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

\+ W.P.(C) 15812/2022

KUSUM HEALTHCARE PRIVATE LIMITED .....Petitioner

Through: Mr. Vishal Kalra & Mr. Snigdha Gautam, Advs.

versus

THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13(1), NEW DELHI & ORS. .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semiwal, Mr. Apoorv Agarwal, JSCs, Ms. Nupur Sharma, Mr .Manav Goyal, Mr. Gaurav Singh, Ms, Divya Verma & Mr. Bhanukaran Singh Jodha, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **18.07.2024**

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

> "a) issue a writ of and/or order and or directions in the nature of certiorari, prohibition, mandamus or any other appropriate writ, order or direction for quashing of the impugned notice issued under erstwhile section 148 of the Act dated 28.06.2021 (Annexure P/1), notice dated 19.05.2022 issued under section 148A(b) of the Act (Annexure P/2), order dated 22.07.2022 passed under section 148A(d) of the Act (Annexure P/3) and consequential notice issued under section 148 of the Act dated 22.07.2022 (Annexure P/4) by the Respondent No. 1 for the assessment year 2014-15;
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> b) set aside the Instruction No. 1 dated 11.05.2022 issued by Respondent No. 4 (CBDT) which ultra- virus to the Act;
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> c) stay the operation of the impugned above stated notice(s)/ order and other subsequent proceedings and/ or giving effect to and/ or taking any steps whatsoever pursuant to and/ or in furtherance of

the Impugned notice during the pendency and till the disposal of the present writ petition and;

d) such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioner principally assails the validity of the reassessment action which has been initiated for Assessment Year ["**AY**"] 2014-15. From the record we gather that while undertaking an assessment for the concerned year, the respondents on 29 January 2018 passed a final assessment order referable to Section 144C(3) read along with Section 143(3) of the Income Tax Act, 1961 ["**Act**"]. Against this assessment order the petitioner had preferred an appeal before the Commissioner of Income Tax (Appeals) wherein the appeal of the petitioner was partly allowed. Both the petitioner and the respondent thereafter filed appeals before the Income Tax Appellate Tribunal. The appeal of the petitioner came to be withdrawn as it had opted to settle the dispute under the Direct Tax Vivad se Vishwas Act, 2020 ["**DTVSV Act**"]. We deem it appropriate to notice at this stage that a Form 5 was issued on 20 October 2021.

3. According to the disclosures made in the writ petition a notice under Section 148 came to be issued originally on 28 June 2021. The petitioner filed its objections in detail to the said notice on 22 and 26 July 2021. A Return of Income in response to the impugned notice also came to be submitted on 27 July 2021. However, and in the meanwhile, a dispute arose with respect to notices which had come to be issued by the respondents following the earlier statutory procedure which was prescribed and prevailed prior to 01 April 2021. This aspect came to be settled by this Court in terms of its judgment rendered in **Man Mohan Kohli vs Assistant Commissioner of**

Income Tax and Another. [2021 SCC OnLine Del 5250] on 15 December 2021 and which stood affirmed by the Supreme Court in **Union of India and Others vs Ashish Aggarwal** [(2023)) 1 SCC 617]. Shorn of further details, all that the Court deems necessary to notice was that the Supreme Court in *Ashish Aggarwal*, in order to salvage the situation created by virtue of the respondents proceeding in terms of the erstwhile regime and which prevailed prior to 01 April 2021, accorded liberty to them to draw proceedings afresh from the stage of Section 148A(b) and which provision had come to hold the field in the meanwhile.

4. Taking recourse to the liberty so accorded, the respondents issued a fresh notice under Section 148A(b) against the writ petitioner on 19 May 2022. In response to the same the petitioner furnished a reply afresh and while dealing with the merits of the allegations which were levelled it took the following position:

> "**vi) Without prejudice to the above submission. it is humbly submitted that assessee had not carried out any transaction with DPCL during the subject AY as alleged in the case related information detail. Accordingly. it is humbly submitted that aforesaid information being relied upon for subject reassessment is baseless and void.**
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> vii) It is further humbly submitted that assessee was incorporated on March 12, 1997 and is engaged in manufacturing and trading of pharmaceutical products. Further, Assessee being a company is statutorily required to gets its accounts audited from Company Law perspective. Further, even from Income tax law perspective, it had got its accounts audited for subject year. Audited financial statements of company and Tax Audit report are enclosed as **Annexure 2 and 3** respectively. Thus, the accounts of assessee are duly audited and no such transaction with DPCL is appearing in its books of accounts.
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> viii) Without prejudice to above, assessee requests your goodself to kindly share the detailed /self-explanatory documents/ information received by your goodself for alleging that assessee had entered into such transaction of fictious loan with DPCL and how such transaction represents income escaping assessment in the form of

> asset. Based on upon review of such documents/ information, assessee shall file its necessary reply, if required.
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> ix) In view of the above, it is clear that information provided to assessee is not a concrete material on record to establish that the assessee has escaped assessment before initiating a re-assessment proceeding. Thus, based upon this aspect as well, subject notice is void."

Thereafter a final order under Section 148A(d) came to be framed on 22 July 2022.

5. We are constrained to observe that a bare perusal of the aforesaid order would indicate that the jurisdictional officer has clearly failed to either deal with or consider the various objections which were urged by the writ petitioner including those which touched upon the very assumption of jurisdiction under Section 148.

6. We note that the various contentions including on the aspect of limitation have come to be perfunctorily disposed of with the respondent observing as follows:

> "**5.1** Notice barred by limitation of time
>
> The assessee objects to notice that it is time barred. The assessee takes recourse to the provisions of the section 149 pre and post finance act 2021 to substantiate its claims. It is hereby stated that the Hon'ble Supreme Court has upheld the view of the Hon'ble High Court that the benefit of new law shall be made available even in respect of proceedings of past assessment years. Decision of the Hon'ble Supreme Court read with time extension provided by taxation and other laws (relaxation and amendment of certain provisions) 2020 (TOLA) and various notifications issued thereunder will allow extended reassessment notices to travel back in time to their original dates when such notices were to be issued and then new section 149 is to be applied at that point.
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> **5.2** Proceedings have been initiated without prior approval of the Specified Authority
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> The extended reassessment notices are deemed to be the show cause notices under section 148A(b) in accordance with the judgement of Hon'ble Supreme Court. Therefore all the requirements of new law prior to the show cause notice shall be deemed to have been complied with and only requirement left was

to provide the information to the assessee which has duly been done vide letter dated 19.05.2022.

5.3 No concrete information and material has been provided to the assessee which suggests that income chargeable to tax has escaped assessment

<u>The above objection of the assessee has been considered but found not tenable. All the relevant information and material available with the office related to the case of assessee was duly shared within the time period of 30 days as directed by Hon'ble Supreme Court and thus objection raised by assessee holds no ground and stands disposed off.</u>

<u>To conclude all the objections raised by the assessee have been examined and found to be untenable. The reopening is fully tenable on legal grounds as well as on merits</u>."

7. Pursuant to notices issued on the instant writ petition, the respondents have filed a reply. However, that reply also does not allude to any material which may have constituted the basis for the allegations levelled in the Section 148 notices. This we note since the petitioner had vehemently contended in its reply to the Section 148A(b) notice that it had no dealings in the concerned AY with the Dishman Group of Companies. The counter affidavit fails to shed any light on this aspect.

8. The respondents, however, have taken the position that in light of the judgment rendered by the Supreme Court in **Anshul Jain vs. Principal Commissioner of Income Tax and Anr.** [2022 SCC OnLine SC 1756], all contentions should be addressed in the course of the re-assessment proceedings and that we should desist from examining any challenge including one which may go to the root of the assumption of jurisdiction.

9. We find ourselves unable to sustain that submission since a reading of the judgment in *Anshul Jain* clearly establishes that the assessee before the Supreme Court had not raised any jurisdictional

challenge to the assumption of jurisdiction under Section 148. It was in the aforesaid context, and the nature of the objection which was raised by the assessee there, that led to the Supreme Court observing as under:

> "**1.** What is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.
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> **2.** Under the circumstances, the High Court has rightly dismissed the writ petition.
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> **3.** No interference of this Court is called for.
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> **4.** The present Special Leave Petition stands dismissed."

10. It is equally important to note that subsequently the Supreme Court in **Red Chilli International Sales vs. Income Tax Officer and Anr.** [2023 SCC OnLine SC 237] has reaffirmed the right of an assessee to invoke the extraordinary jurisdiction of the Court conferred by Article 226 of the Constitution in situations where the re-assessment is assailed on jurisdictional grounds. We deem it apposite to extract the following observations as appearing in that judgment:

> "**2.** We with the petitioner that the impugned judgment rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this Court, on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice under Section 148 of the Income Tax Act, 1961 is satisfied. The provisions of reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in depth consideration keeping in view the earlier case law. Accordingly, we set aside the observations made by the High Court in the impugned judgment observing that the writ petition would not be maintainable in view of the alternative remedy, clarify that this

issue would be examined in depth by the High Court if and when it arise for consideration. We do deem it open to examine this issue in the present case after having examined the notice under Section 148A (b) including the annexure thereto, the reply filed by the petitioner and the order under Section 148A(d) of the Income Tax Act, 1961.

3. Recording the aforesaid, the special leave petition is disposed of. We clarify that the dismissal of the special leave petition would not be construed as a findings or observations on the merits on case."

11. In view of the aforesaid, and in light of a manifest failure on the part of the jurisdictional officer to either deal with or rule upon the objections which were raised by the assessee here, we find ourselves unable to sustain the order under Section 148A(d) as well as the consequential notice under Section 148.

12. We, accordingly, allow the instant writ petition and quash the order dated 22 July 2022 referrable to Section 148A(d) of the Act and the notice issued under Section 148 of the Act dated 22 July 2022. The matter shall stand remitted to the desk of the concerned jurisdictional officer who shall draw proceeding afresh and from the stage of receipt of the reply of the writ petitioner. The concerned AO may also consider according an opportunity of personal hearing to the writ petitioner. All rights and contentions of the respective parties on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 18, 2024/kk