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

+ W.P.(C) 12422/2022

ARYAN MANAGEMENT SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr.Bhupinder Jit Kumar, Advocate.

Versus

INCOME TAX OFFICER, WARD-3(1), DELHI & ANR.

..... Respondents

Through: Mr.Sanjay Kumar, Sr.Standing
Counsel for the Revenue.

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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):

C.M.No.37355/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.12422/2022 & C.M.No.37354/2022

1. Present writ petition has been filed challenging the order dated 26th July, 2022 passed by the Respondent No. 1 under Section 148A(d) of the Income Tax Act, 1961 ('the Act') and the notice dated 26th July, 2022 issued by the Respondent No. 1 to the Petitioner under Section 148 of the



Act for the Assessment Year 2014-15 and the consequential proceedings initiated thereto.

2. Learned counsel for the Petitioner states that the impugned order has been passed without application of mind and without considering the response filed by the Petitioner. He states that the Petitioner is a small non-trading company earning only rental income, audited by a reputed firm of auditors, namely Walker Chandiook & Co., LLP since financial year 2004-05 and has never had any requirement of outside funds. He further states that the company has a single bank account and never had any transaction with Mr. Hasmukh Mehta as alleged.
3. Learned counsel for the Petitioner states that the material forming the basis of the allegation against the Petitioner was not provided along with the letter dated 27th May, 2022. He states that the name of the Petitioner nowhere figures in the Diary or in the statements relied upon by the Respondent No. 1. He further states that even in the tabular information stated to have been prepared on the basis of Diary, the name appears differently on different pages. Consequently, according to him, the show cause notice is vague, non-specific and based on borrowed satisfaction.
4. Issue notice. Mr. Sanjay Kumar, learned senior standing counsel accepts notice on behalf of the Respondents-Revenue. He contends that the investigation wing has found the details of the transaction of Petitioner-Assessee in the seized diary. In the said details, it is clearly mentioned that the Assessee company has received cheques from Shri Hasmukh Mehta amounting to Rs.1,72,00,000/- during the financial year 2013-14 which is not a genuine business transaction as the entities from whom the funds have



been received are not doing any business and are paper concerns which are engaged in only providing accommodation entries.

5. A perusal of the paper book reveals that impugned order under Section 148A(d) of the Act has been passed on the ground that the Assessing Officer has certain details which shows that the Assessee Company has received cheques. In fact, the impugned order states: “...*Since the amount of more than Rs.50,00,000/- has been received in the bank account of the assessee, the same is represented in the form of asset hence, the present case satisfied the Section 149(1)(b) of the Income Tax Act, 1961.*”

6. However, neither in the notice issued under Section 148A(b) of the Act nor in the impugned order passed under Section 148A(d) of the Act, there is any detail of any cheque credited in the bank account of the Petitioner-Assessee and/or any debit entry in the bank account of Mr.Hasmukh Mehta or his front companies.

7. Accordingly, this Court is of the view that the Assessing Officer has not shared the material information stated in the impugned show cause notice issued under Section 148A(b) of the Act as well as in the impugned order passed under Section 148A(d) of the Act despite a specific request made by the Petitioner vide reply dated 07th June, 2022.

8. This Court is of the opinion that the Petitioner has been denied an effective opportunity to file a response/reply and non-sharing of information is violative of the rationale behind the judgment of this Court in ***Sabh Infrastructure Ltd. Vs. Assistant Commissioner of Income Tax, (398) ITR 198*** as well as the statutory mandate.



9. Consequently, the impugned order passed under Section 148A(d) of the Act as well as the notice issued under Section 148 of the Act, both dated 26th July, 2022 for the Assessment Year 2014-15 are set aside and the matter is remanded back to the Assessing Officer for a fresh determination. In the interest of justice, this Court permits the Assessing Officer to supply additional information, if any, in his possession to the Petitioner-Assessee within four weeks. The Petitioner-Assessee shall be at liberty to file an additional response within four weeks thereafter. The Assessing Officer shall subsequently decide the matter in accordance with law within four weeks.
10. With the aforesaid directions, present writ petition along with pending application stands disposed of. This Court clarifies 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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