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

\+ W.P.(C) 13104/2022 & CM APPLs. 39756-39757/2022

M/S MGM STONE AGGREGATES PRIVATE LIMITED ..... Petitioner

Through: Mr. Ankit A. Shah, Advocate.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Abhishek Maratha, Advocate for Revenue.

% Date of Decision: 09th September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, J: (ORAL)

1. Present Writ Petition has been filed challenging the Order passed under Section 148A(d) and the Notice issued under Section 148 of the Income Tax Act, 1961 ('the Act') dated 25th July, 2022 for Assessment Year 2013-14. Petitioner also challenges the constitutional validity of the Instruction No. 1/2022 issued by the CBDT to the extent it is applicable to Assessment Year 2013-2014 on the ground that the same is against the first proviso to Section 149 of the Act as amended by Finance Act 2021.

2. Learned counsel for the petitioner states that the petitioner is a company who has been granted license for mining and was engaged in mining of stones in State of Rajasthan in the Year 2012-2013. He further states that the Joint Secretary, Department of Mines, Government of Rajasthan, Jaipur raised certain demands against the petitioner, alleging that extra mining had been done by petitioner in the year 2012-2013 (Assessment Year 2013-2014).

3. The petitioner filed a Civil Writ Petition No. 11421 of 2017 before High Court of Rajasthan at Jaipur challenging the order of the Joint Secretary, Department of Mines, Government of Rajasthan, Jaipur based on the report of the Committee appointed by the High Court. He states that the High Court of Rajasthan at Jaipur vide order dated 10th March, 2021, after considering the Report of the Committee dated 12th March, 2018 constituted for evaluation of the alleged illegal mining done by the Petitioner in the year 2012-2013 under its order, set aside the order dated 22nd June, 2017 issued by the Joint Secretary, Department of Mines, Government of Rajasthan, Jaipur, raising additional demands against petitioner and remitted the report dated 12th March, 2018 to the State of Rajasthan with liberty to take such steps as it may be advised strictly in accordance with law.

4. Consequently, learned counsel for petitioner contends that the reassessment proceedings have been initiated based on the Committee Report dated 12th March, 2018, without considering that the same was considered by the High Court of Rajasthan while setting aside the order dated 22nd June, 2017 issued by the Joint Secretary, Department of Mines, Government of Rajasthan, Jaipur, raising additional demands against the petitioner. He states that though the petitioner informed the same to the

Respondent No. 2 on 3rd June, 2022, yet the respondent No.2 without considering the objection of the Petitioner, passed the non-speaking and non-reasoned impugned order.

5. *Per* contra, learned counsel for the respondent-revenue who appears on advance notice states that the decision of the Supreme Court in ***Union of India vs. Ashish Agarwal, 2022 SCC OnLine SC 543*** read with the time extension provided by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short 'TOLA') allows extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new Section 149 of the Act is to be applied at that point.

6. He also states that if the submission of the learned counsel for the petitioner is accepted, then it would render the judgment of the Supreme Court in ***Union of India vs. Ashish Agarwal (supra)*** nugatory.

7. Having heard the learned counsel for the parties, this Court is of the view that the issue of alleged illegal mining done by the petitioner has not been conclusively settled in petitioner's favour. The State of Rajasthan still has the option to conduct a further inquiry.

8. In any event, the aforesaid facts disclose that there is a prima facie allegation of income having escaped assessment which will have to be examined by the Revenue Authorities and not the State of Rajasthan. Consequently, the notice under Section 148 of the Act calls for no interference at this stage.

9. As far as the validity of first proviso to Section 149 of the Act is concerned, this Court in ***Touchstone Holdings Pvt. Ltd. vs. Income Tax Officer, Delhi & Ors., W.P.(C) 13102/2022*** has held as under:-

> *"16. The petitioner's challenge to the paragraph 6.2.(i) of the CBDT Instruction No.1/2022 dated 11th May, 2022 is not maintainable. The contention of the petitioner that assessment for AY 2013-14 became time barred on 31st March, 2020 is incorrect. The time period for assessment stood extended till 30th June, 2021. The initial reassessment notice for AY 2013-14 has been issued to the petitioner within the said extended period of limitation. The Supreme Court has declared that the said reassessment notice be deemed as a notice issued under Section 148A of the Act and permitted Revenue to complete the said proceedings. In this case, the income alleged to have escaped assessment is more than 50 lakhs and therefore, the rigour of Section 149(1)(b) of the Act (as amended by the Finance Act, 2021) has been satisfied.*
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> *17. Accordingly, the present writ petition along with the pending application is dismissed. However, this Court clarifies that the Assessing Officer shall decide the matter on its own merits without being influenced by any observation made in the present order except the issue of limitation.*

10. Consequently with the aforesaid liberty, the present writ petition and applications stand disposed of. It is also clarified that the petitioner shall be at liberty to raise all its contentions and submissions before the Assessing Officer, except the issue of limitation.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 9, 2022
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