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

\+ W.P.(C) 13528/2024 and CM APPLs. 56530-31/2024

MPS EXIM PRIVATE LIMITED .....Petitioner

Through: Mr Ruchesh Sinha, Advocate.

versus

INCOME TAX OFFICER, WARD 17(1) DELHI & ANR. .....Respondents

Through: Mr Vaibhav Kulkarni with Mr Himanshu Agarwal, Advocates.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

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

% **17.12.2024**

1. The petitioner has filed the present petition, *inter alia,* praying as under:

> "a) That this Hon'ble High Court be pleased to quash the impugned notice dated 9.08.2024 issued U/s 148A(b), the order dated 29.08.2024 passed U/s 148A(d) for the A.Y. 2018-19 and the consequential notice dated 29.08.2024 issued U/s 148 of the Income Tax Act, 1961 against the Petitioner for the A.Y. 2018-19;
>
> b) That this Hon'ble High Court be pleased to pass a writ of and/or order and/or direction in the nature of prohibition commanding Respondents to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said purported notice under section 148 of the Income Tax Act 1961 and/or in any proceedings initiated thereunder for the A.Y 2018-19."

2. The Assessing Officer (AO) had issued a notice dated 09.08.2024 (hereafter *the impugned notice*) under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the assessment year (AY) 2018-19 informing the petitioner that it had information which was suggestive of the

petitioner's income escaping assessment for AY 2018-19. The AO alleged that the income amounting to ₹84,85,000/- which pertains to the transactions with one M/s Dhiru Builders and Promoters Private Ltd. (hereafter *Dhiru Builders*), was suggestive of the petitioner's income escaping assessment. The AO had also enclosed along with the impugned notice an enquiry report, which indicated that there was information to the effect that a credit of ₹84,85,000/- was outstanding in the books of the petitioner on account of payments received from Dhiru Builders at the end of the Financial Year (FY) 2017-18. The said figure was reduced to ₹49,40,000/- at the end of the FY 2018-19. According to the AO, the said credits were unexplained credits. The said impugned notice was premised on an investigation, which was generated by the investigation wing of the Department suggesting that Dhiru Builders was not a substantial entity and was not engaged in any active business.

3. It is material to note that a similar action was also instituted in the case of Dhiru Builders and the proceedings were initiated for the assessment of income in the hands of Dhiru Builders, as unexplained cash credits. However, the said proceedings were dropped.

4. The petitioner had countered the said allegation and had furnished the explanation asserting that the transaction relating to Dhiru Builders were genuine transactions and the creditworthiness of the said entity could not be doubted.

5. Admittedly, the proposal to initiate the reassessment proceedings in the case of Dhiru Builders was dropped. The petitioner has filed a copy of the order dated 31.08.2024 passed under Section 148A(d) of the Act in case of Dhiru Builders, whereby the AO had found that the Assessee had

discharged the onus under Section 68 of the Act and the payments were not unexplained transactions.

6. The petitioner also contends that the order dated 29.08.2024 (hereafter *the impugned order*) passed in the petitioner's case under Section 148A(d) of the Act is unreasonable as the AO has not considered as the petitioner's response.

7. The learned counsel appearing for the Revenue fairly states that the impugned order passed under Section 148A(d) of the Act be set aside and the matter be remanded to the AO to consider it afresh in the light of the averments made in the present petition as well as the order dated 31.08.2024 passed in the case of Dhiru Builders.

8. Accordingly, the impugned notice and the impugned order are set aside and the matter is remanded to the AO to consider afresh.

9. The petition is disposed of in the aforesaid terms. Pending applications are also disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 17, 2024/*tr*

Click here to check corrigendum, if any