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

% *Date of Decision : 12.12.2024*

\+ **<u>W.P.(C) 17022/2024 & CM APPL. 72144/2024</u>**

YOGENDER MOHAN RUSTAGI .....Petitioner

Through: Mr Vibhu Gupta, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 28 DELHI & ANR. .....Respondents

Through: Mr Shlok Chandra, SSC, Ms Naincy Jain and Ms Madhavi Shukla, JSCs and Mr Sushant Pandey, Advocate.

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

<u>VIBHU BAKHRU, ACJ.</u> (*ORAL*)

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

> "a) Issue writ of certiorari or writ, order or direction in the nature of certiorari, or any other appropriate writ, order or direction under Article 226/227 of the Constitution of India, quashing notice dated 08.08.2024 issued under section 148A(b) of the Act;
> b) Issue writ of certiorari or writ, order or direction in the nature of certiorari, or any other appropriate writ, order or direction under Article 226 / 227 of the Constitution of India quashing impugned order dated 31.08.2024 passed under section 148A(d) of the Act and notice dated 31.08.2024 issued under

section 148 of the Act in the case of the Petitioner for assessment year 2018-19, and all actions/ proceedings consequential thereto;
c) Grant ad-interim ex-parte stay on the reassessment proceedings initiated under section 147/148 of the Act for the assessment year 2018-19 during pendency of the present petition;"

2. The Assessing Officer (hereafter *the AO*) had issued a notice dated 08.08.2024 under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the assessment year (AY) 2018-19 setting out certain information which according to the AO was suggestive of the petitioner's income escaping assessment.

3. The notice indicates that a search was conducted at the corporate office of M/s VKC Nuts Private Limited (hereafter *M/s VKC Nuts*). During the course of search, certain hard disk drives were seized and the statement of the managing director of M/s VKC Nuts was recorded. According to the AO, the hard disc contains information, which indicated that there were certain transactions (including cash sales and purchases) made by M/s VKC Nuts with certain entities which were also mentioned in the books of account of 'Big Wave Traders'.

4. The analysis of the data indicated that there were certain transactions with M/s Mata Din Bhagwan Dass, the proprietorship concern of the petitioner herein. The ledger account as maintained in the books of accounts, found during the search, was set out in the notice. The same is reproduced as under:-

Ledger	Matadin Bhagwandas					1-Apr-17 to 31-Mar-18
Date	Particulars		Vch Type	Vch no.	Debit	Credit
03-Jan-18	To	Almod ac	Journal	D-920	8833323	
		(Ref. AGAE ZERO@17190/)				
05-Jan-18	By	Cash	Receipt			4000000
		(agst rtgs-1741)				
08-Jan-18	By	Cash	Receipt			3000000
		(agst rtgs-vkc j&k1741)				
17-Jan-18	By	Cash	Receipt			33180
		(agst cheq)				
18-Jan-18	By	I Disc	Journal			143
18-Jan-18	By	Cash	Receipt			1800000
		(AGST RTGS VKC 08/01/18)				
22 -Feb-18	By	Pur Shp	Shp Purchase	T-M-002		1519600
24-Feb-18	By	Pur Shp	Shp Purchase	T-M-011		1531850
27-Feb-18	By	Pur Shp	Shp Purchase	T-M-018		1568600
06-Mar-18	To	Cash	Payment		1526000	
		AG.RTGS. VKC 06.03.18				
14-Mar-18	To	Cash	Payment		3162600	
		(AGST RTGS VKC 13/03/18)				
					13521923	13453373
		By	Closing Balance			68550
					13521923	13521923

5. According to the AO, the cash receipts as reflected in the said ledger account was suggestive that the income of the petitioner had escaped assessment. In addition, other allegations were also made in the said notice.

6. The petitioner responded to the notice on 14.08.2024 within the time as prescribed. It is the petitioner's case that he submitted another reply dated 30.08.2024 to further elucidate his reply and provided entry wise comments.

7. Thereafter, the AO passed an order dated 31.08.2024 (hereafter *the impugned order*) under Section 148A(d) of the Act holding that it was a fit case for issuance of the notice under Section 148 of the Act. The said order indicates that the AO did not consider the reply furnished by the petitioner on 30.08.2024.

8. It is also apparent that the AO has not examined the reply furnished within the stipulated period as the same was rejected with the observation that the petitioner had merely furnished documents for the entries in the ledger, which were made through banking channel. The AO concluded that the petitioner had failed to furnish a reply with respect to the entries mentioned in the ledger account as set out in the notice.

9. The impugned order also does not examine whether the entries made through the banking channel furnished by the petitioner correspond with the cash entries as is reflected in the ledger account that were disclosed in the notice. This is relevant as it is the case of the petitioner that the cash entries reflected in the ledger account were in fact payments made through banking channels. Even according to the AO, the petitioner had furnished the details of certain entries which were made through banking channel. The additional reply furnished by the petitioner on 30.08.2024 sets out the petitioner's comments regarding each cash entry reflected in the said ledger account, which admittedly was not considered by the AO as the same was filed after the period for furnishing the reply had expired.

10. The learned counsel appearing for the Revenue, on instructions, states that the petitioner had paid the amounts through banking channel to VKC

Group and received back equivalent amount in cash. However, the learned counsel for the Revenue is unable to point out any allegations to that effect in the notice.

11. A plain reading of the ledger account as is reproduced above reflects that the petitioner had paid consideration for supplies in cash. The cash entries are thus reflected as credit entries and not debit entries. Thus, the Revenue's contention that the ledger account that the petitioner had received cash is erroneous. The ledger account in question reflects that the petitioner had paid cash.

12. As noted above, it is the petitioner's case that the entries which are reflected as cash payments made by the petitioner are in fact the payments made through banking channel and have been incorrectly reflected as cash receipts in the books maintained of VKC Group.

13. It does not appear that the AO had made any specific allegation that the petitioner had paid money through banking channel and received back the cash against those payments.

14. In view of the above, we consider it apposite to set aside the impugned order dated 31.08.2024 passed under Section 148A(d) of the Act as well as the notice dated 31.08.2024 issued under Section 148 of the Act and remand the matter to the AO to consider afresh in light of the averments made in the present petition and the replies furnished by the petitioner on 14.08.2024 and 30.08.2024. We also clarify that the AO would be entitled to seek such further information from the petitioner as he considers necessary for taking an informed decision.

15. The petition is disposed of in the aforesaid terms. Pending application is also disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 12, 2024

M *Click here to check corrigendum, if any*