



2026:DHC:9054-DB



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

Date of decision: 08th October, 2026

CNR No. DLHC010122192022

+ **W.P.(C) 5162/2022**

PERNOD RICARD INDIA PRIVATE LIMITEDPetitioner

Through: **Mr. Deepak Chopra, Sr. Adv. with
Mr. Anmol Anand & Ms. Priya
Tandon, Advs.**

versus

**ASSISTENT COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE -31, NEW DELHI AND ANR.Respondents**

Through: **Mr. Siddhartha Sinha, SSC**

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE DR. JUSTICE ADITI CHOUDHARY

J U D G M E N T

DINESH MEHTA, J. (ORAL)

1. By way of the present writ petition preferred under Articles 226 and 227 of the Constitution of India, the petitioner/assessee has challenged the notice dated 31.03.2021 issued by the respondents under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as '*the Act of 1961*') seeking to re-assess the petitioner for Assessment Year (hereinafter referred to as '*AY*')



2013-14.

2. The petitioner is a company engaged in the business of manufacture and sale of alcoholic beverages in India. The petitioner whose ultimate holding company is M/s Pernod Ricard S.A., France, filed its return of income (hereinafter referred to as 'return') for AY 2013-14 on 29.11.2013 declaring an income of Rs.1104,60,81,258/-.

3. On 20.10.2016, the Transfer Pricing Officer passed an order under Section 92CA(3) of the Act of 1961 and proposed an adjustment of Rs.14,88,04,829/- to the petitioner's returned income, in furtherance whereof, the Assessing Officer passed an assessment order dated 23.12.2016 under Section 143(3) read with Section 144C of the Act of 1961.

4. It may be noted that a survey was conducted at petitioner's place of business on 27.03.2019 under Section 133A of the Act of 1961 and thereafter, the impugned notice dated 31.03.2021 under Section 148 of the Act of 1961 came to be issued.

5. The petitioner sought copies of the reasons recorded for re-opening of the assessment which were provided to the petitioner on 22.07.2021. The petitioner objected to the initiation of reassessment proceedings on various counts, which objections came to be rejected by the Assessing Officer by way of order dated 22.03.2022 and the Assessing Officer decided to proceed in



furtherance of the notice, which he had issued under Section 148 of the Act of 1961.

6. Mr. Chopra, learned Senior Counsel for the petitioner, argued that the proceedings in question are wholly without jurisdiction, inasmuch as petitioner's assessment had been completed under section 143(3) of the Act of 1961 and each of the aspects relevant to the assessment, including the purchase price paid by the petitioner, had been examined by the Assessing Officer and the Transfer Pricing Officer. He argued that the proceedings are arbitrary and without jurisdiction.

7. He also argued that since the proceedings had been initiated after the expiry of four years, it was incumbent upon the Assessing Officer to establish that there had been a failure on the part of the petitioner to disclose fully and truly all the material facts necessary for the assessment. His main contention has been that since the notice in question does not contain any such allegation, the same is liable to be quashed for being without jurisdiction.

8. Learned Senior Counsel further argued that the proceedings in question have been initiated solely on the basis of the information received from the Directorate of Revenue Intelligence (DRI) or Investigation Wing, and the Assessing Officer has not applied his own mind or conducted any independent inquiry. In other words, his submission has been that the Assessing Officer



has not recorded his own satisfaction of income escaping assessment, and he has proceeded on borrowed satisfaction.

9. He also argued that even if it is assumed that there is some difference between the rates at which the parent company had sold the goods to its Swiss subsidiary and the price at which Swiss subsidiary had in turn had sold the goods to the petitioner, it cannot be said that some income has escaped assessment in petitioner's hands.

10. Heard learned Senior Counsel for the petitioner.

11. Before adverting to the submissions made by Mr. Chopra and deciding whether the present writ petition warrants interference, we deem it appropriate to reproduce the reasons recorded by the Assessing Officer for initiating reassessment proceedings against the petitioner:

“Brief details of information collected / received by the AO

The information has been received in this office in the case of assessee company (M/s Pernod Ricard India Pvt Ltd (PAN: AAACS4781P) from the office of Dy. Director of Income Tax (INV.), Unit-4(2), New Delhi. As per information, a survey action u/s 133A of the Act was conducted on 27.03.2019 on M/s Pernod Ricard India Pvt Ltd. It has been observed by the Investigation wing that as per the VAT returns submitted by the assessee company, it has made total sales amounting to Rs.189,87,09,113/- to CSD, however sales amounting to Rs.181,74,96,105/- have only been recorded in the Profit and Loss account (books of accounts) for Income Tax purposes for declaration of turnover. Hence, there is a difference of Rs. 8,12,13,009/- in



the turnover declared in VAT returns vis-a-vis the turnover in the Profit and Loss account. During post survey proceedings, the assessee submitted that this short declaration of turnover in books of accounts is on account of following factors:-

“As per the notifications nos. VAT-1511/CR-57/Taxation-1 & no. VAT/AMD- 2011/IA/ AM-6 of the Maharashtra Government, for intra-state sales VAT is to be charged on the Maximum Retail Price (MRP) of the product and the same is recorded in the VAT return for arriving at the Gross Turnover.

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Whereas in Punjab, excise duty, freight charges, local sales tax etc. have been borne by the distributor and not the manufacturer i.e. PRIPL in this case. Since PRIPL has not paid the excise duty, freight charges and local sales tax, it has not included the corresponding excise duty, freight charges and local sales component in its turnover declared for the Income Tax purposes.”

A detailed reconciliation of the gross turnover declared in VAT returns, for sales made to the CSD canteens from different states, vis-a-vis the corresponding turnover declares in ITR is given by the assessee company.

Return	Source State	CSD Sales value	Turnover in VAT/CST	Freight	Local Sales Tax	Central Sales Tax	Duty/MRP added in VAT return for VAT computations	Total (filed in Income Tax return)
VAT	Madhya Pradesh	8,65,25,990	18,20,35,112	1,41,073	3,64,07,030	-	(-)13,20,57,266	8,65,25,950
VAT	Punjab	9,59,17,015	11,69,30,765	1,41,563	34,84,205	-	(-)2,46,39,518	9,59,17,015

From the above, it has been observed that in the state of Maharashtra, the turnover amounting to Rs.18,20,35,112/- has been filed in VAT/CST return whereas the sale of Rs.



8,65,25,990/- have been made to CSD, Mumbai and even considering the amount of Freight & Local Sales Tax, the amount of Rs. 13,20,57,266/- remained unexplained. Further, in the state of Punjab, the turnover amounting to Rs.11,69,30,765/- has been filed in VAT/CST return whereas the sale of Rs. 9,59,17,015/- have been made to CSD, Punjab and the amount of Rs. 2,46,39,518/- remained unexplained.

The Summons u/s 131(1A) of the Act was issued to CSD, Adelphi, 119, MK Road, Mumbai-400020 seeking details of the purchases made from PRIPL during F.Y. 2012-13. DGM(F&A), CSD Mumbai has submitted the report of bills paid for which contains the total payments made by CSD to PRIPL during the F.Y. 2012-13. As per which, CSD has made total payments of Rs. 1,71,47,65,945/- to the assessee company M/s Pernod Ricard India Pvt. Ltd. Therefore, there is a difference in amounts of sales as booked by M/s Pernod Ricard India Pvt Ltd with respect to CSD, Mumbai and the amount paid by CSD, Mumbai for purchase from M/s Pernod Ricard India Pvt Ltd during F.Y. 2012-13.

Therefore, the sales amounting to Rs. 15,66,96,784/- (Rs. 13,20,5,266/- plus Rs. 2,46,39,518/-) remains unexplained and the same needs to be assessed in the hands of the assessee company for the assessment year 2013-14.”

12. On perusal of the aforesaid reasons, we find that during the survey conducted by the Investigation Wing of the Department, it has come to fore that as per the returns which the petitioner had filed under Value Added Tax Act (hereinafter referred to as ‘VAT’), its total sales to Canteen Stores Department (hereinafter referred to as ‘CSD’) amounted to Rs.189,87,09,113/-, whereas the petitioner had recorded sales to the tune of Rs.181,74,96,105/-



only in its books of accounts. According to the Assessing Officer, the difference in turn-over of Rs.8,12,13,009/- had resulted in escapement of income.

13. True it is, that the assessee had given its justification in the preliminary objection/reply which may or may not be correct, but at the stage of deciding preliminary objection, such an issue cannot be, and rightly has not been, decided by the Assessing Officer. The issue as raised by the petitioner is not a question of jurisdiction or question of law but of facts, which can neither be decided by the Assessing Officer while deciding preliminary objections, nor can they be decided by this Court in its jurisdiction under Article 226 of the Constitution of India.

14. The petitioner's assertion or plea that in Madhya Pradesh, Punjab and other States, the turnover/sales made to CSD is required to be reflected on Maximum Retail Price as per the State VAT laws, may be correct but the same can be examined only by the Assessing Officer in light of the applicable law and the facts during the course of assessment proceedings.

15. We, therefore, do not find any error in the order dated 22.03.2022 passed by the Assessing Officer rejecting petitioner's objections, nor do we find any plausible reason to entertain the writ petition on this ground.

16. The other argument advanced by Mr. Chopra is that the



petitioner had disclosed all material facts and that while issuing notice beyond the period of four years, the Assessing Officer had failed to establish as to which material fact the petitioner had not disclosed and how such failure resulted in income escaping assessment. According to us, such argument of Mr. Chopra has no substance in the eyes of law. A simple look at the notice shows that the Assessing Officer has relied upon returns filed by the assessee under the provisions of Value Added Tax Act, 2005 (hereinafter referred to as '*the VAT Act*').

17. Mr. Chopra could not point out from record or provisions of the Act or applicable Rules showing that an assessee is required to file the returns which it filed under the provisions of VAT Act. He also could not establish that returns which the petitioner had filed under the provisions of VAT Act were filed and shown to the Assessing Officer. Such being the position, when we find that the entire fulcrum of the impugned notice is the difference between the turnover shown in the VAT Return and the figures of sales shown while furnishing the return under the Act of 1961, the Assessing Officer was justified not only in invoking extended period of limitation but also in issuing the impugned notice, when he found that there was difference of more than Rs.8 crore in the figures of turnover declared in the VAT Returns *vis-a-vis* the turnover in the profit and loss account during the year under consideration.



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18. We are not convinced with the arguments of Mr. Chopra that the Assessing Officer had rejected the petitioner's objections cursorily. The impugned notice pertains to AY 2013-14 and was issued on 31.03.2021, notably, prior to the introduction of the new re-assessment regime with effect from 01.04.2021. Hence, the procedure prescribed under Section 148A of the Act of 1961 was not applicable. The Assessing Officer's consideration of the petitioner's preliminary objections must, therefore, be examined bearing in mind the law applicable at the relevant time.

19. Prior to the introduction of the new regime with effect from 01.04.2021, the Assessing Officer was supposed to decide preliminary objections raised by the assessee in light of the judgment of Hon'ble the Supreme Court rendered in the case of *GKN Driveshafts (India) Ltd. v. ITO*, (2003) 259 ITR 19 (SC), but the same was confined to jurisdictional aspect.

20. In the instant case, the petitioner's objections primarily relate to the merits of the proposed reassessment rather than raising any jurisdictional aspects of initiation of proceedings etc. Since the petitioner's objection did not relate to competence or initiation of proceedings or jurisdiction of the Assessing Officer, maybe the order is not well-worded, but on ultimate analysis, we find that it conforms to the requirement of law, as the proceedings were not liable to be dropped at the outset.



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21. We, therefore, do not find any error in the order dated 22.03.2022, rejecting petitioner's preliminary objection and the Assessing Officer's decision of reassessment proceeding against the petitioner under Section 148 of the Act of 1961.

22. The writ petition is, therefore, rejected.

23. Needless to observe that what we have rejected is petitioner's right to get the notice quashed - we have not commented or pronounced upon merits of petitioner's contentions or otherwise. The petitioner shall, therefore, be free to take all possible pleas (except jurisdictional plea) in order to justify the transactions before the Assessing Officer while taking part in the assessment proceedings, and the Assessing Officer shall consider the same in accordance with law.

(DINESH MEHTA)
JUDGE

(ADITI CHOUDHARY)
JUDGE

OCTOBER 8, 2026/kk