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

+ W.P.(C) 12654/2022 & CM APPL. 38423/2022 (stay)

**BIRD WORLDWIDE FLIGHT
SERVICES (I.) PVT. LTD.**

..... Petitioner

Through: Mr. Mayank Nagi & Mr. Pulkit
Verma, Advocates.

versus

**DEPUTY COMMISSIONER OF
INCOME TAX CIRCLE 4(2), DELHI**

..... Respondent

Through: Mr. Kunal Sharma, Sr. Standing
Counsel for Revenue with Ms. Zehra
Khan, Jr. Standing Counsel & Mr.
Sandeep Kumar Advocate.

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Date of Decision: 02nd September, 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 order passed under Section 148A(d) of the Income Tax Act, 1961 ('the Act') and the Notice issued under Section 148 of the Act, both dated 29th July, 2022 for the Assessment Year ('AY') 2017-18.



2. Learned Counsel for the Petitioner states that in the present case the initial notice under 148A(b) of the Act was issued on 18th May, 2022. He states that the Petitioner asked for the material relied upon vide letter dated 01st June, 2022. He, however, states that the material forming the basis of allegation of escapement of income was served on the Petitioner only on 19th July, 2022 with a direction to respond by 21st July, 2022.

3. He submits that in the judgment of *Union of India Vs. Ashish Agarwal, 2022 SCC OnLine SC 543*, it was stipulated that a period of two weeks would be granted to the Assessee to file the response under Section 148A(b) of the Act and the same shall be reckoned from the date on which the 'Information' and the 'Material' forming the basis of purported action, is served on the Assessee. He states that though the Petitioner filed for an adjournment on 21st July, 2022 for additional ten days, yet the reply was filed within the additional time on 26th July, 2022. He contends that the same was not taken into account while passing the impugned order dated 29th July, 2022. Consequently, according to the learned counsel for the Petitioner, there has been a violation of the principles of natural justice.

4. Issue notice. Mr. Kunal Sharma, learned Sr. Standing Counsel for the Revenue, accepts notice.

5. Having perused the paper book, this Court is of the view that the Petitioner has a right to get adequate time under Section 148A of the Act to respond to the show cause notice. It is pertinent to mention that Section 148A(b) of the Act permits the Assessing Officer to *suo moto* provide up to thirty days' period to an assessee to respond to the show cause notice issued under Section 148A(b) of the Act, which period may in fact be further extended upon an application made by the Assessee in this behalf.



6. This Court in *Meenu Chaufla Vs. ITO, WP(C) No. 7854 of 2022* dated 27th May 2022, has held that in such cases the mandate of Section 148A(c) is violated as it casts a duty on the AO, by using the expression 'shall', to consider the reply of the Assessee in response to notice under Section 148A(b), before making an order under Section 148A(d) of the Act.

7. Consequently, the impugned order and the notice under Section 148 of the Act, both dated 29th July, 2022 for the AY 2017-18 are set aside and the matter is remanded back to the AO for a fresh decision after considering the reply dated 26th July, 2022 filed by the Petitioner within four (04) weeks.

8. With the aforesaid directions, the present writ petition along with the pending application stands disposed of.

9. It is clarified that the rights and contentions of all the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 02, 2022/msh