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

\+ W.P.(C) 17464/2024 and CM Nos.74271/2024 & 74272/2024

RAKESH LOOMBA (THROUGH CONSTITUTED POWER OF ATTORNEY HOLDER TEJASVI CHAUDHARY) .....Petitioner

Through: Mr. Sachit Jolly, Senior Advocate with Mrs. Mansha Anand, Mr. Aditya Rathore and Mr. Abhyudaya Shankar Bajpai and Mr. Tejasvi Chaudhry, Advocates.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE INT TAX 2 2 1 & ORS. .....Respondents

Through: Mr. Puneet Rai, Mr. Ashvini Kumar, Mr. Rishabh Nangia and Mr. Akhil Jain, Advocates.

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

O R D E R

% **09.01.2025**

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

> "a. That this Hon'ble Court be pleased to issue a writ of Certiorari, or any other appropriate writ, order, or direction quashing Impugned Final Assessment Order dated 21.03.2024 passed under Section 147 r.w.s. 144 of the Act alongwith Impugned Demand Notice dated 21.03.2024 issued under Section 156 of the Act and the Impugned Penalty Notice dated 21.03.2024 under Section 274 r.w.s. 271 AAC(1) of the Act by the Respondent No. 2 and the consequent proceedings initiated for the AY 2018-19.
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> b. That this Hon'ble Court be pleased to issue a writ of *Certiorari*, or any other appropriate writ, order, or direction quashing the Impugned Draft Assessment Order dated 11.02.2024 passed under Section 144C(1) r.w.s. 147 of the Act.
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> c. That this Hon'ble Court be pleased to issue a writ of *Certiorari*, or any other appropriate writ, order, or direction quashing the Impugned

Show Cause Notice dated 19.03.2022, the Impugned Order dated 20.04.2022, and the impugned Notice dated 20.04.2022, as passed by Respondent No. 1"

2. It is the petitioner's case that it had not received the notice dated 19.03.2022 issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) as the same was merely uploaded on the e-filing portal of the petitioner without any real time alert. Consequently, the petitioner was unable to respond to the aforesaid notice.

3. Since no response was received by the petitioner, the Assessing Officer (AO) proceeded to pass an order dated 20.04.2022 under Section 148A(d) of the Act holding that it is a fit case for issuing notice under Section 148 of the Act for the assessment year (AY) 2018-19. The AO also proceeded to issue notice dated 20.04.2022 under Section 148 of the Act requiring the petitioner to submit return for the AY 2018-19 within a period of 30 days from the date of the issuance of the said notice.

4. Pursuant to the re assessment proceedings, a draft assessment order dated 11.02.2024 was framed by the AO and thereafter, the final assessment order dated 21.03.2024 was passed, raising a demand of Rs. 15,07,71,000/-. The AO also initiated penalty proceedings under Section 274 read with Section 271AAC(1) of the Act.

5. It is the petitioner's contention that neither the order dated 20.04.2022 passed under Section 148A(d) of the Act nor the notice dated 20.04.2022 issued under Section 148 of the Act was served upon the petitioner. It is further contended by the petitioner that notices dated 25.10.2023, 07.12.2023, 11.01.2024 and 02.02.2024 issued under Section 142(1) of the Act were also not served upon the petitioner.

6. The petitioner has placed reliance on the judgment of this court in the

case of ***CIT v. Chetan Gupta, Neutral Citation No. 2015:DHC:7656-DB*** wherein this court held that in order for the AO to exercise his jurisdiction to reopen the assessment a notice under Section 148 of the Act has to be mandatorily issued to the assessee and without proper service of notice on the assessee under Section 148 of the Act, the reassessment proceedings would be invalid and liable to be quashed. Further in ***Suman Jeet Aggarwal v. ITO & Ors., 2022 SCC OnLine Del 3141***, this court made the observation to the effect that uploading of the notice on the e-filing portal of the assessee would be considered as valid service only when the Department has issued a real time alert as provisioned in Section 144B(6)(ii)(a) of the Act.

7. Mr. Rai, learned counsel appearing for the Revenue fairly states that the petitioner may be given one more opportunity to respond to the notice dated 19.03.2022 without going into the question whether the earlier notice was served on the petitioner or not.

8. In view of the above, the impugned order dated 20.04.2022 passed under Section 148A(d) of the Act as well as notice dated 20.04.2022 issued under Section 148 of the Act are set aside. The consequent draft assessment order dated 11.02.2024 and the Final Assessment order dated 21.03.2024 are also set aside.

9. The petitioner may file its response to the notice issued under Section 148A(b) of the Act within a period of four weeks from date. The AO shall consider the same and pass an appropriate order, according to the provision as applicable prior to 01.09.2024, within a period of four weeks thereafter. In the event, the AO considers that it is a fit case for issuing notice under Section 148 of the Act, it will obtain necessary approval from the concerned Commissioner of Income Tax as was the requirement at the material time.

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

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 09, 2025

Click here to check corrigendum, if any