



\$~29

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

+ W.P.(C) 13779/2022 and CM APPL. 42107/2022 (for stay)

**NORTH END FOODS MARKETING
PRIVATE LIMITED**

..... Petitioner

Through : Mr. Rohit Tiwari and Mr. Akash
Shukla, Advocates.

versus

**DEPUTY COMMISSIONER OF
INCOME TAX CIRCLE 16(1) DELHI** Respondent

Through : Mr. Abhishek Maratha, Senior
Standing Counsel for Revenue.

%

Date of Decision: 23rd September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (Oral):

1. The present writ petition has been filed challenging the order dated 26th July, 2022, passed under Section 148A(d) of the Income Tax Act, 1961 ('the Act') and the notice dated 26th July, 2022, issued under Section 148 of the Act, for the Assessment Year ('AY') 2013-14.

2. In the Show Cause Notice ('SCN') dated 20th May, 2022, issued under Section 148A(b) of the Act, the Petitioner/assessee was to show cause with respect to information received by the Income Tax Department ('Department') that the assessee is involved in High Value Transactions with Mr. Naveen Sharma [Proprietor of M/s Mahamaya



Trading Company and M/s Surya Trading Company ('entities')] and as per the information received, the said entities were engaged in providing accommodation entries and the assessee, was also a beneficiary as it had a High Value Transaction amounting to Rs.1,50,00,000/- during the Financial Year ('FY') 2012-13.

The SCN further records that upon receipt of the aforesaid information, a notice dated 13th April, 2021, was issued to the assessee under Section 133(6) of the Act, calling for the information regarding its transaction with M/s Mahamaya Trading Company and M/s Surya Trading Company, however, no reply was received from the assessee. The assessee was thus, called upon to furnish its reply to the said information in the SCN dated 20th May, 2022, issued under Section 148A(b) of the Act, on or before 3rd June, 2022.

3. The assessee in compliance to the said SCN, filed its reply dated 3rd June, 2022, raising legal objections to the initiation of the reassessment proceedings, which were restricted to the issue of limitation. The objections raised by the assessee in its reply can be summarized as follows:

- (a) The procedure envisaged under Section 148A of the Act is required to be complied with before issuing a notice under Section 148 of the Act;
- (b) Section 149 of the Act shall be applicable and rights and defenses available to the assessee under the said provision shall be available to it;
- (c) Central Board of Direct Taxes ('CBDT') Instructions dated 11th May, 2022, are erroneous and contrary to the decisions of the Supreme Court in the case of *Union of India vs. Ashish Agarwal*, 2022 SCC Online SC 543; and



(d) The present proceedings which pertain to AY 2013-14 cannot be reopened due to the proviso to Section 149(1) of the Act (as amended by the Finance Act, 2021).

4. Pertinently, in this reply to the SCN, the assessee did not refer to or offer any explanation qua the transactions undertaken by the assessee with M/s Mahamaya Trading Company and M/s Surya Trading Company. The reply was completely silent on the transaction.

5. The Assessing Officer ('AO') after considering reply of the assessee dated 3rd June, 2022, observed that no response has been furnished on the merits of the information put to the assessee in the SCN dated 20th May, 2022. With respect to the issue of limitation, the AO held that the notice has been issued within limitation, as in this case initial notice was issued on 22nd April, 2021, under the unamended Section 148 of the Act and the present proceedings are in pursuance to the judgment of the Supreme Court in *Ashish Aggarwal* (supra). Consequently, the AO concluded that the assessee has not denied the transaction and the income amounting to Rs. 1,50,00,000/- has escaped assessment and he initiated reassessment proceedings vide impugned notice dated 26th July, 2022.

6. Learned counsel for petitioner has contended that the findings of the AO in its SCN dated 20th May, 2022, and in the impugned order dated 26th July, 2022, that the assessee had failed to respond on the merits of the allegations is incorrect and contrary to the record of the AO. He submits that the assessee had, filed a reply on 16th April, 2021, to the AO in response to the notice dated 13th April, 2021, issued under Section 133(6) of the Act. He states that with the said reply, the assessee had filed all the relevant documents evidencing its transactions with M/s Surya Trading Company for



a sum of Rs. 1,50,00,000. He states that the assessee had clarified therein that it had no transactions with M/s Mahamaya Trading Company. He states that the assessee filed a further reply on 24th July, 2021, disputing the initiation of the reassessment proceedings in pursuance to the Section 148 Notice dated 22nd April, 2021. He states that the said replies, though on record, have not been considered by the AO while passing the impugned order dated 26th July, 2022 and he therefore, seeks setting aside of the impugned order and the notice, both dated 26th July, 2022.

7. Issue notice. Mr. Abhishek Maratha, learned Senior Standing Counsel for Revenue appears on advance notice and states that the assessee is a beneficiary of an accommodation entry and the transaction between the assessee and M/s Surya Trading Company is not genuine. The adjudication of the petition involves disputed questions of facts and same cannot be determined in the present proceedings.

8. We have heard learned counsel for the parties. We have perused reply dated 3rd June, 2022, filed by the petitioner in response to the SCN dated 20th May, 2022. In the said reply, the assessee had not adverted to its replies dated 16th April, 2021 and 24th July, 2021. The reason for not adverted to its earlier replies is curious, considering this allegation was specifically recorded by AO in the SCN. The said reply dated 3rd June, 2022, also does not deal with the merits of the allegations contained in the statutory SCN as regards the nature of transactions between assessee and the third party.

9. In its reply dated 16th April, 2021, the assessee admitted that it had carried out a single transaction of Rs.1,50,00,000/- with M/s Surya Trading Company in the relevant year and clarified that it had no transaction with the entity M/s Mahamaya Trading Company. In the reply furnished on 16th



April, 2021, the assessee annexed its ledger and bank statement which reflects a single transaction with M/s Surya Trading Company during the FY 2012-13. The assessee has not furnished any explanation in the said reply with respect to the purpose of the transaction with the said entity, though, the Department, in its notice dated 13th April, 2021, issued under Section 133(6) of the Act had specifically called upon the assessee to furnish the purpose of the transaction. No documents were filed with the said reply to evidence that the said transaction was carried out in ordinary course of business.

10. It is the case of the Revenue that the entity M/s Surya Trading Company is a shell entity which is engaged in the business of providing accommodation entries and the assessee is a beneficiary. The assessee has not placed on record any documents explaining and substantiating the nature of its transaction with M/s Surya Trading Company.

11. The Revenue's contention that assessee is a beneficiary of an accommodation entry from M/s Surya Trading Company and the assessee's contention that it was done in course of business are rival pleas and its determination is a pure question of fact, which will have to be determined by the statutory authorities after appreciation of evidence. A writ petition cannot be maintained to determine the disputed facts and therefore this petition is not maintainable at this interim stage of reassessment proceedings.

12. The Supreme Court in *Commissioner of Income Tax and Ors. v. Chhabil Das Agarwal, (2014) 1 SCC 603* has held that as the Act of 1961 provides a complete machinery for assessment/reassessment of tax, the assessee is not permitted to abandon that machinery and invoke writ



jurisdiction of High Court under Article 226. The present case does not fall under the exceptional grounds on which a writ jurisdiction of the Court can be invoked.

13. Accordingly, the present writ petition and pending applications are dismissed. However, this Court clarifies that the AO shall decide the matter on its own merits without being influenced by any observations made in the present order.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 23, 2022

j