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

+ **W.P.(C) 11872/2022 and CM APPL. Nos. 35472-73/2022**

SUJAN BUILDERS PRIVATE LIMITED Petitioner

Through : Ms. Rano Jain and Mr. Venketesh
Chaurasia, Advocates.

versus

ITO, WARD 24(1), DELHI Respondent

Through : Mr. Ruchir Bhatia, Senior Standing
Counsel for Revenue along with
Ms. Mansie Jain, Advocates.

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Date of Decision: 29th August, 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):

CM APPL. 35473/3033 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) 11872/2022 and CM APPL. 35472/2022 (for stay)

1. Present writ petition has been filed challenging the order passed under Section 148A(d) of the Income Tax Act, 1961 ('the Act') as well as the notice issued under Section 148 of the Act both dated 30th July, 2022 for the Assessment Year (AY) 2017-18.

2. Learned counsel for the petitioner states that the petitioner is a company engaged in the business of sale and purchase of properties and it



had filed its return of income on 15th January, 2018 for the AY 2017-18 declaring an income of Rs.16,36,874/-. She states that the Petitioner was issued a letter dated 25th May, 2022 in terms of the judgment of the Supreme Court in the case *of Union of India v. Ashish Agarwal Civil Appeal No. 3005/2022* providing the information on the basis of which the income of the Petitioner was sought to be reassessed which alleged that the Petitioner had violated Section 269SS of the Act as it had sold a property of Rs.56,00,000/- during F.Y. 2016-17 to Kanhaiyalal and had received Rs.7,04,000/- in cash. She further states that the Petitioner in its reply dated 25th May, 2022 to the Respondents informed them that the sale of the impugned property was duly recorded as the turnover of the Petitioner and a penalty amounting to Rs.7,04,000/- under Section 271D read with Section 269SS of the Act had already been levied on the Petitioner vide order dated 12th June, 2019.

3. Learned counsel for the petitioner states that the petitioner appealed against the penalty order before the Commissioner of Income Tax (Appeals) [‘CIT(A)’] under Section 271D of the Act and later opted for settling the dispute under the Direct Tax Vivad Se Vishwas Act 2020. She states that the Petitioner paid an amount of Rs.1,76,000/- and an order for full and final settlement of tax arrears under Section 5(2) read with Section 6 of The Direct Tax Vivad Se Vishwas Act, 2020 in Form No.5 was issued to the Petitioner on 13th September, 2021. She further states that the Petitioner had informed the Respondents that the Petitioner had sold the property at a consideration equivalent to the Stamp Valuation of Rs.56,00,000/- on which the due taxes under Section 194 IA had been deducted.

4. Learned counsel for the Petitioner states that the Respondents passed



the impugned order dated 30th July, 2022 under Section 148A(d) of the Act, rejecting the contentions of the Petitioner stating that the amount of Rs.56,00,000/- (consideration received against the property) was not accounted for and the same had escaped income. She points out that in the show cause notice issued under Section 148A(b) of the Act, there was no allegation against the Petitioner requiring it to account for the receipt of Rs.56,00,000/- and moreover, the Petitioner had disclosed the fact of the sale of the property for a consideration of Rs.56,00,000/- as a part of its turnover on the basis of which the penalty under Section 271D of the Act had been levied on the Petitioner by the authorities. She also relies upon the reply to the show cause notice dated 25th May, 2022 wherein, it has been stated as under :

“In respect to the matter, we would like to submit that the assessee company has filed Its Income Tax return on 15.01.2018 vide online acknowledgment receipt no. 365077471150118 for the AY 2017 - 18 (as per annexure A-2) after getting the books of accounts audited U/S 44AB of the Income tax Act 1961, whereby the above referred sale of Flat to Mr. Kanhaiya Lal for Rs 56,00,000/- has been duly considered in the turnover reported in the Audited Profit and Loss Account for the relevant AY 2017 - 18 and sales proceeding from that, both cash part of Rs 7,04,000/- and amount through banking channel and TD8 has been duly recorded in the Books of Account maintained for the AY 2017 - 18.”

5. In support of the aforesaid contention, she relies upon pages 37 and 52 of the paper-book which includes Form No. 26AS. She states that the impugned action of the Respondent of issuing a notice under section 148 of the Act and passing an order under section 148A(d) of the Act based on



different and separate grounds than the one stated as per information supplied under section 148A(b) of the Act is against the principles of natural justice and therefore unsustainable.

6. Mr. Ruchir Bhatia, learned Senior Standing Counsel for the Revenue, who appears on advance notice, states that other than the above quoted passage in the reply, the petitioner-assessee had not referred to its TDS return as well as to the Income Tax Return before the Assessing Officer. He emphasizes that the documents and accounts in support of the aforesaid submissions were not produced before the Assessing Officer by the petitioner.

7. Having heard learned counsel for the parties, this Court is of the view that the impugned order does not consider the contention of the petitioner that the amount of Rs.56,00,000/- received as consideration for the property has already been disclosed by the petitioner in its return and that the said fact had been admitted by the authorities in the penalty order passed under Section 271D of the Act. Further, the fact that TDS on the sale consideration of Rs.56,00,000/- was duly reflected in the Form 26AS as well as in the Income Tax Return has not been examined. Consequently, the impugned order under Section 148A(d) and the impugned notice under Section 148 of the Act, both dated 30th July, 2022 are set aside and the matter is remanded back to the Assessing Officer for a fresh decision.

8. In the interest of justice, the petitioner is given liberty to file amended/additional reply to the notice issued under Section 148 of the Act within four weeks. The Assessing Officer is directed to pass an order under Section 148A(d) of the Act within four weeks thereafter in accordance with law.



9. The present writ petition and the application are disposed of in the above terms. It is clarified that the rights and contentions of all the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 29, 2022

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