

\$~38

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

% *Date of decision: 22.12.2022*

+ **W.P.(C) 17577/2022**

CHARU CHAINS AND JEWELS PVT LTDPetitioner

Through: Mr Rajat Navet, Advocate, Mr
Ghanshyam Jha, Advocate, Mr
Kushagra Pandit, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX.....Respondent

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Easha, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 56129/2022

1. Allowed, subject to just exceptions.

W.P.(C) 17577/2022 & CM APPL. 56128/2022 [Application filed on
behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Sanjay Kumar accepts notice on behalf of the respondent/revenue.

3. In view of the directions that we intend to pass, Mr Kumar says that
counter-affidavit is not required to be filed.

4. Therefore, with the consent of counsel for the parties, the writ petition
is taken up for hearing and final disposal at this stage itself.

5. This writ petition is directed against the order dated 25.07.2022
passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “the

Act”] and the consequential notice of even date i.e., 25.07.2022 issued under Section 148 of the Act concerning Assessment Year (AY) 2016-2017.

6. The record appears to show that while the Assessing Officer (AO) was carrying out the assessment *vis-a-vis* AY 2017-2018, he came across certain unsecured loan transactions entered into amongst three entities [whose names are set forth hereafter] amounting to a cumulative sum of Rs.2.7 crores. The details concerning the read as follows:

No.	Name & Address of Lender	Date of Starting Loan	Total Amount of Loan Taken during FY 2015-16 (in Rs. Crores)
1.	NCR BUILDTECH PVT. LTD.	21/04/2015	1.2
2.	CAPITAL INTROTECH PVT. LTD.	29/04/2015	0.8
3.	SALONI BUILDING PVT. LTD.	08/05/2015	0.7
	TOTAL		2.7

7. Given this position, the assessing officer formed, broadly, the following view:

(i) That these were accommodation entries, and in this context, adverted to the fact that the parties were located at the same address; furthermore inspection/enquiry was conducted at two locations which revealed that the aforementioned lenders were either not found at the given address or exhibited typical characteristics of entry providing entities.

(ii) That there were common directors, and at least two out of the three companies referred to above had their names struck off, presumably, from the register maintained by the Registrar of Companies (ROC).

(iii) Likewise, directors of two out of the three companies i.e., Capital Introtech Pvt. Ltd. and NCR Buildtech Pvt. Ltd. did not respond to the summons issued by the assessing officer on 29.11.2019.

(iv) Most of the lenders had nominal incomes. In other words, they did not have the potential to lend the amounts to third parties.

8. We have, on record, the reply dated 31.05.2022 whereby the petitioner, *inter alia*, sought the following information/material from the AO.

(i) Enquiries made by the AO.

(ii) Inspection/ Enquiry Report.

(iii) Any other reports/documents incidental or related to the above.

(iv) Lastly, any other information and material relied upon by the revenue.

9. We may note that in the very same reply, the petitioner had indicated that it would file a further response once the aforementioned information/material is provided and that even if the information/material is not provided, it would reserve its the right to file a further response.

10. During the course of the proceedings, it has emerged, that at least, the information that the AO and/or Inspector gathered concerning the transactions in issue has not been furnished to the petitioner.

11. The record also shows that in view of the response dated 31.05.2022, the AO *via* communication dated 16.06.2022 granted further time to the petitioner to file a final response, albeit on or before 27.06.2022; making it clear that if no response is received, an order under Section 148A(d) of the Act would be passed based on the material available on record.

12. Mr Rajat Navet, who appears on behalf of the petitioner, has advanced the submission that the order dated 25.07.2022 deserves to be set

aside, as it has been passed after the time prescribed in Clause (d) of Section 148(A) of the Act had passed.

12.1 According to him, the said order ought to have been passed within one month from the end of the month in which the petitioner had preferred the reply dated 31.05.2022.

12.2 In other words, Mr Navet's contention is that the time for passing the order expired on 30.06.2022.

13. Mr Kumar, on the other hand contends, and in our view rightly, that a careful perusal of the reply dated 31.05.2022 would show that it was a "partial" reply, and that taking into account the assertions raised therein, the AO *via* communication dated 16.06.2022 granted further time to the petitioner to submit a final response. Therefore, it is Mr Kumar's submission, that the period of one month would commence only from 30.06.2022, being end of the month i.e., the date on which the extended time to furnish the reply expired. Thus, accordingly, if this position is taken to be correct, the AO could pass an order under Section 148A(d) of the Act, on or before 31.07.2022.

13.1. In sum, it is Mr Kumar's contention, that since the order under Section 148A(d) of the Act was passed on 25.07.2022, it was not beyond the timeframe provided in Section 148A(d) of the Act.

14. As observed above, we are in agreement with Mr Kumar on this aspect of the matter. To reiterate, since the reply of the petitioner was partial, and the petitioner itself had indicated that even if no material is supplied, it will file a further response to the notice issued under Section 148A(b) of the Act, the one-month timeframe would kick in only from 30.06.2022.

15. This brings us to the second point, which is with regard to the non-supply of the material.

16. Insofar as this aspect is concerned, Mr Kumar, cannot but accept that in terms of the judgment of the Supreme Court rendered in *Union of India v. Ashish Aggarwal* 2022 (5) TMI 240, underlying information/material which formed the basis for triggering the assessment/reassessment proceedings was required to be furnished to the petitioner.

17. That being the position, according to us, the best way forward is to set aside the impugned order dated 25.07.2022 passed under Section 148A(d) of the Act and the consequential notice of even date i.e., 25.07.2022 issued under Section 148 of the Act.

17.1 It is ordered accordingly.

18. The matter is remitted to the AO.

18.1 The AO will furnish the underlying material concerning the petitioner, within three weeks of receipt of a copy of the judgement.

18.2 Once the material is supplied, the petitioner will have further three weeks to file a response.

18.3 The AO will grant personal hearing to the petitioner's authorized representative, and thereafter, take the next steps in law, as mandated under the Act.

19. The writ petition is disposed of in the aforesaid terms.

20. Pending application shall also stand closed.

21. Parties will act based on the digitally signed copy of the judgement.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 22, 2022/AR

Click here to check corrigendum, if any

