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

+ W.P.(C) 13734/2022 & CM APPL.41911/2022

CATCHY PROP-BUILD PRIVATE LIMITED Petitioner

Through: Mr.Aditya Ajgaonkar, Advocate with
Mr.Vikas Jain, Mr.Aviral Saxena and
Mr.Manjeet Rathod, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX AND ORS

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
with Ms.Adeeba Mujahid, Jr.Standing
Counsel and Mr.Nikhil Jain,
Advocate.

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Date of Decision: 17th October, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

CM APPLs.41912-41913/2022 (exemption)

Allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

W.P.(C) 13734/2022 & CM APPL.41911/2022

1. Present writ petition has been filed challenging the show cause notice dated 16th March, 2022 issued under Section 148A(b) of the Income Tax Act, 1961 [‘the Act’] as well as the order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act both dated 31st March, 2022 for the assessment year 2018-19.

2. Learned counsel for the petitioner states that the impugned show cause notice dated 16th March, 2022 was issued under Section 148A(b) of the Act seeking to initiate reassessment proceedings against the assessee on account of some transactions of purchase and sale of shares undertaken by it. He states that the impugned show cause notice has been issued in violation of the provisions of Section 148A(b) of the Act as it merely states the transaction entered into by the Petitioner and does not contain any allegation of escapement of income.

3. Learned counsel for the petitioner states that the petitioner filed a reply to the show cause notice explaining the aforesaid transactions stating that the transaction had been recorded in the books of accounts of the assessee and had also been duly declared in the Return of Income. He further states that the petitioner also informed the respondents that the valuation of the shares of “Bert Marketing Pvt. Ltd.” that had been sold by the Mr. Anish Malhotra to Manu Garments [now amalgamated with the Petitioner] for a consideration of Rs. 3,09,95,000/- had been done in accordance with the provisions of Rules 11U and 11UA of the Income Tax Rules, 1962 by a qualified Chartered Accountant.

4. He, however, states that the Respondents passed the impugned order under Section 148A(d) of the Act on a completely different ground that the company Manu Garments was not sound so as to make an investment of more than Rs.3 crores and so the source of investment remained unexplained. He points out that this reason/information was not mentioned in the impugned show cause notice. He contends that the Petitioner was not provided any proper and effective opportunity to reply to the authorities as there was no specific charge/allegation/basis in the show cause notice to

suggest that income had escaped assessment and the grounds on the basis of which the impugned order has been passed were never put to it before the passing of the order making it impossible for it to counter the same.

5. Issue notice. Mr.Puneet Rai, learned senior standing counsel for the respondents-revenue, accepts notice.

6. He, on instructions, admits that the impugned show cause notice issued under Section 148A(b) of the Act is vague. He, on instructions, prays that the Assessing Officer be given liberty to issue a supplementary notice under Section 148A(b) of the Act. In support of his submission, he relies upon the order passed by this Court in ***Mahashian Di Hatti Pvt. Limited Vs. Deputy Commissioner of Income Tax, WP(C) 12504/2022*** dated ***1st September, 2022***.

7. Having perused the paper book and having heard learned counsel for the parties, this Court is of the view that in the notice issued under Section 148A(b) of the Act, the petitioner was never asked to explain the source of funds that were used by Manu Garments to purchase the shares of Bert Marketing Pvt. Ltd.

8. This Court is further of the opinion that if the foundational allegation is missing in the notice issued under Section 148A(b) of the Act, the same cannot be incorporated by issuing a supplementary notice.

9. In the case of ***Mahashian Di Hatti Pvt. Limited*** (supra), there was a specific allegation that the assessee-company had taken accommodation entries of Rs.1,90,84,654/- from twenty eight bogus entities maintained by one Sh.Deepak Nanjyani. Since the foundational allegation was present in the notice issued under Section 148A(b) of the Act, this Court in the said case permitted the Assessing Officer to supply the names of twenty eight

bogus entities as well as the bank details of one Raj Trading Company. Consequently, the present case is clearly distinguishable from the case of *Mahashian Di Hatti Pvt. Limited* (supra).

10. Keeping in view the aforesaid, the present writ petition along with applications is allowed and the show cause notice issued under Section 148A(b) of the Act as well as the order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act for the assessment year 2018-19 are quashed. However, if the law permits, the respondents/revenue to take further steps in the matter, they shall be at liberty to do so. Needless to state that if and when such steps are taken and if the petitioner has a grievance, it shall be at liberty to take its remedies in accordance with law.

MANMOHAN, J



MANMEET PRITAM SINGH ARORA, J

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OCTOBER 17, 2022
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