$~74

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

\+ W.P.(C) 16388/2024, CM APPL. 69080/2024 (Stay) & CM APPL. 69081/2024 (Exemption)

MINOSHA INDIA LIMITED FORMERLY RICOH INDIA LIMITED .....Petitioner

Through: Mr. Ashish Mehta, Mr. Bharat Jain & Ms. Aanchal Jain, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 16 1 & ANR. .....Respondents

Through: Mr. Shlok Chandra, SSC with Ms. Naincy Jain & Ms. Madhavi Shukla, JSC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **27.11.2024**

1. Issue notice.

2. The learned counsel appearing for the respondents accepts notice.

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

> "a) Issue a writ of certiorari, or any other appropriate writ, order or direction quashing of the Impugned 148A(b) SCN dated 24 August 2024 (Annexure P1); and
>
> b) Issue a writ of certiorari, or any other appropriate writ, order or direction quashing of the Impugned 148A(d) Order dated 31 August 2024 (Annexure P2) being bad in law since the Petitioner was not provided effective opportunity of being heard and the

> Impugned 148A(d) Order was passed in complete haste and disregard of principal of natural justice;
>
> c) Issue a writ of certiorari, or any other appropriate writ, order or direction quashing of the Impugned 148A(b) Order dated 24 August 2024 (Annexure P1) and consequent Impugned 148 Notice dated 31 August 2024 (Annexure P3) being based on "incorrect information to suggest" escapement of income; and
>
> d) Direct Respondent 1 to keep the re-assessment proceedings in abeyance and not to take any action in furtherance to the Impugned 148A(d) Order (Annexure P2) and Impugned 148 Notice dated 31 August 2024 (Annexure P3) during the pendency of the present Writ Petition.
>
> e) Any other relief that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

4. It is the petitioner's case that the impugned notice dated 24.08.2024 issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) is founded on a factually erroneous premise, that an amount of ₹32,48,24,940/- was disallowed in computation of the income, instead of ₹32,97,88,740/-, resulting in a shortfall in disallowance of ₹49,63,800/-. Thus, according to the Assessing Officer (hereafter *the AO*), the said amount had escaped assessment. The assessee has explained that this is factually incorrect and in fact, an amount of ₹32,97,88,740/- was disallowed. Clearly, if this is correct, the transaction which is suggestive of the petitioner's income escaping assessment is confined to ₹4,69,312/-, which relates to club membership fees paid by the assessee. This is below the threshold limit of ₹50,00,000/-, under Section 149(1)(b) of the Act and therefore, the assessments for assessment year (AY) 2018-19 could not be reopened.

5. Mr. Shlok Chandra, learned counsel appearing for the Revenue submits that the assessee's explanation was not before the AO as his request for extending the time for filing the reply had been rejected. He, however, fairly states that considering that the issue is centered around the question of fact, that is easily verifiable from the record, he would not oppose remanding the matter to the AO, to consider it afresh.

6. In view of the above, we consider it apposite to set aside the impugned order dated 31.08.2024, issued under Section 148A(d) of the Act, as well as the notice dated 31.08.2024, issued under Section 148 of the Act, in respect of AY 2018-19. We direct that the present petition be considered by the AO as the assessee's response to the notice dated 24.08.2024, issued under Section 148A(b) of the Act.

7. The petitioner is also granted liberty to file any additional response within a period of one week from date. The AO shall consider the contents of the present petition as well as any additional response that may be filed, and pass such orders, as it considers apposite, in accordance with law.

8. The petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 27, 2024/*at*

Click here to check corrigendum, if any