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

\+ W.P.(C) 6077/2024 & CM APPL. 25263/2024

AMARJOT KAUR ..... Petitioner

Through: Mr.Sanket Bora, Ms.Rudrali Patil, Ms.Adity Gupta, Ms.Vidhi Punmiya and Mr.Prateek Arora, Advs.

versus

OFFICE OF THE INCOME TAX OFFICER WARD 35(5), DELHI & ORS. ..... Respondents

Through: Mr.Indruj Singh, Sr.SC with Mr.Sanjeev Menon and Mr.Rahul Singh, Jr.SCs.
Mr.Abhishek Yadav, SPC for R-3/UOI.

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\+ W.P.(C) 6079/2024, CM APPLs. 25268/2024 & 30285/2024

AMARJOT KAUR ..... Petitioner

Through: Mr.Sanket Bora, Ms.Rudrali Patil, Ms.Adity Gupta, Ms.Vidhi Punmiya and Mr.Prateek Arora, Advs.

versus

OFFICE OF THE INCOME TAX OFFICER WARD 35(5), DELHI & ORS. ..... Respondents

Through: Mr.Indruj Singh, Sr.SC with Mr.Sanjeev Menon and Mr.Rahul Singh, Jr.SCs.
Mr.Abhishek Yadav, SPC for R-3/UOI.

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

O R D E R

% **20.05.2024**

CM APPL.30312/2024 (Amendment of the writ petition)

1. This application has been filed to take on record a copy of the amended writ petition.

2. Bearing in mind the disclosures made in the application, it is allowed. The amended writ petition already stands placed on the record.

3. Application stands disposed of.

W.P.(C) 6077/2024 & CM APPL. 25263/2024
W.P.(C) 6079/2024, CM APPLs. 25268/2024 & 30285/2024

1. These two writ petitions have been preferred seeking the following reliefs:-

> **W.P.(C) 6077/2024**
> "a. Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the Impugned Notice u/s 148A(b) Dated 28th February 2024, Notice u/s 148 Dated 14th March 2024, Impugned Order Passed Under Section 148A(d) Dated 14th March 2024 and the impugned consequential reassessment proceedings for the A.Y. 2017-18; and/or
> b. That this Hon'ble Court be pleased to issue a writ of Prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting Respondents from taking any steps or coercive action in furtherance of the Impugned Notice u/s 148A(b) Dated 28th February 2024, Notice u/s 148 Dated 14th March 2024, Impugned Order Passed Under Section 148A(d) Dated 14th March 2024 and the impugned consequential re-assessment proceedings in pursuance thereof for the A.Y. 2017-18; and
> c. That pending the hearing and final disposal of the Writ Petition ad-interim reliefs in tenns of prayer clause "b";

d. Pass an Order directing the Respondents to the petitioner the legal cost incurred in connection with the present proceedings;
e. Pass any such order(s) or directions(s) as may be deemed fit and necessary in the facts of the case."

W.P.(C) 6079/2024

"a. Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the Impugned Notice u/s 148A(b) Dated 16th February 2023, Notice u/s 148 Dated 23rd March 2023, Impugned Order Passed Under Section 148A(d) Dated 23rd March 2023 And Impugned Order u/s 147 R.W.S 144 Dated 17th March 2024, Impugned Demand Notice u/s 156 Dated 17th March 2024, Penalty Notices u/s 271AAC(1), 272A(1)(d) and 274 r.w.s 272A(1)(d) of the ITA all dated 18th March 2024 and the impugned consequential reassessment proceedings for the A.Y. 2019-2020; and/or
b. That this Hon'ble Court be pleased to issue a writ of Prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting Respondents from taking any steps or coercive action in furtherance of the Impugned Notice u/s 148A(b) Dated 16th February 2023, Notice u/s 148 Dated 23rd March 2023, Impugned Order Passed Under Section 148A(d) Dated 23rdMarch 2023 And Impugned Order u/s 147 R.W.S 144 Dated 17th March 2024, Impugned Demand Notice u/s 156 Dated 17th March 2024, Penalty Notices u/s 271AAC(1), 272A(1)(d) and 274 r.w.s 272A(1)(d) of the ITA all dated 18th March 2024 and the impugned consequential re-assessment proceedings in pursuance thereof for the A.Y. 2019-2020; and
c. Pass an Order directing the Respondents to the petitioner the legal cost incurred in connection with the present proceedings;
d. Pass any such order(s) or directions(s) as may be deemed fit and necessary in the facts of the case."

2. In so far as W.P.(C) 6077/2024 is concerned, the same pertains to a reassessment action which was initiated for Assessment Year ["**AY**"] 2017-2018. The connected writ petition, W.P.(C) 6079/2024, is concerned with AY 2019-2020.

3. In so far as proceedings for AY 2017-2018 are concerned we note that a notice under Section 148A(b) of the Income Tax Act, 1961 ["**Act**"] came to be issued on 28 February 2024. While responding to

the same, the petitioner had taken the stand that the partnership firm to which the Permanent Account Number relates, had been dissolved and consequently the proceedings were sought to be initiated in respect of a non-existent entity.

4. Although, the stand was duly noticed in paragraph no.4 of the order dated 14 March 2024, which came to be passed under Section 148A(d) of the Act, we find that the same has not been accorded any consideration. This would be evident from a reading of paragraph no.4 of that order which is reproduced herein below:-

> "4. The assessee submitted reply on ITBA portal on 08.03.2023. The reply of the assessee has been considered u/s 148A(c) of the Act but not found tenable. The assessee submitted that
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> > "Respected Sir / Madam, I, Amarjot Kaur was partner in my Firm S P Electronics & Battery Products was a partnership firm having PAN AACFS6009F. This firm was dissolved on 31 March 2004 as my partner Sh. Navnirman S/o Sh. Sukhdev Singh got retired on 31 March 2004. Copy of Dissolution Deed attached. After that I continued the business as proprietor w.e.f 01 April 2004 and timely submitted all the details on my PAN No. AFYPK5670F till date. Copy of my PAN & Aadhaar are attached. The bank account no. 50435010000040 mentioned in the notice is my Overdraft General Account with PNB Bank, the transaction of which I am duly reflecting in my Balance Sheet and Income Tax Returns, Copy of Bank Certificate is attached. I am also attaching my GST Certificate also in this regard. You are requested to vacate the notice and oblige."
>
> The assessee has not submitted cash book, sale/purchase ledgers, bank account statement, sale/purchase bills/vouchers etc to establish that the cash deposited in its bank account has been accounted on PAN No. AFYPK5670F. In absence of the detail, it is not possible to examine the cash deposited into the bank account. Looking at the above undisclosed income, it is found that despite having taxable income, the assessee has not filed his return of income for the year under consideration. Moreover, the assessee's case is covered under provisions of section 149(1)(b) of the Act as the period of three years but not more than ten years have elapsed from the end of the relevant assessment year and the documents or evidences in possession reveal that income of Rs 1,19,81,110/- chargeable to tax for the relevant year has escaped assessment. It is also evident from information available with Assessing Officer that the income

chargeable to tax for the relevant year, which has escaped assessment, is more than Rs. 50 lakhs and same is represented in form of an "Asset" (Cash deposited into ORIENTAL BANK OF COMMERCE # A/C 50435010000040). Accordingly, it is found to be a fit case for issuing notice u/s 148 of the Act for the A.Y. 2017-18.

5. In view of the aforesaid, we would be of the considered opinion that the matter would merit being remitted to the desk of the Assessing Officer ["**AO**"] to commence proceedings afresh and from the stage of Section 148A(b) of the Act.

6. Insofar as W.P.(C) 6079/2024 is concerned, although an identical issue appears to have been raised, the record would reflect that the reply by the respondents was received only after the period for submission of a response as stipulated under the Section 148A(b) notice had expired. Although, the petitioner contends that the said notice was received belatedly and thus being the cause for a delayed submission, we find no justification to go into these disputed questions since undisputedly and in the interregnum, a final assessment order has come to be passed and in respect of which the petitioner would have efficacious statutory alternative remedies.

7. While the petitioner had sought to rely upon the decision rendered by this Court in **Rajinder Nath Kapoor v. ITO**, [2023 SCC OnLine Del 3614], we find that the same had proceeded on the basis of a reply which had been duly filed within the time stipulated and prescribed under the notice issued under Section 148A(b) of the Act. In fact, taking cognizance of an identical factual basis is what has convinced us to allow W.P.(C) 6077/2024.

8. Accordingly, W.P.(C) 6077/2024 shall stand allowed. The impugned order dated 14 March 2024 issued under Section 148A(d) of the Act and the consequential notice issued under Section 148 of

the Act shall stand set aside and the matter shall stand remitted to the AO for passing a fresh order after taking into consideration the reply which was submitted. All rights and contentions of respective parties are kept open.

9. In so far as, W.P.(C) 6079/2024 is concerned, we dispose of the same with liberty reserved to the writ petitioner to adopt appropriate statutory alternative remedies.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 20, 2024/MJ