

\$~A-9

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

+ **W.P.(C) 13076/2022 & CM APPL.39590/2022**

M/S RISE PROJECTS PRIVATE LIMITED Petitioner

Through: Mr.Gautam Jain, Advocate with
Mr.Piyush Kumar Kamal and Mr.Ajit
Kumar Jha, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX AND ANR.

..... Respondents

Through: Mr.Ruchir Bhatia, Sr.Standing
Counsel with Ms.Mansie Jain,
Advocate.

%

Date of Decision: 28th October, 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.39591/2022 (exemption)

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) 13076/2022 & CM APPL.39590/2022

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 15th July, 2022 for the Assessment Year 2016-17.

2. Learned counsel for the petitioner states that pursuant to the directions of the Supreme Court in *Union of India v. Ashish Agarwal*, 2022 SCC OnLine SC 543 the Petitioner was issued a letter dated 24th May, 2022 under Section 148A(b) of the Act alleging that Petitioner had taken accommodation entries of Rs. 99,00,000/- from a bogus company controlled and operated by an established entry provider, namely, Mr.Himanshu Verma and it had purchased immovable property of Rs.13,10,58,000/- sources of which were not explained.

3. He states that the petitioner filed a reply to the said letter wherein it was submitted that the reassessment proceedings were sought to be initiated on incorrect facts as the transaction with the entity allegedly owned by Mr.Himanshu Verma had taken place in the Financial Year 2016-17 which is relevant to the assessment year 2017-18 and not the year under consideration i.e. assessment year 2016-17. He further states that in the return of income filed by the Petitioner for the year under consideration, it had disclosed purchases under the heads of land, capital cost, labour and under charges aggregating to Rs. 55,05,57,558/- which is far higher than the figure of Rs. 13,10,58,000/- alleged in the notice.

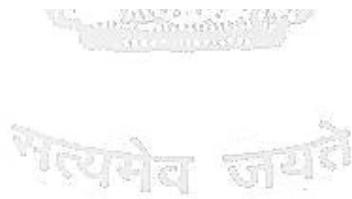
4. Learned counsel for the petitioner states that the issue of purchase of property had already been assessed by the Assessing Officer during original scrutiny assessment for the assessment year 2016-17 and the said transactions had been accepted by the respondents vide assessment order dated 19th December, 2018. He submits that the proceedings initiated under Section 147 of the Act are based on a mere change of opinion which is not permissible in law, as there is no fresh tangible material before the respondents to take a contrary view to the one taken during original scrutiny

assessment. He states that the impugned order dated 15th July, 2022 passed under Section 148A(d) of the Act has been passed without considering the detailed reply filed by the petitioner.

5. Issue notice. Mr.Ruchir Bhatia, learned senior standing counsel for the respondents-revenue, accepts notice.

6. He, on instructions, states that as the petitioner's contentions have not been considered while passing the impugned order under Section 148A(d) of the Act, the Assessing Officer has no objection if the present matter is remanded back for a fresh consideration.

7. Keeping in view the aforesaid, the impugned order passed under Section 148A(d) and the notice issued under Section 148A of the Act both dated 15th July, 2022 for the assessment year 2016-17 are set aside and the Assessing Officer is directed to pass a fresh order under Section 148A(d) of the Act in accordance with law within eight weeks. The rights and contentions of all the parties are left open. With the aforesaid directions, the present writ petition and application stand disposed of.



MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 28, 2022
TS