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

+ W.P.(C) 12363/2022

NIDHI BINDAL

..... Petitioner

Through: Mr.Ved Kumar Jain with Mr.Nichay  
Kantoor and Ms.Richa Mishra,  
Advocates.

versus

INCOME TAX OFFICER WARD 36(1), DELHI & ANR. ....

Respondents

Through: Mr.Kunal Sharma, Sr.Standing  
Counsel for Revenue with Ms.Zehra  
Khan and Mr.Shubhendu  
Bhattacharya, Advocates.

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Date of Decision: 26<sup>th</sup> August, 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):**

**C.M.No.37116/2022**

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**W.P.(C) No.12363/2022 & C.M.No.37115/2022**

1. Present writ petition has been filed challenging the notice dated 19<sup>th</sup> March, 2022 issued under Section 148A(b) of the Income Tax Act, 1961 ('the Act), order dated 30<sup>th</sup> March, 2022 passed under Section 148A(d) of the Act and the impugned notice dated 30<sup>th</sup> March, 2022 issued under



Section 148 of the Act by the Respondent No.1 for the assessment year 2015-16.

2. Learned counsel for the Petitioner states that the impugned notice dated 19<sup>th</sup> March, 2022 has been issued in contravention of Section 148A(b) of the Act as it required the Petitioner to file reply by 25<sup>th</sup> March, 2022 i.e. within six days despite the fact that Section 148A(b) mandatorily directs the respondents to give a minimum time of seven days to the assessee to file its reply.

3. Learned counsel for the Petitioner states that the Petitioner had requested for seven days' adjournment on 25<sup>th</sup> March, 2022 and two days adjournment on 28<sup>th</sup> March, 2022 on the ground that she had permanently moved to United Arab Emirates (UAE). He states that subsequently the Petitioner filed a detailed reply on merits (along with supporting evidences) on 29<sup>th</sup> March, 2022 i.e. prior to passing of the order by the Respondents and the said facts are evident from the income tax portal.

4. Learned counsel for the Petitioner states that the impugned order dated 30<sup>th</sup> March, 2022 has been passed without considering the detailed reply dated 29<sup>th</sup> March, 2022 and voluminous documents/evidences filed by the Petitioner in response to show cause notice dated 19<sup>th</sup> March, 2022. He states that the Respondent No.1 has erroneously observed in the impugned order dated 30<sup>th</sup> March, 2022 that Petitioner had not submitted any response till the date of passing of order.

5. This Court is of the view that since the impugned show cause notice required the Petitioner to file the reply by 25<sup>th</sup> March 2022 i.e. within six days despite the fact that Section 148A(b) mandatorily requires to give a minimum time of seven days to the assessee to file its reply, the



Respondents failed to fulfil the criterion of ‘not less than seven days’ as provided in clause (b) of Section 148A of the Act.

6. In this case, as the impugned order under Section 148A(d) of the Act had been passed after receipt of the reply of the Petitioner, this Court is of the view that Assessing Officer should have considered the reply as the same was available on record. By not considering the reply of the Petitioner dated 29<sup>th</sup> March, 2022, the mandate of Section 148A(c) of the Act 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.

7. Consequently, the impugned order dated 30<sup>th</sup> March, 2022 issued under Section 148A(d) of the Act and the notice dated 30<sup>th</sup> March, 2022 issued under Section 148 of the Act are set aside. The Respondents are directed to take the submission filed on 29<sup>th</sup> March, 2022 on record and pass a reasoned order in accordance with law within eight weeks. With the aforesaid directions, present writ petition along with pending application stands disposed of.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**AUGUST 26, 2022**  
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