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

+ W.P.(C) 7791/2022 & CM APPLs.23857-23858/2022

ERNST AND YOUNG U.S. LLP

..... Petitioner

Through: Mr. S. Ganesh, Sr. Advocate with
Ms. Soumya Singh and Ms. Ananya
Kapoor, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX, CIRCLE
INTERNATIONAL, TAXATION 1-2-2 & ANR. Respondents

Through: Mr. Puneet Rai with Ms. Adeeba
Mujahid and Mr. Karan Pandey,
Advocates.

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Date of Decision: 20th 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 order dated 13th April, 2022 passed under Section 148A(d) of the Income Tax Act, 1961 (for short 'Act') and the notice dated 13th April, 2022 passed under Section 148 of the Act.

2. Learned senior counsel for the Petitioner states that the Petitioner had been given time till 8th April, 2022 to reply to the Show Cause notice dated



30th March, 2022 as well as corrigendum dated 1st April, 2022. He further states that the impugned order under Section 148A(d) has been passed without considering the Petitioner's request for adjournment dated 09th April, 2022 as well as 12th April, 2022 and detailed reply dated 13th April, 2022 (uploaded on 14th April, 2022) to the Show Cause notice. He emphasises that the impugned order proceeds on the basis that the Petitioner did not file any reply to the Show Cause Notice.

3. Issue notice. Mr. Puneet Rai, learned counsel accepts notice on behalf of Respondents-Revenue.

4. He states that in the present case, the adjournment request had not been filed within the stipulated time i.e. till 8th April, 2022. Therefore, according to him, the Assessing Officer was well within its right to pass the order under Section 148A(d) of the Act.

5. Having heard learned counsel for the parties, this Court is of the view that the Petitioner-Assessee has a right to get adequate time in accordance with the Act to submit its reply. Section 148A(b) permits the Assessing Officer to *suo moto* provide up to thirty days period to an assessee to respond to the Show Cause Notice issued under Section 148A(b), which period may in fact be further extended upon an application made by the Assessee in this behalf, and such period given to the assessee is excluded in computing the period of limitation for issuance of notice under Section 148 of the Act in terms of the third proviso to Section 149 of the Act.

6. Since, in the present case, the Petitioner-Assessee is a resident of the United States of America, this Court is of the view that the delay of one day in asking for an adjournment should not have led to closure of the right to file a reply to the Show Cause Notice.



7. Consequently, the impugned order passed under Section 148A(d) as well as the notice under Section 148 of the Act, both dated 13th April, 2022, are quashed and the Respondent No.1 is directed to pass a fresh reasoned order under Section 148A(d) after considering the reply dated 13th / 14th April, 2022 filed by the Petitioner in accordance with law within eight weeks. With the aforesaid direction, the present writ petition and applications are disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 20, 2022
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