), Jaipur*

Copy to:-

- 1. The Pr. Commissioner of Income-Tax-II, Jaipur for information.*
- 2. The Addl Commissioner of Income-Tax, Range-6, Jaipur for information.*

*Income tax Officer
Ward-6(2), Jaipur”*

7. Having perused the letter dated 9th May, 2022 written by the Income Tax Officer, Ward 6(2), Jaipur, this Court is of the view that the said Income Tax Officer had no jurisdiction to issue notice dated 14th March, 2022 to propose initiation of reassessment proceedings, as the petitioner's jurisdictional Assessing Officer is based in Delhi, Circle 10(1). Consequently, as the impugned notice under Section 148A(b) as well as the impugned order under Section 148A(d) have been issued by a non-jurisdictional Assessing Officer, the same are quashed. If the law permits the respondents/revenue to take further steps in the matter, they shall be at liberty to do so. Needless to state that if and when such steps are taken and if the petitioner has a grievance, it shall be at liberty to take its remedies in accordance with law. In view of the aforesaid, the present writ petition along with pending applications stands disposed of.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MAY 10, 2022
TS