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

+ W.P.(C) 7415/2022 & CM APPL. 22649/2022

ATEN CAPITAL PRIVATE LIMITED Petitioner
Through: Mr. Amit Dayal, Advocate

versus

ASSISTANT COMMISSIONER
OF INCOME TAX, CIRCLE 1(1), DELHI & ANR. Respondents
Through: Mr. Zoheb Hossain, Advocate with
Mr. Vipul Agrawal and Mr. Parth
Semwal, Advocates.

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Date of Decision: 18th May, 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 (Oral):**

1. Present writ petition has been filed challenging the order passed under Section 148A(d) and the notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') both dated 5th April, 2022.
2. Learned counsel for the petitioner states that the impugned order has been passed in complete violation of the principles of natural justice as well



details about date and time when the assessee company uploaded its reply on system, since, no CASE HISTORY/NOTING was visible on ITBA Portal after issue of notice u/s 148.

Later on, another ticket was raised on 22.04.2022 vide Incident Detail 1729209 for providing the solution in this matter and the solution received from ITBA Helpdesk is reproduced hereunder:

“The functionality of case history in status monitor for 148A after the creation of 147 pendency is not live now”.

Another ticket dated 12.05.2022 vide Incident No.1742654 was raised, solution to which has been provided today(17.05.2022) stating that E-mail need to be sent to CIT-ITBA with necessary approval so that case history noting can be provided which invariable contains the mention of timing, which will show that this office proceeded with the processing of the case u/s 148A after the lapse of the time provided to the assessee. Considering the reply of ITBA a separate request has already been made to superior authority for approval.

Without prejudiced to what said above, in this case information was received on Insight Portal which was uploaded by ITO, Ward-1(1)(1), International taxation, Delhi mentioning that during the A.Y. 2018-19 assessee had made foreign outward remittance amounting to Rs.2,76,85,000/- on which TDS was not deducted. The copy of the information with the heading details is attached. Since the reply of the assessee was not received accordingly, proceedings u/s 148A were processed for issue of notice u/s 148 because such exercise of verification cannot be carried out in the absence of any pending proceedings. Nevertheless in case assessee had genuine reason for non-deduction of TDS that would have been considered in the proceedings in all fairness of law as per procedure prescribed and income assessed accordingly. This office hereby submits that since this is a 1st year under the amended provisions of section 148A and all actions have had to be online



on ITBA so technical glitches could/may occur. This office had taken all action on bonafide believe after giving fair opportunity to the assessee and will readily comply with such remedial actions considering the information received and addressing assessee concerns within the procedures of law as directed.”

5. He further submits that Section 148A advisedly uses the expression ‘enquiry’. Consequently, according to him, it is open to the Assessing Officer to issue a notice for the purpose for verification of transaction to examine as to whether income has escaped assessment.

6. This Court is of the view that even if the re-assessment was being done for verification in accordance with Explanation 1 to Section 148, nothing prevented the Assessing Officer from conducting an enquiry with respect to the said information in accordance with Section 148A(a) of the Act. In any event, it was all the more necessary in the present case for the Assessing Officer to thoroughly scrutinise the contentions and submissions advanced by the petitioner-assessee before passing an order under Section 148A(d) of the Act.

7. In the present case, the petitioner has placed on record an acknowledgement of the reply dated 4th April, 2022 received by him from the e-filing Portal of the Income Tax Department. The said acknowledgment bears the number 579354131040422. From the said acknowledgment number it is apparent that the petitioner had filed its reply on 4th April, 2022.

8. Since the impugned order under Section 148A(d) has been passed on 5th April, 2022 i.e. after receipt of the detailed reply of the petitioner dated 4th April, 2022, the Assessing Officer should have considered the same as it was available on record. By not considering the reply of the petitioner dated



4th April, 2022, the mandate of Section 148A(c) has been violated as it casts a duty on the Assessing Officer, by using the expression 'shall' to consider the reply of the petitioner/assessee in response to the notice under Section 148A(b) before making an order under Section 148A(d) of the Act.

9. In fact, this Court in *Fena Pvt. Ltd. vs. ACIT Circle 7-1 & Anr., W.P.(C) 6553/2022* had quashed the order passed under Section 148A(d) of the Act in similar circumstances i.e. where Assessing Officer had not taken into consideration the replies along with the documents/evidences filed by the assessee before passing the order under Section 148A(d) of the Act.

10. For the aforesaid reasons, the impugned order under Section 148A(d) and the notice issued under Section 148 of the Act both dated 5th April, 2022 are quashed and set aside. The matter is remanded back to the Assessing Officer to pass a reasoned order in accordance with law within eight weeks after considering the reply dated 4th April, 2022 filed by the petitioner. With the aforesaid observation and direction, present writ petition and application stand disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 18, 2022

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