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

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+ **W.P.(C) 6555/2022**

KAPOOR INDUSTRIES LIMITED. Petitioner

Through: Dr. Rakesh Gupta, Mr. Somil
Agarwal, Mr. Anshul Mittal and Mr.
Rajan Bajaj, Advocates.

Versus

DEPUTY COMMISSIONER OF INCOME TAX AND ORS.

Respondents

Through: Mr. Abhishek Maratha, Sr. Standing
Counsel for Revenue.

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+ **W.P.(C) 6559/2022**

**KAPOOR INDUSTRIES LIMITED AS SUCCESSOR IN
INTEREST OF KAPOOR INDUSTRIES**

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Advocate with
Dr. Rakesh Gupta, Mr. Rohit Jain,
Mr. Aniket D. Agarwal and Mr.
Somil Agarwal, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through: Mr. Abhishek Maratha, Sr. Standing
Counsel for Revenue.

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+ **W.P.(C) 6560/2022**

KAPOOR INDUSTRIES LIMITED

..... Petitioner

Through: Dr. Rakesh Gupta, Mr. Somil
Agarwal, Mr. Anshul Mittal and Mr.
Rajan Bajaj, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS

..... Respondents

Through: Mr. Abhishek Maratha, Sr. Standing
Counsel for Revenue.

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Date of Decision: 05th 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):

CM APPL.19914/2022 (exemption) in W.P.(C) 6555/2022

CM APPL.19927/2022 (exemption) in W.P.(C) 6559/2022

CM APPL.19930/2022 (exemption) in W.P.(C) 6560/2022

Exemptions allowed subject to all just exceptions.

Accordingly, the applications stand disposed of.

W.P.(C) 6555/2022 & CM APPL.19913/2022

W.P.(C) 6559/2022 & CM APPL.19926/2022

W.P.(C) 6560/2022 & CM APPL.19929/2022

1. Present writ petitions have been filed challenging the reassessment notices dated 30th March, 2021 issued by Respondent No. 2 under Section 148 of the Income Tax Act, 1961 [‘the Act’] for the assessment years 2015-

16, 2016-17 & 2017-18 as well as the assessment orders dated 31st March, 2022 passed under Section 147 read with Section 143(3) of the Act.

2. Mr. Ajay Vohra, learned senior counsel for the petitioner states that the impugned notices are *void ab initio* as they have been issued in the name of a non-existing partnership firm i.e. "M/s Kapoor Industries". He states that the erstwhile partnership firm was converted into a limited company in terms of Part IX of the Companies Act, 1956 with effect from 05th March, 2012. He emphasises that during the assessment proceedings of the erstwhile firm and of the Petitioner company for the assessment year 2012-13, the fact of the conversion of the partnership firm into the Petitioner company with effect from 05th March, 2012 was specifically intimated to the Income Tax Department and the returns up to the date of conversion were filed separately, i.e., till 4th March 2012, the return was filed in the name of the partnership firm and after 4th March 2012 till 31st March 2012, the return was filed in the name of the Petitioner company. He states that scrutiny assessments have been done for the assessment year 2012-13 in the hands of both the partnership firm as well as the Petitioner company.

3. Learned senior counsel for the Petitioner also states that even though the show cause notices were purportedly dated 28th March, 2022, yet the same were digitally signed by respondent No.1 on 29th March at 2:54 pm -- most importantly the date and time of compliance of the said notices were fixed on 29th March, 2022 at 12 pm, i.e., before the time when the said notices were evidently even signed by respondent No.1.

4. Learned senior counsel for the Petitioner further states that the income, alleged to have escaped assessment in the aforesaid assessment years, had been offered to tax in the hands of the converted company.



5. Per contra, Mr.Abhishek Maratha, learned counsel for the respondent/Revenue states that as per data available on ITBA, the PAN of the so-called partnership firm was alive on the system at the time of issuance of the notice under Section 148 of the Act. He further states that if an entity ceases to exist by virtue of conversion, the liability to get PAN and other identification struck off/erased lies with assessee. He contends that the existence of TDS and other data in the name of the partnership firm means that the PAN of the earlier entity was being utilized for making certain transactions based upon which Section 148 notices were issued.

6. Having heard the learned counsel for the parties, this Court is of the view that even if the submission of learned counsel for the respondent is accepted, then also the impugned orders are liable to be set aside as the Petitioner had not been given an opportunity either to deal with or to respond to the show cause notices dated 28th March, 2022 inasmuch as it had been issued after the date and time of compliance had expired.

7. Consequently, the impugned orders are set aside on the ground of being violative of the principle of natural justice and the matter is remanded back to the Assessing Officer for fresh adjudication. The Petitioner shall file its response to the show cause notices dated 28th March, 2022 within four weeks. Along with its response, the Petitioner shall enclose the following documents including that of the erstwhile partnership firm:-

S.No.	Exports
1.	Export Invoice & Packing List
2.	Shipping Bills of Exports
3.	Bank Certificate of Payment Receipt
4.	Bank Statements showing inward remittance
5.	Ledger account of export sales

6.	Debtors ledger accounts
Imports	
1.	Purchase Invoices
2.	Bill of entry of imports
3.	Outward foreign remittance for import payments
4.	Bank statements showing payments
Interest Income	
1.	26 AS
2.	Ledger account.

8. The Assessing Officer shall cross check the aforesaid documents with the AIR information available with the Respondent-Department.

9. The Assessing Officer is also directed to fix the date of hearing after four weeks thereafter and decide the same by way of a reasoned order in accordance with law after giving an opportunity of hearing to the Petitioner.

10. With the aforesaid directions, present writ petitions along with pending applications are disposed of.



MANMOHAN, J



DINESH KUMAR SHARMA, J

MAY 05, 2022

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