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

+ **W.P.(C) 13733/2022 & CM APPLs.41909-41910/2022**

ADROIT FINANCIAL SERVICES PRIVATE LIMITED

..... Petitioner

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

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE

1(1),DELHI & ORS.

..... Respondents

Through: Mr.Sanjay Kumar, Advocate with
Ms.Easha Kadian, Advocate for
revenue.

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Date of Decision: 22nd September, 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 notice dated 7th April, 2021 issued by Respondent No. 1 under Section 148A(b) of the Income Tax Act, 1961 ('the Act'), order dated 29th July, 2022 passed by the Respondent No.1 under Section 148A(d) of the Act, the consequent initiation of reassessment proceedings vide notice dated 29th July, 2022 issued by Respondent No.1 under Section 148 of the Act for the assessment year 2013-14 and all consequential proceedings/ actions initiated pursuant thereto.



2. Learned counsel for the Petitioner states that the proceedings for the assessment year 2013-14 initiated vide assessment notice dated 29th July, 2022 are barred by limitation in view of Section 149(1)(b) of the Act, as the proceedings have been initiated after expiry of three years from the end of the relevant assessment year and the income alleged to have escaped assessment is Rs.45,34,639 i.e. less than Rs. 50,00,000. He emphasises that though Respondent No.1 has itself observed in the impugned order under Section 148A(d) of the Act that the amount alleged to have escaped assessment is below the threshold of Rs.50,00,000/-, yet Respondent No. 1 issued notice under Section 148 of the Act. The relevant extract of the order is reproduced hereinbelow: -

“6.10 Similarly as far as transaction amounting to Rs.926187/- with entity M/s Jignesh Shah and concern in the absence of satisfactory evidence the reply is not considered tenable.

Considering the discussion above it is observed that reply of the assessee with respect to transactions amounting to Rs. (926187 + 3608452) = Rs. 4534639/- is below the threshold amount of Rs. 50 lacs has escaped assessment for the A.Y. 2013-14.

7. In light of the above facts and on the basis of material available on records, it is inferred that the case of M/s.Adroit Financial Services PVT LTD (PAN: AABCA1156D) is a fit case for issuing notice u/s 148 of the I.T. Act, 1961 for A.Y. 2013-14. This order is being passed with prior approval of Principal Chief Commissioner of Income Tax, Delhi.”

3. Issue notice. Mr.Sanjay Kumar, learned counsel for the respondents-revenue, accepts notice. He states that he has no instructions in the present case. He, however, does not dispute that the income alleged to have escaped assessment is less than Rs.50,00,000/-.



4. This Court is of the view that the reopening in the present case is in violation of CBDT Instruction No.01/2022 dated 11th May, .2022, wherein it has been clearly stated that notices in the cases pertaining to assessment years 2013-14, 2014-15 and 2015-16 cannot be issued, if the condition specified under Section 149(1)(b) is not fulfilled namely that income alleged to have escaped assessment should be Rs.50,00,000/- or more.

5. Consequently, as the impugned order under Section 148A(d) of the Act has been passed contrary to the CBDT Instruction No.1/2022, the same is quashed. (See: (2003) 5 SCC 528: *Simplex Castings Ltd. v. Commissioner of Customs [Vishakapatnam]*, (2004) 3 SCC 488: 267 ITR 272 (SC): *Commissioner of Customs v. Indian Oil Corporation Ltd.*, (2002) 10 SCC 64: *Collector of Central Excise, Vadodara vs. Dhiren Chemical Industries* and (2012) 3 SCC 784: 343 ITR 270 (SC): *Catholic Syrian Bank Ltd. vs. CIT*)

6. Accordingly, the present writ petition along with applications stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 22, 2022
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