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

+ W.P.(C) 13781/2022

NAGESH TRADING CO.

..... Petitioner

Through: Mr.Salil Kapoor with Mr.Sumit
Lalchandani and Mr.Vibhu Jain,
Advocates.

versus

INCOME TAX OFFICER, WARD-47-1, DELHI Respondent

Through: Mr.Abhishek Maratha, Sr.Standing
Counsel for the Revenue.

Date of Decision: 12th 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:

C.M.No.42110/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.13781/2022 & C.M.No.42109/2022

1. Present writ petition has been filed challenging the show cause notice dated 2nd June, 2022 issued under Section 148A(b) of the Income Tax Act, 1961 ['the Act'] as well as the order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act, both dated 28th July, 2022 for the Assessment Year 2017-18.

2. Learned counsel for the Petitioner states that pursuant to the directions of the Supreme Court in *Union of India vs. Ashish Agarwal, 2022 SCC*



OnLine SC 543, the Petitioner was issued a letter dated 2nd June, 2022 under Section 148A(b) of the Act alleging that the Petitioner is a beneficiary of accommodation entries provided by the entities controlled by Mr.Ashok Kumar Gupta and has booked non-genuine bogus sales in their books of accounts to the tune of Rs.3,02,00,636/-. He states that the Petitioner had filed a reply dated 4th June, 2022, wherein it was submitted that the impugned show cause notice dated 2nd June, 2022 under Section 148A(b) of the Act had been wrongly issued to the Petitioner as the initial notice under the unamended Section 148 of the Act was issued to the Petitioner on 31st March, 2021 and served vide email on the same date. He states that the Petitioner had duly participated in the re-assessment proceedings initiated vide notice dated 31st March, 2021 issued under Section 148 of the Act by filing its return of income and replying to all the notices issued under Section 142(1) of the Act. He states that the Respondent failed to pass the re-assessment order within the prescribed time limit that ended on 31st March, 2022. He further states that the Respondent, without taking into consideration the fact that the limitation for completing the re-assessment proceedings pursuant to the notice issued under Section 148 of the Act had already elapsed subsequently issued the impugned show cause notice dated - 2nd June, 2022 under Section 148A(b) of the Act.

3. Mr.Abhishek Maratha, learned senior standing counsel for the Respondent-Revenue, on the last date of hearing had handed over a copy of letter dated 04th October, 2022 written to him by the Income Tax Officer, Ward-47(1), New Delhi. The said letter is reproduced hereinbelow:-

“Kindly refer to the e-mail dated 29.09.2022 received from Sh. Abhishek Maratha, Sr. Standing Counsel in the case of Nagesh



Trading Co. for A.Y. 2017-18 wherein he has required to advise the suitable instructions. The pointwise reply is as under:

1. The assessment proceedings initiated vide notice u/s 148 of the Act after 31.03.2021 as per the old regime were quashed by the Hon'ble Delhi High Court vide W.P.(C)520/2022 & CM No.1499/2022 dated January 11, 2022 and the assessee Nagesh Trading Co. was appearing as a petitioner at Sr. No. 76 of the said judgment. In view of the fact, the Hon'ble Jurisdictional High Court had allowed the writ petition in the case of the assessee, hence on the bonafide belief the assessment proceedings that were initiated on 31.03.2021 but the date of service of notice was not ascertainable, were not concluded by the Assessing Officer on 31.03.2022 presuming them to have become void ab-initio in assessee's case since the Hon'ble High Court had decided in his favour.

2. As discussed above, the re-assessment proceedings under the new regime were initiated once again, as the status of date of service of notice i.e. date and time stamp of mail delivery was not appearing on ITBA Portal in the given case. A screenshot of same is enclosed for ready reference. Therefore, the proceedings were started afresh in view of the Hon'ble Supreme Court Judgment in the case of Ashish Aggarwal by issuing copy of annexures u/s 148A(b) to give opportunity of being heard to the assessee and thereafter passing order u/s 148A(d) of the Act and subsequently issuing notice u/s 148 of the Act for AY 2017-18.

3. The date of generation of DIN was on the referred notice was 31.03.2021 however the date of service of notice i.e. date and time stamp of mail delivery was not appearing on ITBA Portal in the given case. A screenshot of same is enclosed for ready reference as the documentary evidence. It is important to mention here that the proof of date of delivery of the notice u/s 148 of the Act dated 31.03.2021 has not been informed by the assessee as well at the time of re-assessment proceedings under the new regime when opportunity of being heard was provided vide DIN & Letter No.ITBA/COM/F/17/2022-23/1043307054(1) dated 02.06.2022 fixing the date for 20.06.2022.

4. Clearly the issue involved is of assessee being involved as a beneficiary of providing / receiving of accommodation entry to the



tune of Rs. 3,02,00,636/- through the web of entities operated by entry operators, Ashok Kumar Gupta, Sandeep Gupta and Anuj Gupta who were subject to survey operations by Investigation Wing, Delhi and the case was reopened based upon clear findings from the Investigation Report. The notice u/s 148 dated 30.07.2022 for AY 2017-18 was issued on the bonafide belief that earlier notice u/s 148 dated 31.03.2021 was not served upon the assessee on 31.03.2021 itself and that is the reason that assessee had gone in writ before the Hon'ble High Court to which he got relief and proceedings had become void ab-initio. However, now for the first time, the assessee has filed evidence before the Hon'ble Delhi High Court that he has received the notice, mentioned supra, on 31.03.2021 itself. Therefore, the proceedings initiated by passing order u/s 148A(d) of the Act and issuing notice u/s 148 of the Act in the new regime may get technically challenged.

It is proposed that you may kindly plead before the Hon'ble High Court to kindly take a considerate view owing to a peculiar circumstance and allow the present proceedings to continue in view of the bonafide belief of the Assessing Officer and the limitation posed by the Departmental Software and the fact that assessee did not come out clean when he had been given the opportunity. In the worst case scenario, you are advised to kindly ensure that since the income has clearly escaped assessment and amount involved is more than Rs. 50 lacs, so Department's right to re-initiate the assessment is not compromised.

The above reply is submitted after prior approval from the Pr. Commissioner of Income tax, Delhi-10, New Delhi."

4. In rejoinder, learned counsel for the Petitioner states that the facts stated in the letter dated 04th October, 2022 are not correct inasmuch as the three writ petitions being W.P.(C) Nos.520/2022, 559/2022 and 659/2022 do not pertain to the assessment year in question.

5. Having heard learned counsel for the parties, this Court is of the view that the Respondent having issued and served the impugned notice on 31st March, 2021 under Section 148 of the unamended Act, could not have



issued another notice under Section 148A(b) of the Act dated 2nd June, 2022 to the Petitioner.

6. Further the directions given by the Supreme Court in *Ashish Agarwal (supra)* were applicable to cases, where notices under Section 148 of the Act had been issued during the period 01st April, 2021 to 30th June, 2021 – which is not the case in the present matter.

7. Consequently, the show cause notice dated 2nd June, 2022 as well as the order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act, both dated 28th July, 2022, for the Assessment Year 2017-18 are quashed.

8. However, this Court clarifies that it has not dealt with the legality and validity of the proceedings initiated vide show cause notice dated 31st March, 2021 issued under Section 148 of the unamended Act.

9. Further, if the law permits the Respondent-Revenue to take further steps in the matter, they shall be at liberty to do so. Needless to state that if and when such steps are taken and if the Petitioner has a grievance, it shall be at liberty to take its remedies in accordance with law.

10. With the aforesaid directions and liberty, the present writ petition stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 12, 2022/KA