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

+ **W.P.(C) 6489/2022 & CM APPL.19676/2022**

ATMA RAM SARIA

..... Petitioner

Through: Mr. Arvind Kumar with Ms. Devina
Sharma and Mohd. Wasimul Haque,
Advocates.

versus

ADDITIONAL COMMISSIONER OF INCOME TAX, DELHI

..... Respondent

Through: Mr. Sanjay Kumar, Advocate.

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Date of Decision: 25th April, 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 notice dated 31st March, 2021 issued by the respondent under Section 148 of the Income Tax Act, 1961 (for short 'Act') and the assessment order passed by the respondent under Section 147 read with Section 144B of the Act dated 30th March, 2022 for the Assessment Year 2013-14.

2. Learned counsel for the Petitioner states that during the year under consideration, the Petitioner sold the shares of Croitre Industries Limited/ Mahavir India Limited through online transaction at the Bombay Stock



Exchange through the SEBI registered Stock Broker and had received the sale price in cheques on which Securities Transaction Tax at applicable rates had been paid.

3. He states that though as per the impugned assessment order, there is no record of filing of return of income pursuant to Section 148 notice on e-filing portal, yet the petitioner had filed return on 27th April, 2021 as is apparent from Annexure P-4 on record.

4. He also states that the Respondent had violated Section 144B of the Act as it has passed the assessment order dated 30th March, 2022 without issuing a prior show cause-cum-draft assessment order. He states that Respondent had hastily passed the assessment order on 30th March, 2022 without deciding the objections to the re-opening filed by the Petitioner on 28th March, 2022 which was within the time allowed by the Respondent, as the copy of the reason for reopening of assessment was provided by the Respondent only on 26th March, 2022, in spite of repeated requests made by the Petitioner.

5. Issue notice.

6. Mr. Sanjay Kumar, learned counsel accepts notice on behalf the Respondent. He states that the present writ petition is not maintainable as the petitioner can agitate all its contentions and submissions before the appellate forum.

7. The Supreme Court in ***GKN Driveshafts (India) Ltd. vs. Income Tax Officer and Ors., (2003) 1 SCC 72*** has held that when a notice under Section 148 of the Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On



receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.

8. In the present case, from the documents on record, it is apparent that the petitioner-assessee had filed his return of income for the Assessment Year 2013-14 on 27th April, 2021. However, the reasons for reassessment were supplied to the petitioner-assessee for the first time as late as 26th March, 2022. Thereafter even when the petitioner-assessee had filed his objections, the same were disposed of prior to passing of the impugned assessment order.

9. Keeping in view the aforesaid, it is apparent that the impugned assessment order has been passed contrary to the procedure stipulated by the Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra).

10. Accordingly, the impugned assessment order, demand notice and penalty notice all dated 30th March, 2022, are set aside and the Assessing Officer is directed to decide the objections dated 28th March, 2022 filed by the petitioner-assessee in accordance with law within ninety days. If the Assessing Officer wishes to issue any notice or seek any further information he shall be at liberty to do so. This court clarifies that rights and contentions of all the parties are left open.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 25, 2022
AS