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

\+ W.P.(C) 482/2023

CADENCE REAL ESTATES PRIVATE LIMITED .....Petitioner

Through: Ms. Kavita Jha, Sr. Adv. with Mr. Vaibhav Kulkarni, Mr. A. Bali & Mr. Himanshu Aggarwal, Advs.

Versus

INCOME TAX OFFICER & ANR. .....Respondents

Through: Mr. Debesh Panda, Ms. Zehra Khan, Mr. Vikramaditya, Ms. A. Shankar, Ms. Yashika & Ms. Delphina, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

O R D E R

% **24.04.2025**

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 17.05.2022 issued under section 148A(b) of the Act;
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> 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 29.06.2022 passed under section 148A(d) and consequential proceedings initiated under section 148 of the Act;
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> c) Issue writ of certiorari or writ, order or direction in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 / 227 of the Constitution of India retraining the Respondents from continuing with the assessment proceedings pursuant to the impugned order dated 29.06.2022 passed under section 148A(d) of the Act, for assessment year 2016-17 and all actions/ proceedings

consequential."

2. The petitioner is a private limited company and is engaged in the business of real estate. The petitioner filed its return for the assessment year [**AY**] 2016-17 on 13.10.2016 declaring an income of ₹4,40,910/-. The Assessing Officer [**AO**] issued a notice dated 23.04.2021 under Section 148 of the Income Tax Act, 1961 [**Act**] seeking to initiate the reassessment proceedings in respect of AY 2016-17. The said notice was issued for reassessment under the provisions of the Act as were in force prior to 31.03.2021. The said notice was challenged by the petitioner by filing a writ petition before this court [being W.P.(C) No.7584/2021], *inter alia*, for the aforesaid reason. The impugned notice was set aside by this court by an order dated 16.12.2021 passed in a batch of matters with the lead matter being ***Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr.: Neutral Citation No.: 2021:DHC:4181-DB***.

3. Similar notices were also set aside by the various High Courts in India. The Revenue had assailed the orders passed by the High Courts before the Supreme Court in a batch of matters. In ***Union of India & Ors. v. Ashish Agarwal: (2023) 1 SCC 617*** and other connected appeals, the Supreme Court issued directions under Article 142 of the Constitution of India directing that such notices be construed as notices under Section 148A(b) of the Act with a further direction to the AOs to provide the information as required to be accompanied by the said orders.

4. In compliance of the directions issued by the Supreme Court in ***Union of*** India ***& Ors. v. Ashish Agarwal*** *(supra)*, the AO provided the information to the petitioner on 17.05.2022 and the petitioner responded to the said notice on 31.05.2022.

5. Thereafter, the AO passed the order under Section 148A(d) of the Act on 29.07.2022 and issued the notice under Section 148 of the Act [**the**

impugned notice]. The AO had proceeded to issue notice after approval of Principal Commissioner of Income Tax [**PCIT**] who is not the competent authority to grant such approval. Concededly, the impugned notice was not issued with prior approval of the Principal Chief Commissioner of Income Tax [**PCCIT**] as mandated under Section 151(ii) of the Act.

6. In ***Ganesh Dass Khanna v. Income Tax Officer & Anr.: Neutral Citation No.: 2023:DHC:8187-DB***, this court considered the provisions of Section 149 of the Act and held that, since the income that had escaped assessment was less than ₹50,00,000/-, the time limit prescribed under Section 149(1)(a) of the Act would be applicable, as the question concerning the limitation and the competence of the specified authority to grant approval were intertwined.

7. In ***Twilight Infrastructure Pvt. Ltd. v. Income Tax Officer Ward 25 3 Delhi & Ors.: Neutral Citation No.: 2024:DHC:259-DB***, this court referred to the stand of the Revenue in ***Ganesh Dass Khanna v. Income Tax Officer & Anr.*** (supra) and held as under:

> "12. Clearly, the revenue advanced the argument of interlinkage between limitation and the ascertainment of the specified authority due to the plain language of the amended Section 151 of the Act. Section 151, when read alongside the first proviso to Section 148, brings the aspect of inextricable linkage to the fore.
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> 12.1. Clauses (i) and (ii) of Section 151 of the amended Act (which has been extracted hereinabove) clearly specify the authority whose approval can trigger the reassessment proceedings. Thus, if three (3) years or less have elapsed from the end of the relevant AY, the specified authority who would grant approval for initiation of reassessment proceedings will be the Principal Commissioner or Principal Director or Commissioner or Director. However, if more than three (3) years from the end of the relevant AY have elapsed, the specified authority for according approval for reassessment shall be the Principal Chief Commissioner or Principal

> Director General or, where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General.
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> *** *** ***
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> 12.3. In these cases, there is no dispute that although three (3) years had elapsed from of the end of the relevant AY, the approval was sought from authorities specified in clause (i), as against clause (ii) of Section 151."

8. In view of the above, the impugned notice is liable to be set aside.

9. Concededly, the said issue is covered by the earlier decision of this court in ***Abhinav Jindal HUF v. Income Tax Officer Ward 54(1) Delhi & Ors.: Neutral Citation No.:2024:DHC:7238-DB***.

10. In view of the above, the petition is allowed and the impugned notice issued under Section 148 of the Act is set aside. All proceedings initiated pursuant to the impugned notice are also set aside. It is, however, clarified that this order will not preclude the Revenue from initiating any further proceedings afresh albeit in accordance with law.

11. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 24, 2025

'gsr' *Click here to check corrigendum, if any*