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

\+ W.P.(C) 17240/2024

VIVEK KUMAR .....Petitioner

Through: Mr. Nitin Kanwar, Advocate.

versus

INCOME TAX OFFICER & ANR. .....Respondent

Through: Mr. Puneet Rai, Sr. Standing Counsel with Mr. Ashvini Kumar, Mr. Rishabh Nangia, Jr. Standing Counsel, Mr. Nikhil Jain, Advocates.

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

O R D E R

% **13.12.2024**

CM APPL. 73343/2024

1. Exemption is allowed, subject to all just exceptions.

CM APPL. 73342/2024

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

> "*1) It is therefore, prays that this Hon'ble Court may kindly be pleased to:- Issue a writ of CERTIORARI or any other appropriate writ, order or direction quashing the Impugned Order u/s 148A(d) dated 11.11.2024 of the Income Tax Act, 1961 and other Consequential proceedings;*
>
> *2) Issue a writ of PROHIBITION or any other appropriate writ, order or direction to prohibit the Assessing Officer and any other income Tax Authority regarding the Impugned Order u/s 148A(d) dated 11.11.2024, of the Income Tax Act,*

1961 to do any consequential reassessment proceedings and any other Consequential proceedings; and

3) For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case;"

3. The petitioner had filed his return of income for assessment year (AY) 2018-2019 declaring an income of ₹8,53,966/-. On 17.08.2024, the Assessing Officer (AO) issued a notice under Section 148A(b) of the Act, disclosing information, which according to the AO was suggestive of the petitioner's income for the AY 2018-2019, escaping assessment.

4. The petitioner filed a response to the said notice on 23.08.2024 *inter alia* stating that the information as mentioned in the notice issued under Section 148A(b) of the Act pertained to income that was declared by the Assessee in its return. Therefore there was no escapement of income.

5. However, it appears that the AO did not consider the petitioner's response and issued an order dated 31.08.2024 under Section 148A(d) of the Act holding that it was a fit case for issuance of notice under Section 148 of the Act and initiation of the re-assessment proceedings for AY 2018-2019. The said order also referred to income escaping assessment, which according to the petitioner was declared in his return of income.

6. The AO also issued a notice dated 31.08.2024 under Section 148 of the Act for AY 2018-19.

7. Aggrieved by the same, in view of the above, the petitioner filed a writ petition before this Court being W.P.(C) 14429/2024 *inter alia* impugning the order dated 31.08.2024 issued under Section 148A(d) of the Act as well as the notice issued under Section 148 of the Act on essentially

two grounds. First, that the AO had not considered the petitioner's response to the notice issued under Section 148A(b) of the Act; and second, that the AO had no jurisdiction to initiate the re-assessment proceedings after the notification dated 29.03.2022 issued by the Central Board of Direct Taxes directing faceless re-assessments.

8. In so far as the petitioner's first ground is concerned that is the AO had not considered the petitioner's response to the show cause notice this court found the same to be merited. The AO had not dealt with the specific response of the petitioner that his income, which was mentioned in the notice issued under Section 148A(b) of the Act, was declared in his return of income. Accordingly, this court set aside the order dated 31.08.2024 passed under Section 148A(d) of the Act and remanded the matter to the AO for the consideration afresh.

9. It is material to note that insofar as the second ground of challenge – that the AO did not have jurisdiction to initiate the proceedings – is concerned, this Court noted that the said issue was pending consideration in a batch of matters and directed that the fate of the proceedings initiated by the AO will abide by the decision in the said batch of petitions.

10. It is material to note that the issue regarding the Jurisdiction of Assessing Officer to initiate proceedings for re-assessment/assessment under Section 147 of the Act is now concluded by the decision of this court in ***T.K.S. Builders Pvt. Ltd V. Income Tax Officer Ward 25(3);*** Neutral Citation No. ***2024:DHC:8330-DB***.

11. Pursuant to the order dated 15.10.2024 passed by this court in the afore-mentioned writ petition W.P.(C) 14429/2024, AO once again examined the petitioner's response to the notice under Section 148A(b) and

has deleted the reference to income, which on examination, was found to have been declared by the petitioner in his return. However, the AO has also noted that there is information which remains unexplained and accordingly passed a fresh order under Section 148A(d) of the Act holding that it is a fit case for issuance of notice under Section 148 of the Act.

12. It is relevant to note that one of the allegations is that the purchases reflected by the petitioner in his books are bogus as the same were made from non-existent/accommodation entry providers. Although the petitioner reiterated that the purchases were genuine, the AO found that the same required verification and the petitioner had not produced sufficient material to establish the movements of goods.

13. The AO also noted that one entity M/s Ridhi Sidhi Polymers was involved in the practice of availing/issuing bogus sales/purchase bills and the said entity had made purchases from non-filers and/or filers declaring negligible incomes. Out of these bogus purchases, sales were made to the beneficiaries including the assessee i.e. the petitioner in the present case.

14. We are not persuaded to accept that the order dated 11.11.2024 passed under Section 148A(d) of the Act warrants any interference by this court in these proceedings.

15. The AO has at the threshold stage examined the response furnished by the petitioner and has found it a fit case to continue with the re-assessment proceedings.

16. It is material to note that at the stage of issuance of notice under Section 148 of the Act, the AO is not required to conclusively determine the income that escaped assessment. The AO is required to be satisfied that there are reasons that indicate that the assessee's income has escaped

assessment.

17. Needless to state that the assessee is required to be given full opportunity to establish the genuineness of his return in the re-assessment proceedings and nothing stated in the orders passed under Section 148A(d) precludes the assessee from doing so.

18. In view of the above, the present petition is unmerited and is accordingly dismissed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 13, 2024
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Click here to check corrigendum, if any