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

\+ W.P.(C) 7115/2022 & CM APPLs.21850-21851/2022

PRADEEP KUMAR VARSHNEY ..... Petitioner

Through: Mr. Amol Sinha, Mr. Nitin Gulati, Mr. Sushant Sarkar, Mr. Ashvini Kumar, Mr. Rajiv Shankar Dvivedi and Mr. Rishabh Jain, Advocates.

versus

INCOME TAX OFFICER WARD 71(3), DELHI ..... Respondent

Through: Mr.Sunil Agarwal with Mr. Tushar Gupta and Mr. Utkarsh Tiwari, Advocates.

% Date of Decision: 17th May, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order dated 9th April, 2022 passed by the Respondent under Section 148A(d) of the Income Tax Act, 1961 (for short 'Act') for the Assessment Year 2018-19 and all consequential proceedings in pursuance thereto including issuance of the notice dated 9th April, 2022 under Section 148 of the Act.

2. Learned counsel for the Petitioner states that in the present case notice under Section 148A is not warranted as it is a case of Section 153C of the Act to which proviso (c) of Section 148A applies.

3. Mr. Sunil Agarwal, learned counsel for the Respondent has brought on record the instructions received by him by way of email dated 13th May, 2022. The said email is reproduced as under:-

> *"To,*
>
> *Sh. Sunil Aggarwal Senior Standing Counsel, High Court*
> *4th Floor, 15 Link Road, Jangpura Extension,*
> *New Delhi*
>
> *Sir,*
>
> *Sub: Writ Petition (C) 7115 of 2022 in the matter of Pradeep Kumar Varshney (PAN AAMPV9765D) for A.Y. 2018-19-reg.*
>
> *Kindly refer to your email dated 12.05.2022 wherein it has been directed to verify and apprise the correct position in the above case regarding re-opening the case u/s 148 of the I.T. Act, 1961.*
>
> *In this regard, correct position in this case is as under:*
>
> *1. In this case, the information was received, in accordance with the Risk Management Strategy formulated by CBDT, on insight portal of Income Tax Department, under the category High Risk CRU/VRU information system.*
>
> *2. As per information received in this case, it was noted that a search was conducted in the case of Sangini Group of Surat on 03.12.2021. After verification of the seized material found during search proceedings, it was noticed that some persons have made cash payments with Sangini Corporation and M/s Nandkishore Corporation. The assessee's name i.e Sh. Pradeep Kumar Varshney is also in the list of persons who have made on money to M/s Nand Kishore Corporation. The assessee had paid on money of Rs. 75,34,000/- in cash for purchasing a shop in Sangini Textile Hub-A from Nandkishore Corporation during the A.Y. 2018-19 (F.Y. 2017-18).*
>
> *3. As per explanation 1 to Section 148 which states as under:*

Explanation 1-For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means:

(i) Any information flagged in the case of the assessee for the relevant assessment year with the risk management strategy formulated by the Board from time to time.

(ii) Any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Hence, considering the information received under the category clause (i) of Explanation of the section 148, the proceedings in this case were initiated u/s 148A and show cause notice under clause (b) of section 148A of the I.T. Act, 1961 was issued with the prior approval of the specified authority on 24.03.2022. The assessee submitted reply to the show cause notice on 07.04.2022, which was considered u/s 148A(c) of the I.T. Act, 1961 and thereafter, notice u/s 148 was issued on 09.04.2022 along with passing a order u/s 148A(d) of the I.T. Act, 1961.

Sir, the above is the correct and factual position in this case.

Yours faithfully,
(Subhash Chand)
Income Tax officer
Ward-71(3), New Delhi"

4. In response to a pointed query, Mr. Sunil Agarwal, learned counsel for the Revenue admits that the case of the petitioner falls under Section 153C of the Act.

5. Consequently, this Court is of the view that the present case involves interpretation of Section 148A of the Act. The relevant portion of the said section is reproduced hereinbelow:-

*"***148A.** *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, with the prior approval of specified authority, 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,—*

xxxx xxxx xxxx

*(*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, relate to, the assessee.*

Explanation.—*For the purposes of this section, specified authority means the specified authority referred to in section 151*.]**"**

6. Since the case of the petitioner is admittedly covered by proviso (c) to Section 148A, this Court is of the view that the impugned order and notice are untenable in law. Accordingly, both the impugned order and notice dated 9th April, 2022 are set aside and the matter is remanded back to the Assessing Officer to pass a fresh reasoned order in accordance with law.

7. With the aforesaid direction, the present writ petition and pending applications stand disposed of.

MANMOHAN, J

MANOJ KUMAR OHRI, J

MAY 17, 2022
AS