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

+ **W.P.(C) 12173/2022, CM APPL. 36417-18/2022**

PEEYUSH KUMAR AGGARWAL

..... Petitioner

Through: Mr. Sumit K. Batra, Mr. Manish Khurana, Mr. Kshitij Chhabra & Mr. Shikar Verma, Advocates.

versus

ITO WARD 19 (1), DELHI

..... Respondent

Through: Mr. Puneet Rai, Sr. Standing Counsel for Revenue with Ms. Adeeba Mujahid, Jr. Standing Counsel & Mr. Nikhil Jain, Advocate.

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Date of Decision: 26th 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. 36418/2022 (exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, these applications stand disposed of.

W.P.(C) 12173/2022, CM APPL. 36417/2022 (for stay)

1. Present writ petition has been filed challenging the notice dated 27th July, 2022 issued under Section 148 of the amended Act, order dated 28th July, 2022 passed under Section 148A(d) of the Income Tax Act, 1961 ('the



Act') and notices dated 15th July, 2022 and 26th May, 2022 issued under Section 148A(b) of the Act for the Assessment Year 2014-15.

2. Learned counsel for the Petitioner states that the Respondent provided materially incorrect information vide impugned notice dated 26th May, 2022 under Section 148A(b) of the Act. He states that another notice dated 15th July 2022 was issued by the Respondent under Section 148A(b) of the Act, supplying the correct list of entities with whom the Petitioner was alleged to have transacted. He states that therefore the latter notice was technically the first notice under section 148A(b) of the Act and at least seven days' time for filing the reply should have been provided as per Section 148A(b) of the Act. He points out that Petitioner was afforded only three days' time to file his reply. He also states that even though the same was filed on 16th July, 2022, yet the same was not considered.

3. Learned counsel for the Petitioner further states that the Respondent has passed the impugned notice under Section 148 of the amended Act on 27th July, 2022, prior to adjudicating and passing the order under Section 148A(d) of the Act on 28th July, 2022 which is patently illegal. He emphasizes that the notice issued under Section 148 of the Act dated 27th July, 2022 does not bear a DIN number.

4. Issue notice. Mr. Puneet Rai, Sr. Standing Counsel for Revenue accepts notice. He states that the impugned notice under Section 148 of the Act dated 27th July, 2022 had actually been issued on 28th July, 2022 along with a forwarding letter. In support of his contention he refers to the notice itself issued under Section 148 of the Act inasmuch as it refers to an order passed under Section 148A(d) of the Act dated 28th July, 2022.



5. Having perused the paper book, this Court finds that the contentions and submissions advanced by the Petitioner in its reply dated 16th July, 2022 have not been considered by the Assessing Officer while passing the order under Section 148A(d) of the Act. This Court in *Divya Capital One Pvt. Ltd. Vs. Assistant Commissioner of Income Tax Circle 7(1) Delhi & Anr. (2022) 445 ITR 436* has held that “the mandate of Section 148A(c) has been violated as the impugned order under Section 148A(d) of the Act has been passed without considering the detailed reply filed by the Petitioner.”

6. Consequently, the impugned order passed under Section 148A(d) as well as notice issued under Section 148 of the Act are set aside and the matter is remanded back to the Assessing Officer for a fresh decision in accordance with law within eight weeks. Needless to state that the rights and contentions of all the parties are left open.

7. Accordingly, the present writ petition along with pending application stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 26, 2022

msh/KA