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

\+ W.P.(C) 6565/2023 and CM APPL. 25727/2023

ASHISH GIRDHAR .....Petitioner

Through: Mr Sumit Lalchandani and Ms Ananya Kapoor, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 22(2), DELHI & ANR. .....Respondents

Through: Mr Sunil Agarwal, Senior standing counsel with Mr Shivansh B. Pandya, Mr Viplav Acharya, Ms Priya Sarkar and Mr Utkarsh Tiwari, Advocates.

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

O R D E R

% 19.05.2025

1. The petitioner has filed the above-captioned petition, *inter alia*, impugning an order dated 26.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [**the Act**] along with the notice dated 26.07.2022 issued under Section 148; the notice dated 26.05.2022 under Section 148A(b) and the original notice issued under Section 148 dated 29.06.2021 [**impugned notices and impugned orders**] in respect of assessment year [**AY**] 2013-14.

2. The learned counsel for the petitioner has confined its challenge to the said notice in the present petition on the ground that the same are barred by limitation.

3. The initial notice under Section 148 of the Act for AY 2013-14 was issued on 29.06.2021. The said notice was unsustainable as it was issued in

accordance with the statutory regime regarding reassessment in force prior to 31.03.2021. This Court in the case of ***Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr.: Neutral Citation No.: 2021:DHC:4181-DB*** had set aside such notices that were issued after 31.03.2021 without following the procedure as prescribed under Section 148A of the Act.

4. However, the Supreme Court in the case of ***Union of India & Ors. v. Ashish Agarwal: (2023) 1 SCC 617***, issued directions for considering the said notices as the notices issued under Section 148A(b) of the Act and further granted time to the Assessing Officer to supply the material on which such notices were premised. Therefore, in compliance with the directions issued by the Supreme Court in the case of ***Union of India & Ors. v. Ashish Agarwal*** (*supra*), the Assessing Officer [**AO**] in the present case provided information and material to the Assessee on 26.05.2022 and the Assessee was granted two weeks' time to respond to the said notice. The said period expired on 09.06.2022. The Assessee responded to the notice dated 26.05.2022 on 28.05.2022 (which was filed on the portal on 31.05.2022).

5. The AO passed an order under Section 148A(d) of the Act on 26.07.2022. According to the Assessee, the same was beyond the period as stipulated.

6. In the present case, the period of six years from the end of the assessment year for issuing a notice under Section 148 of the Act expired on 31.03.2020. Thus, in terms of Section 149 of the Act, a notice under Section 148 of the Act could not be issued. However, the said period was extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [**TOLA**]. Consequently, the time limit for issuing

such a notice was extended to 30.06.2021.

7. The original notice under section 148 of the Act was issued on 29.06.2021, which was one day before the last day of expiry of period of limitation.

8. As noted above, the said notice was deemed to be a notice under Section 148A(b) of the Act by virtue of the decision of the Supreme Court in ***Union of India & Ors. v. Ashish Agarwal*** (*supra*). The Supreme Court also granted further time to provide the material, which was required to accompany such a notice. As explained by the Supreme Court in the case of ***Union of India v. Rajeev Bansal: 2024 SCC OnLine SC 2693***, the period from the date of the issuance of the notice till 04.05.2022, the date on which the Supreme Court had rendered the decision in ***Union of India & Ors. v. Ashish Agarwal*** (*supra*) is required to be excluded in terms of the fifth proviso to Section 149(1) of the Act. Additionally, the time provided till the date of providing the material, which should have accompanied a notice under Section 148A(b) of the Act, as well as the time available to the assessee to respond to the said notice was also required to be excluded by virtue of the third Proviso to Section 149(1) of the Act, as applicable at the material time.

9. Since the initial notice under Section 148 of the Act –subsequently construed as a notice under Section 148A(b) of the Act – which was issued one day before the last day of expiry of period of limitation; there was no time available for the AO to issue a notice under Section 148 of the Act after the petitioner had furnished its reply to the said notice. Thus in terms of sixth proviso to Section 149(1) of the Act, the AO had seven days to issue the notice under Section 148 of the Act, therefore the last day to issue notice

was 16.06.2022; that is seven days from 09.06.2022. The impugned notice was issued on 26.07.2022, which is after the period for issuing such a notice had expired.

10. Concededly, the controversy involved in the present case is covered by the decision of this Court in ***Ram Balram Buildhome Pvt. Ltd. v. Income Tax Officer and Anr.: Neutral Citation No.2025:DHC:547-DB***.

11. In view of the above, the present petition is allowed. Consequently, any further proceedings undertaken by the Revenue pursuant to the notices as well as the re-assessment order passed under Section 147, are set aside.

12. It is material to note that the present petition was listed on 17.05.2023 and this Court had passed an order staying the operation of the impugned order and notices. However, this Court is informed that notwithstanding the stay order, an assessment order was passed.

13. Since the petitioner has prevailed in the present petition and the impugned order and notices have been set aside, the assessment order passed under Section 147 of the Act pursuant to the impugned notice, is set aside.

14. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

15. The hearing fixed before the Registrar on 30.10.2025 stands cancelled.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 19, 2025
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Click here to check corrigendum, if any