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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7889/2022 & CM APPLs.24093-24094/2022

M/S ESTER INDUSTRIES LTD.

..... Petitioner

Through: Mr. R. Santhanam, Advocate with  
Mr.Arjun Prasad Sinha, Advocate.

versus

ASSISTANT CIT, NEW DELHI AND ANR.

..... Respondents

Through: Mr.Zoheb Hossain, Sr.Standing  
Counsel with Mr.Vipul Agrawal and  
Mr.Parth Semwal, Jr.Standing  
Counsel.

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Date of Decision: 24<sup>th</sup> 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 Notice under Section 148 of the Income Tax Act, 1961 ('the Act') dated 31<sup>st</sup> March, 2021, Order under Section 147 read with Section 144B and the demand notice issued under Section 156 of the Act dated 30<sup>th</sup> March, 2022.
2. Learned Counsel for the Petitioner states that the impugned order and notice have been issued and passed illegally, mechanically and without application of mind.



3. He states that the impugned Order has been passed without considering the detailed reply submitted by the petitioner during the assessment proceedings. He states that the short term capital loss of Rs.35,11,525/- can only be carried forward for set off against short term capital gain in subsequent years and, therefore, the question of disallowing the loss so computed and reducing the same from the business loss of the assessee entitled to be carried forward under Section 72 for set off in future does not arise and the impugned order is liable to be quashed.

4. He also states that the respondents have committed grave error in issuing the notice under old Section 148 without complying with the mandatory requirements of the statute and thereafter converting the case as falling under the new section 147/148 read with Section 148A when no enquiry was conducted and no notice under Section 148A was issued and no effective opportunity of hearing provided to the assessee.

5. He states that as against a returned loss of Rs.5,71,43,593/-, the respondents have raised a tax demand of Rs.43,43,36,124/-.

6. Per contra, learned counsel for the respondent-revenue, who appears on advance notice, states that the petitioner has already filed an appeal challenging the impugned order. He further states that the petitioner has also filed a rectification application which is pending consideration.

7. Having heard learned counsel for the parties and having perused the paperbook, this Court finds that the Petitioner has not brought on record anything to prove that the impugned notice issued shall be governed by the amended procedure under Section 148A of the Act.

8. This Court is also of the view that Petitioner is basically challenging the impugned order on merits. The Supreme Court in *Commissioner of*



*Income Tax and Ors. Vs. Chhabil Das Agarwal, (2014) 1 SCC 603* has held that as the Income Tax Act, 1961 provides complete machinery for assessment/reassessment of tax, assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226.

9. This Court is further of the view that the present case does not fall under the exceptional grounds on which a writ petition is maintainable at the interim stage in tax matters.

10. In view of the above, the present writ petition and applications are dismissed with liberty to raise all contentions and submissions in the appeal and rectification proceedings.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**MAY 24, 2022**  
**TS**