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

\+ W.P.(C) 8484/2022

ESTRO WEB SERVICES PVT LTD ..... Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goyal, Advs.

versus

INCOME TAX OFFICER WARD 8 -1 DELHI ..... Respondent

Through: Mr. Sanjay Kumar, Ms. Easha and Ms. Hemlata Rawat, Advs. for Revenue.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **16.02.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "A. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned order passed u/s 148A(d) of the Act dated 31.03.2022 by respondent /JAO being arbitrarily and perfunctorily passed in violation of the mandate of the 1961 Act and same is also against the command/tests specified under article 14 of constitution of India;
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> B. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned show cause notice unlawfully issued u/s 148A(b) of the 1961 act dated 21.03.2022, which is ultravires and contrary to the 1961 Act and it is against the tests specified under article of 14 of constitution of India;
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> C. Issue of a writ of certiorari or an order quashing the impugned notice purportedly issued u/s 148 of the act dated 31.03.2022 based on unlawful order passed u/s 148A(d) and invalid SCN issued u/s 148A(b) of the 1961 Act.
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> D. Issue of a writ of certiorari or an order quashing the impugned action of respondent/JAO in mechanically/irrationally deciding u/s 148A(d) of 1961 Act that extant case is a fit case for issue of notice u/s 148 of 1961 Act;

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E. Issue a writ in the nature of mandamus or an order prohibiting the operation of the proceedings as deemed fit and proper in the facts and circumstances of the present case as initiated by the respondent u/s 148 of the 1961 Act;

F. Pass any other order(s) as this Hon'ble Court may deem to be fit and more appropriate may please give order to grant interim relief to the petitioner by staying the operation of impugned noticed issued by respondent which suffers from series of jurisdictional errors as pointed above;"

2. The petitioner is essentially aggrieved by a purported failure on the part of the respondent to provide an opportunity of oral hearing as also a failure to supply the material on the basis of which proceedings under Section 148A of the Income Tax Act, 1961 ["**Act**"] came to be instituted.

3. We note that the petitioner was placed upon notice in terms as contemplated under Section 148A(b) of the Act on 21 March 2022. What was however asserted before us was a failure on the part of the respondent to provide an opportunity of oral hearing. In so far as this aspect is concerned, we note that the Supreme Court in **Union of India v. Jyoti Prakash Mitter** [(1971) 1 SCC 396] had clearly held that a right of personal hearing need not necessarily be understood as a right of oral hearing.

4. However, notwithstanding the above, it appears from the record that there has been a failure on behalf of respondent to provide the material on the basis of which action was initiated under Section 148A of the Act. It is in the aforesaid backdrop that learned counsel appearing for the petitioner draws our attention to the following observation appearing in **Sabh Infrastructure Ltd. v. Asst. CIT** [2017 SCC OnLine Del 10863] :-

"19. Before parting with the case, the court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under

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sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the Assessing Officer for obtaining the approval of the Superior Officer should itself be provided to the assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the Assessing Officer to the assessee is to be avoided ;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the Assessing Officer for reopening the assessment—especially in those cases where the first proviso to section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the Assessing Officer on the same and if so, the conclusions thereof ;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such report should be enclosed along with the reasons ;

(iv) the exercise of considering the assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed."

5. Reliance was also placed on the decision in **Divya Capital One Pvt. Ltd. v. Asst. CIT** [2022 SCC OnLine Del 1461] wherein the following was observed :-

> "11. This Court further finds that the information/material stated in the impugned show cause notice dated 17th March, 2022 issued under Section 148A(b) of the Act have not been shared with the Petitioner, despite specific request made by the Petitioner vide letter dated 24th March, 2022, thereby denying the Petitioner an effective opportunity to file a response/reply. The non-sharing of the information is violative of the rationale behind the judgment of this Court in Sabh Infrastructure Ltd. vs. Asst. CIT, 398 ITR 198 (Del)."

6. We would thus be of the considered view that the final order under Section 148A(d) of the Act will be liable to be quashed on this

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short ground alone.

7. We accordingly, allow the instant writ petition and set aside the impugned order dated 31 March 2022. The show cause proceedings under Section 148A(b) of the Act shall consequently stand revived with a direction to the respondents to provide the requisite material which constituted the basis for initiation of action.

8. Once the aforesaid material has been duly provided to the writ petitioner, it may be granted an opportunity to respond and the proceedings be disposed of thereafter in accordance with law.

9. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 16, 2024/MJ

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