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

+ W.P.(C) 10307/2022

M/S THE INDURE PRIVATE LIMITED

..... Petitioner

Through: Mr.Sandeep Chilana with
Ms.Shambhavi Sinha, Mr.Priyojeet
Chatterjee, Mr.Shekhar Sharma and
Mr.Abdullah Tanveer, Advocates.

versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI &
ANR. Respondents

Through: Mr.Puneet Rai, senior standing
counsel for the Revenue with
Ms.Adeeba Mujuheed, Advocate.

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Date of Decision: 08th July, 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):

C.M.Nos.29717/2022 & 29719/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

W.P.(C) No.10307/2022 & C.M.No.29718/2022

1. Present writ petition has been filed challenging the order dated 29th June, 2022 passed by the Respondent No. 2 under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and notice dated 30th June, 2022 issued by the Respondent No.2 under Section 148 of the



Act for the Assessment Year 2013-14. Petitioner also seeks a direction to the Respondent No. 2 to reopen the income tax portal of the Petitioner Company and allow it three working days to file a reply to the show cause notice dated 20th May, 2022 and to restrain the Respondents from continuing any proceedings in pursuance to impugned order dated 29th June, 2022 and impugned notice dated 30th June, 2022 during the pendency of the present writ petition.

2. Learned counsel for the Petitioner states that the impugned order has been passed by Respondent No.2 under Section 148A(d) of the Act without giving the Petitioner a reasonable time of two weeks to file its objection, as directed by the Supreme Court in ***Union of India & Ors. vs. Ashish Aggarwal 2022 SCC Online SC 543*** and as requested by the Petitioner vide its letter dated 25th May, 2022.

3. Learned counsel for the Petitioner states that the documents annexed to the notice dated 20th May, 2022, which were relied upon by Respondent No.2 for alleging 'escapement of income' by the Petitioner Company, were completely illegible and unreadable. He states that the Petitioner filed a preliminary reply dated 25th May, 2022 requesting for legible copies of the documents. He states that Respondent No.2, after almost a month, vide its email dated 18th June, 2022 provided legible/readable copies of all the said relied upon documents along with various additional documents.

4. Learned counsel for the Petitioner states that the Petitioner Company was under a *bona fide* belief that, in compliance with the order of the Supreme Court as well as its request letter dated 25th May, 2022, it would be granted two weeks time from the date of providing the documents i.e. till 02nd July, 2022 for responding to the notice and thereafter would be



provided an opportunity of being heard. However, he states that the Petitioner Company received an email from the Respondent No.2 intimating that the impugned order has already been passed on 29th June, 2022 under Section 148A(d) of the Act.

5. *Per contra*, Mr.Puneet Rai, learned standing counsel for the Respondents-Revenue, who appears on advance notice, states that at the initial stage itself, legible copies of the documents were provided to the Petitioner by the Assessing Officer. He states that out of abundant precaution, another set of clear and legible copies of the documents were provided to the Petitioner on 18th June, 2022.

6. Mr.Rai further states that the documents annexed by the Petitioner in the present writ petition at Annexure P-10 clearly shows that the bills relied upon by the Petitioner are fabricated inasmuch as they do not even mention the address and mobile number of the supplier. He states that even in the transportation bills, the consignor address has not been mentioned.

7. It is settled law that '*principle of natural justice is no unruly horse and no lurking land mine*' as held by Mr.Justice Krishna Iyer in ***Chairman, Board of Mining Examination and Chief Inspector of Mines Vs. Ramjee, (1997) 2 SCC 256***. In fact, in ***M/s S.Tikara Vs. State of M.P. & Ors, AIR 1997 SC 1691***, it has been held that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. Consequently, the questions that arise are whether there has been any unfair deal by the respondent?

8. In the present instance, one of the alleged supplier of the petitioner, Mr.Baburam Samasi, has made a statement that he had not carried out the transactions with the petitioner which are appearing in his bank account



with ICICI Bank Ltd. The relevant portion of the statement made by the supplier – Mr.Baburam Samsi is reproduced hereinbelow:-

Q.8 As per information available with us, you have four bank accounts with account numbers 019505500296; 019505003683; 019505005796; 019505005822 in the name of R B Fabrication maintained with ICICI Bank Ltd, Bisra Road, Rourkela. Please confirm.

Ans: Yes, I confirm.

Q.9 Kindly peruse the account statement of account number 019505500296 in the name of R B Fabrication being shown to you and confirm that the transactions appearing therein were carried out by you.

Ans: No, I have not carried out the transactions which are appearing in the bank account statement mentioned above i.e. 019505500296 with ICICI Bank Ltd.

Q.10 Please refer to your answer to Q. No. 8 wherein you have stated that the accounts mentioned therein belong to you. However, in answer to Q. No. 9 you are denying the facts that you have carried out transactions in account number 019505500296. Please explain the discrepancy.

Ans: I was approached by one Sri Prabhu Agarwal, resident of Udit Nagar, Near Malgodam Road, Rourkela who asked me to open bank accounts with the assurance that he will help me in getting orders for my proprietary concern R B Fabrication. Accordingly, I went with Sri Prabhu Agarwal and opened bank accounts in ICICI Bank Ltd, Bisra Road Branch, Rourkela. The ATM Card and Cheque book issued by the bank to me was taken from me by Sri Prabhu Agarwal as he told that he required the same for helping me in getting orders. All the cheque leaves were signed by me without entering any amount or date and were handed over to Sri Agarwal. He did not help me in getting any orders. When I asked him to hand over the cheque leaves and the ATM Card, he gave me two signed cheques of SBI without mentioning any amount therein and told to present the cheques after few months. He also gave me the corresponding passbook. I



went to SBI a few times and ascertained the balance in the said account but every time I found that there was insufficient balance in the account and was unable to present the cheque. After a few days, Sri Agarwal became untraceable and till date his whereabouts are not known to me. I suspect that all the above transactions in the account mentioned by you in q. No 8 and 9 were carried out by him.”

(Emphasis supplied)

9. In view of the testimony of the supplier, this Court is of the opinion that the matter has to proceed further. Further, even if the documents now sought to be relied upon by the petitioner are taken into account, this Court is of the view that the notice under Section 148 of the Act was called for – as a prima facie case of escapement of income was made out. Moreover, as it is the case of the Respondents that, in the first instance, clear and legible copies were supplied to the Petitioner, this Court is of the opinion that the said dispute cannot be adjudicated in the writ proceedings.

10. Accordingly, the present writ petition along with pending application is dismissed. However, this Court clarifies that the Assessing Officer shall decide the matter on its own merits without being influenced by any observation made in the present order.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 08, 2022
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