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

\+ W.P.(C) 14248/2023 & CM APPL. 56341/2023 (Stay)

ERNST AND YOUNG (EMEIA) SERVICES LIMITED ..... Petitioner

Through: Mr. Kamal Sawhney, Mr. Nikhil Agarwal & Mr. Nishank Vashistha, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE INT. TAXATION- 1(2)(2), NEW DELHI ..... Respondent

Through: Mr. Sunil Agarwal, SSC with Mr. Shivansh B. Pandya, Mr. Viplav Acharya, JSCs & Mr. Utkarsh Tiwari, Adv.

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

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

% **10.05.2024**

1. The challenge which stands raised in the writ petition stands succinctly captured in our order of 10 January 2024. For the purposes of completeness, we deem it apposite to extract the same hereunder:

> "1. Mr. Agarwal, learned counsel representing the respondent prays for and is granted three weeks' further time to file a reply in terms of our last order. The petitioner shall have a week thereafter to file a rejoinder affidavit, if so chosen and advised.
>
> 2. Let the petition be called again on 01.03.2024.
>
> 3. For the purposes of considering the prayer for interim relief Mr. Sawhney, learned counsel for the petitioner draws our attention to the following directions as embodied in the judgement rendered by the Division Bench of the Court in **Suman Jeet Agarwal vs. Income-tax Officer** [(2022) SCC OnLine Del 3141]:

"**28.7** We hold that, in order for this mode of transmission i.e. uploading of the Notices in the E-filing portal of the assesses, to be considered valid service, the Department should have issued a real time alert as provisioned in the aforementioned Section 144(B)(6)(ii)(a) of the Act of 1961. Since, the prescribed mode of service is not followed it is akin to no due despatch of Notices, therefore it cannot be said that the Notices were validly issued.

28.8 However, since the assesses in the present case did become aware of the Notices later and the assessment proceedings in their cases are still pending, we are not inclined to quash these Notices.

28.9 It has come on record that the ITBA records the time and date when the E-filing portal is accessed by the assessee, so the first date on which the Notices were accessed by the assesses is duly available. This date will be considered by the JAOs as the date of issuance of Notices by the JAOs."

4. It is pointed out by Mr. Sawhney that although the notice under Section 148A(b) of the Income Tax Act, 1961 ["**Act**"] is purportedly dated 30 March 2022, the respondents despite repeated opportunities have failed to place on the record any material to establish that it was dispatched and served as per the principles laid down in the aforenoted decision prior to 31 March 2022. It is in the aforesaid context that he would contend that the proceedings are rendered barred by time.

5. Bearing in mind the aforesaid, we provide that while it will be open for the competent authority to proceed with the notice referable to Section 148 of the Act, however, any final order that may be passed adverse to the interest of the petitioner, shall not be given effect to till the next date of hearing."

2. Pursuant to the liberty accorded on the last occasion, Mr. Agarwal, learned counsel appearing for the respondent, has on instructions taken us through the email which has been received by him and in which the respondent concedes that there is no notice under Section 148A(b) of the Income Tax Act, 1961 ["**Act**"] dated 30 March 2022, which appears to have been issued to the petitioner.

3. In that view of the matter, the initiation of proceedings for re-

assessment and the assumption of jurisdiction would clearly be rendered illegal.

4. We, accordingly, allow the instant writ petition. The order under Section 148A(d) and notice under Section 148 of the Act both dated 13 April 2022 as well as notice under Section 142(1) of the Act dated 09 August 2023 shall stand quashed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 10, 2024/kk