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

+ **W.P.(C) 12927/2024**

E-HOMES INFRASTRUCTURE PVT. LIMITEDPetitioner

Through: **Mr. Arvind Kumar, Advocate.**

versus

DEPUTY COMMISSIONER OF INCOME TAXRespondent

Through: **Mr. Anurag Ojha, Senior Standing
Counsel with Mr. VIK. Saksena and
Ms. Hemlata Rawat, JSCs.**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

07.01.2025

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1. The petitioner has filed the present petition impugning an order dated 30.08.2024 (hereafter *the impugned order*) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) as well as a notice dated 30.08.2024 (hereafter *the impugned notice*) issued under Section 148 of the Act for the Assessment Year (AY) 2016-17.

2. It is the petitioner's case that issuance of notice under Section 148 of the Act for the AY 2016-17 is beyond the period of limitation as more than six years have since elapsed from the end of the relevant assessment year. The learned counsel for the petitioner further contends that the issue involved in the present petition is covered by the decision of this court in *Manju Somani v. Income Tax Officer Ward-70(1) & Ors: Neutral Citation: 2024:DHC:5411-DB*.



3. The learned counsel appearing for the Revenue submitted that the time period for which a notice could be issued would require to be ascertained by reference to the provisions of Section 153C of the Act as the proceedings for reassessment have been initiated on the basis of information that was found during the course of search conducted on 20.07.2022 in the case of SMC Group and others.
4. She submitted that during the course of post search analysis, it was found that the group entities (SMC Group, Nirala Group and Neo Group) had taken accommodation entries from non-descript entities. These entities are suspected to be shell entities, which were managed by entry operators, to provide accommodation entries. It is alleged that the petitioner had availed loan from one of these shell companies.
5. It is apposite to refer to Section 148A of the Act as was in force at the material time. The same is set out below: -

“148A. Conducting inquiry, providing opportunity before issue of notice under Section 148.— The Assessing Officer shall, before issuing any notice under Section 148, —

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);



(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under Section 132 or requisitioned under Section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, 2[relate to, the assessee; or

(d) *** *** ***

Explanation. — For the purposes of this section, specified authority means the specified authority referred to in Section 151.”

6. It is clear from the proviso to Section 148A of the Act as in force at the material time that the provisions of the said Section would not be applicable in the cases of assessee, where a search was conducted under Section 132 of the Act or the books of account, other documents or assets of the assessee were requisitioned under Section 132A of the Act after



01.04.2021.

7. In terms of Clause (c) of the proviso to Section 148A of the Act, Section 148 would be inapplicable in case where the Assessing Officer (AO) is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that the books of account, assets or documents seized in a search under Section 132 or requisitioned under Section 132A of the Act belong to or contained information relating to the assessee.

8. The Revenue has not filed the counter affidavit despite sufficient opportunity.

9. Concededly, Clause (a) of the proviso to Section 148A of the Act is inapplicable as the petitioner was not one of the entities that was searched. There is also no material on record, which indicates that the condition as stipulated under Clause (c) of the proviso to Section 148A of the Act is satisfied. Obviously, if the same was satisfied, the AO would not have taken recourse to Section 148A of the Act. Thus, this is not a case where a notice under Section 153C of the Act could have been issued as there appears no material to establish that the books of account, documents, other material or assets had been found, which either belonged to the petitioner or contained information pertaining to the petitioner, during the search conducted on the SMC Group. Thus, the question whether a notice could be issued under Section 148 of the Act, is required to be determined on the basis whether such notice could have been issued under the provisions as in force prior to 01.04.2021.

10. Since the impugned notice is issued beyond the period of six years from the end of the relevant assessment year (AY 2016-17), we find merit in the contention that the said impugned notice is barred by limitation in terms



of the first proviso to Section 149(1) of the Act.

11. The petition is, accordingly, allowed and the impugned order and the impugned notice are set aside.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 07, 2025

Aj/Yrj

[Click here to check corrigendum, if any](#)