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

+ W.P.(C) 7436/2022 & CM APPLs.22677-22678/2022

FIRST SOLAR POWER INDIA PRIVATE LIMITED Petitioner

Through: Mr.Ved Jain, Advocate with
Ms.Richa Mishra and Mr.Animesh
Tripathi, Advocates.

versus

**ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 7-1
DELHI & ANR. Respondents**

Through: Ms.Zehra Khan, Jr.Standing Counsel
with Mr.Shray Nargotia, Advocate.
Mr. Kunal Sharma, Sr. Standing
Counsel.

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Date of Decision: 26th May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Writ Petition has been filed challenging the Show Cause Notice dated 17th March, 2022 issued under Section 148A(b) of the Income Tax Act, 1961 ('the Act'), Order dated 31st March, 2022 passed under Section 148A(d), Notice dated 31st March, 2022 under Section 148 of the Act and the approval granted/taken by Respondent No.1 under Section 151 of the Act.

2. Learned Counsel for the Petitioner submits that impugned order dated 31st March, 2022 is arbitrary, cryptic and suffers from non-application of

mind. He states that the source for issuance of the show cause notice is Petitioner's returns and records of transactions undertaken in normal course of business, where no adverse remarks whatsoever have been mentioned regarding the same.

3. He states that the impugned order under Section 148A(d) has arbitrarily contemplated a huge sum of Rs 3,84,12,17,094/- as having escaped assessment without any application of mind and without considering the nature of business of the Petitioner. He refers to the petitioner's detailed clarification regarding each information relied in his reply dated 24th March, 2022 which in tabular form is reproduced hereinbelow:-

Information relied upon in Order under Section 148A(d)	Remarks
<p><u>Interest under Section 194A from M/s Kodangal Solar Parks Private Limited of INR97,083/-</u></p>	<p>The assessee has earned an interest income on unsecured loans given to Kodangal Solar Parks Private Limited which has been duly recorded and reported under the head <u>“Other Income – Interest income on unsecured loans”</u> of INR 4,37,66,327/- (refer Note No:21 of the financial statements).</p>
<p><u>Fee under Section 194J from M/s.Winsol Solar Fields (Polepally) Private Limited of INR 24,086/-</u></p>	<p>During the relevant assessment year, the assessee has provided business support services to M/s. Winsol Solar Fields (Polepally) Private Limited which has been duly recorded and reported under the head <u>“Revenue from Operations – Business Support</u></p>

	<i>Services</i> ” of INR 3,42,22,691/- (refer Note No:20 of the financial statements)
<u>Interest under Section 194A from M/s.Tandur Solar Power Private Limited of INR 24,725/-</u>	The assessee has earned an interest income on unsecured loans given to Tandur Solar Power Private Limited (<i>presently known as “Suntree Solar Energy Private Limited”</i>) which has been duly recorded and reported under the head <u>“Other Income – Interest income on unsecured loans”</u> of INR 4,37,66,327/- (refer Note No: 21 of the financial statements).
<u>SFT-005: Time Deposit in Yest Bank Limited of INR 3,51,29,78,667/-</u>	The assessee has made the term deposits (<i>commonly known as TDR/FDR</i>) with Yes Bank from time-to-time basis during the year in question and amount of INR 3,51,29,78,667/- represents the aggregate amount of TD’s made during the year under consideration. The breakup of the TD’s of INR 3,51,29,78,667/- (<i>covering TD number, principal amount, date of issue, date of maturity</i>) made during the year are enclosed for your reference as Annexure-5 ;
<u>Fee under Section 194J from M/S. Anantapur Solar Parks Private Limited of INR 1,66,31,476/-</u>	During the relevant assessment year, the assessee has provided business support services to M/s. Anantapur Solar Parks Private Limited which has been duly recorded and reported under the head <u>“Revenue from Operations – Business Support Services”</u> of INR 3,42,22,691/- (refer

	Note No: 20 of the financial statements).
<u>Form 15CC (P)- Sending of Foreign Remittance – CITI Bank N.A. of INR 8,80,990/-</u> <u>Form 15CA (R) – Preparation of Form 15CA/CB’s of INR 1,45,63,215/-</u> <u>Form 15CC (P) – Sending of Foreign Remittance - CITI Bank N.A. of INR 79,98,487/-</u>	During the year under consideration, the assessee has furnished Form-15 CA/CB’s in respect to the made foreign remittance made amounting to INR 1,45,63,215/-, details of which are enclosed for you ready reference as Annexure 7-9 ;
<u>Interest under Section 194A from Yes Bank Limited of INR 1,27,44,738/-</u>	The assessee has earned an interest income on fixed deposits made with the Yes Bank Limited which has been duly recorded and reported under the head “ <i>Other Income – Interest income on fixed deposits</i> ” of INR 1,28,71,793/- (refer Note No: 21 of the financial statements).
<u>Fee under Section 194J from M/S.Marikal Solar Parks Private Limited of INR 3,60,000/-</u>	During the relevant assessment year, the assessee has provided business support services to M/s.Marikal Solar Parks Private Limited (<i>presently known as FS India Devco Private Limited</i>) which has been duly recorded and reported under the head “ <i>Revenue from Operations – Business Support Services</i> ” of INR 3,42,22,691/- (refer Note No: 20 of the financial statements).
<u>Fee under Section 194J from M/S.Solarfield Energy Two Private Limited of INR 2,07,72,650/-</u>	During the relevant assessment year, the assessee has provided technical support services to M/s. Solarfield Energy Two Private Limited which has been duly recorded and reported

	under the head “ <i>Revenue from Operations – Technical Services Fees</i> ” of INR 2,07,72,650/- (refer Note No: 20 of the financial statements).
<u>Interest under Section 194A from M/S.Tungabhadra Solar Parks Private Limited of INR 98,52,294/-</u>	The assessee has earned an interest income on unsecured loans given to Tungabhadra Solar Parks Private Limited which has been duly recorded and reported under the head “ <i>Other Income – Interest income on unsecured loans</i> ” of INR 4,37,66,327/- (refer Note No: 21 of the financial statements).
<u>EXC-002: Turnover from Services Reported in Service Tax Return of INR 13,83,53,773/-</u>	<p>The assessee has taken the details of INR 13,83,53,773/- reported by assessee in the service tax return submitted for the period Apr 01, 2017 – June 30, 2017. In this regard, we would like to submit that the amount of INR 13,83,53,773/- reported in the service tax return consists of:</p> <ol style="list-style-type: none"> a) Gross taxable turnover (income) of the assessee: INR 11,05,15,766/- b) Expense on which Service tax paid / payable under reverse charge mechanism: INR 2,78,38,007/-
<u>Interest under Section 194A from M/S. Anantapur Solar Parks Private Limited for INR 96,53,997/-</u>	The assessee has earned an interest income on unsecured loans given to Anantapur Solar Parks Private Limited which has been duly

	recorded and reported under the head " Other Income – Interest income on unsecured loans " of INR 4,37,66,327/- (refer Note No: 21 of the financial statements).
<u>Interest under Section 194A from Axis Bank Limited of INR 1,27,054/-</u>	The assessee has earned an interest income on fixed deposits made with the Axis Bank Limited which has been duly recorded and reported under the head " Other Income – Interest income on fixed deposits " of INR 1,28,71,793/- (refer Note No: 21 of the financial statements).
<u>Fee under Section 194J from M/S.Tungabhadra Solar Parks Private Limited of INR 1,72,07,132/-</u>	During the relevant assessment year, the assessee has provided business support services to M/s. Tungabhadra Solar Parks Private Limited which has been duly recorded and reported under the head " Revenue from Operations – Business Support Services " of INR 3,42,22,691/- (refer Note No: 20 of the financial statements).
<u>Interest under Section 194A from M/S. Poleply Solar Parks Private Limited for INR 4,97,162/-</u>	The assessee has earned an interest income on unsecured loans given to Polepally Solar Parks Private Limited which has been duly recorded and reported under the head " Other Income – Interest income on unsecured loans " of INR 4,37,66,327/- (refer Note No: 21 of the financial statements).

<p><u>Interest under Section 194A from M/S. Winsol Solar Fields (Polepally) Private Limited for INR 2,82,83,272/-</u></p>	<p>The assessee has earned the following interest income(s) from Winsol Solar Fields (Polepally) Private Limited during the relevant assessment year:</p> <table border="1" data-bbox="933 573 1458 835"> <thead> <tr> <th>Particulars</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Interest Income on compulsory-convertible debentures</td> <td>46,42,189/-</td> </tr> <tr> <td>Interest Income on unsecured loans</td> <td>2,36,41,083/-</td> </tr> <tr> <td>Total</td> <td>2,82,83,272/-</td> </tr> </tbody> </table> <p>Here, it is humbly submitted that the aforementioned income has been duly recorded and reported under the head “Other Income – (a) Interest income on Compulsory Convertible Debentures – INR 46,42,192/- and (b) Interest income on unsecured loans- INR 4,37,66,327/- (refer Note No: 21 of the financial statements).</p>	Particulars	Amount	Interest Income on compulsory-convertible debentures	46,42,189/-	Interest Income on unsecured loans	2,36,41,083/-	Total	2,82,83,272/-
Particulars	Amount								
Interest Income on compulsory-convertible debentures	46,42,189/-								
Interest Income on unsecured loans	2,36,41,083/-								
Total	2,82,83,272/-								
<p><u>SFT-005: Time Deposit in Axis Bank Limited of INR (-) 127054/-</u></p>	<p>The assessee has earned an interest income of INR 1,27,054/- on fixed deposits made with the Axis Bank Limited which has been duly recorded and reported under the head “Other Income – <i>Interest income on fixed deposits</i>” of INR 1,28,71,793/- (refer Note No: 21 of the financial statements).</p>								
<p><u>ITR-SAL: Amount of Salary to Amit Kumar Mittal</u></p>	<p>Mr.Amit Kumar Mittal is working as a Technical Director Supply Chain BD – India in the assessee company</p>								

	<p>during the relevant year in question. He is a civil engineer and a qualified business professional having an experience of more than 34 years with specific expertise in the power Sector. During his tenure, he was responsible for project development, engineering, procurement, project management, commissioning and operations of Solar PV plants of the company.</p>
<p><u>ITR-SAL: Amount of Salary to Amit Narendra Mehta</u></p>	<p>Mr.Amit Narendra Mehta has worked as a Director Business Development in the assessee company during the relevant year in question. He is a post graduate diploma holder for one of the top premier MBA Institute of India i.e. Indian Institute of Mangement Ahmedabad. He is a qualified business professional having an experience of more than 22 years in leadership roles across P&L management, team development, business development, asset management and operations. During his tenure, he was responsible for leading the business development activities of the company.</p>
<p><u>ITR-SAL: Amount of Salary to Deepali Lalit Girdhar</u></p>	<p>Deepali Lalit Girdhar has worked as a Director – Corporate Communications in the assessee company during the relevant year in question. She is post graduate diploma holder from a company premier MBA Institute of India. She</p>

	is a qualified business professional having an experience of more than 22 years in leadership roles across corporate communications.
<u>ITR-SAL: Amount of Salary to Kailash Chandra Pandey</u>	Kailash Chandra Pandey has worked as project engineer in the assessee company during the relevant year in question. He is an engineer from a premier Institute of India and responsible for managing the engineering operations of the company.
<u>ITR-02B: Payment of rent to Meera Johri of INR 15,71,992/-</u>	The assessee company had taken an office on rent in Nehru Place from Lalit Mohan Johri and Meera Johri. The rent agreement in this regard was executed on May 17, 2012. During the FY 2016-17, the assessee company had shifted its office from Nehru Place to Barakhamba Road and thus terminated the rent agreement executed for Nehru Place office on May 30, 2016. Thereafter, no transaction was entered by assessee company with either Lalit Mohan Johri or Meera Johri. The landlord wise details of rent paid by assessee during the financial year 2016-17 and 2017-18 are enclosed for your reference as Annexure-20 .
<u>ITR-SAL: Amount of Salary to Srinivasa Rao Dontam</u>	Srinivasa Rao Dontam has worked as senior manager – asset operations in the assessee company during the relevant year in question. He is an electronic engineer from a premier

	Institute of India who is responsible for managing the asset management department of the company.
<u>Remittance in the nature of consultancy and FTS, Hence not liable to deduct TDS – Verification Pending</u>	Assessee explained that no TDS is required to be deducted in respect of nature of service involved.

4. Learned Counsel for the Petitioner further states that the order has been passed without considering the reply dated 24th March, 2022 filed by the Petitioner in response to the Show Cause Notice dated 17th March, 2022. He states that the Respondent erred in observing that no supporting evidence had been filed by the Petitioner despite the fact that supporting evidence had been duly filed along with the reply dated 24th March, 2022. He also states that no opportunity for personal hearing was provided to the Petitioner despite specifically requesting for it vide reply dated 24th March, 2022.

5. Learned Counsel for the Petitioner states that approval under Section 151 of the Act has only been taken for passing the order under Section 148A(d) of the Act and not for issuance of notice under Section 148 of the Act. He further states that the approval granted by the Respondent No.2 is mechanical and without application of mind to the facts of the present case.

6. Issue notice. Ms. Zehra Khan, learned counsel for the respondents, accepts notice. She admits that the present case is covered by the judgment passed by this Court in *Divya Capital One Private Limited (Earlier Known as Divya Portfolio Private Limited) Vs. Assistant Commissioner of Income Tax Circle 7(1) Delhi & Anr, W.P.(C) 7406/2022*.

7. Having perused the paper book, this Court finds that the impugned notice dated 17th March, 2022 as well as the order dated 4th April, 2022 are cryptic, as is evident from the fact that information culled out from Petitioner's own return and records (namely Form 15CA, SFT and Form 26AS) have been used to issue notice under Section 148A(b) of the Act without mentioning as to what is wrong in these transactions, what are the apprehensions of the Assessing Officer and what are the points on which clarification is required. It is not understood as to how transactions carried out in the ordinary course of business can amount to income having escaped assessment without any observation or adverse remarks.

8. In fact, perusal of the impugned notice dated 17th March, 2022 suggests that reassessment in the present case was sought to be initiated merely for verification. This Court is of the view that even if the reassessment was being done for verification in accordance with Explanation 1 to Section 148, nothing prevented the Assessing Officer from conducting an enquiry with respect to the said information in accordance with Section 148A(a) of the Act. In any event, it was all the more necessary in the present case for the Assessing Officer to thoroughly scrutinise the contentions and submissions advanced by the petitioner-assessee before passing an order under Section 148A(d) of the Act.

9. In any event, this Court is of the view that since the impugned order under Section 148A(d) of the Act had been passed on 31st March, 2022 i.e. after receipt of the detailed reply by the Petitioner dated 24th March, 2022, the Assessing Officer should have considered the same as it was available with him/her on record. By not considering the reply of the Petitioner dated 31st March, 2022, the mandate of Section 148A(c) of the Act has been

violated as it casts a duty on the Assessing Officer, by using the expression 'shall', to consider the reply of the petitioner/assessee in response to notice under Section 148A(b) of the Act before making an order under Section 148A(d) of the Act.

10. This Court is also of the opinion that significance of issuance of a show cause notice at a stage prior to issuance of a reassessment notice under Section 148 of the Act has been lost on the Respondents. This Court takes judicial notice that in a majority of reassessment cases post 1st April, 2021, the orders under Section 148A(d) of the Act use a template / general reason to reject the defence of the assessee on merits, namely, "found devoid of any merit because the assessee failed to furnish the supportive evidences in respect of transactions mentioned in show cause notice.....it is established that the assessee has no proper explanation.....". Consequently, this Court is of the opinion that a progressive as well as futuristic scheme of reassessment whose intent is laudatory has in its implementation not only been rendered nugatory but has also had an unintended opposite result.

11. Consequently, the impugned order dated 31st March, 2022 issued under Section 148A(d) of the Act and the notice dated 31st March, 2022 issued under Section 148 of the Act are quashed and the matter is remanded back to the Assessing Officer for a fresh determination. The Assessing Officer is directed to pass a fresh reasoned order under Section 148A(d) of the Act after considering the Petitioner's detailed reply dated 24th March, 2022 in accordance with law within eight weeks. In the event the Assessing Officer wants certain clarification or would like the petitioner's response to any specific information received by the revenue, it shall be at liberty to give a supplementary notice.

12. Accordingly, the present writ petition along with pending applications stands disposed of. However, this Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 26, 2022

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HIGH COURT OF DELHI



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