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

+ W.P.(C) 13581/2022

RATNAGIRI GAS AND POWER PRIVATE
LIMITED

..... Petitioner

Through: Mr. Ved Jain, Mr. Nishchay Kantoor
& Ms. Richa Mishra, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 19(1)
DELHI & ORS.

..... Respondents

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel for Revenue with Ms.
Mansie Jain, Advocate.
Mr. Ranvir Singh, CGSPC for R-4 &
5.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **10.10.2022**

CM APPL. 41388/2022

Exemption allowed, subject to all just exceptions.

Accordingly, this application is disposed of.

W.P.(C) 13581/2022 & CM APPL. No. 41387/2022 (for interim relief)

1. The present writ petition has been filed challenging the order dated 25th July, 2022, passed under Section 148A(d) of the Income Tax Act, 1961, (the 'Act') and the notice dated 25th July, 2022, issued under Section 148 of the Act for the Assessment Year ('AY') 2013-14.
2. The learned counsel for the petitioner states that the Assessee filed its original Income Tax Return for subject AY 2013-14, declaring a loss. The case of the Assessee was selected for scrutiny assessment under Section 143(2) of the Act and on 21st March, 2016, the Assessing Officer ('AO')



passed an assessment order under Section 143(3) of the Act after making certain disallowances. He states that the financial statements of the petitioner were submitted during the assessment proceedings and Note 21 of the said financial statements specifically dealt with 'Employee Benefits Expense' and the said note reads as: "*Expenditure of Rs. 9.14 crore has been debited to current year salary and wages which includes Rs. 2.85 crore for current year and 6.29 crore for earlier years based on debit note from NTPC*".

He states that on 03rd February, 2017, notice under Section 154 of the Act read with Section 159 of the Act was issued stating that an amount of Rs 6.29 Crores debited in the Profit & Loss Account towards prior period under the head 'Wages & Salaries' is an inadmissible expenditure and is proposed to be disallowed. He states that the Assessee filed its reply to the said notice and explained that the expenditure has crystallized during the year under consideration and is thus, an allowable expenditure. He states that the said reply was taken on record and no adverse order was passed by the respondent.

3. Learned counsel for the petitioner states that the Assessee was served with a notice dated 24th May, 2021, under Section 148 of the Act following the procedure as it existed prior to the commencement of the Finance Act, 2021. Pursuant to the directions of the Supreme Court in the case titled ***Union of India vs. Ashish Agarwal, 2022 SCC OnLine SC 543***, the AO has issued a notice dated 30th May, 2022, to provide the assessee with the information which forms the basis of the notice dated 24th May, 2021, and reads to the effect- "*From the perusal of the records, it has been observed that the assessee had debited Rs.6,29,00,000/- in the profit and loss account towards prior period expenditure under the head "Wages & Salary" which*



is an inadmissible expenditure. The same should have been disallowed and added back to the income of the assessee but you have not added back the same in the computation of Income for AY 2013-14.”

4. The learned counsel for the petitioner lay emphasis on the fact that the issue stated in the notice dated 30th May, 2022, is the same issue which was raised in the rectification proceedings initiated on 03rd February, 2017, whereafter considering the reply of the petitioner no adverse order was passed. It is also contended *inter alia* that as is evident from the impugned order, the only material and documents relied upon by the AO for issuing the initial notice dated 24th May, 2021, are the financial statements of the Assessee.

5. The learned counsel for the petitioner states that the Assessee filed its reply dated 13th June, 2022, before the AO and specifically challenged that the proceedings are barred by limitation on account of first proviso to amended Section 149 of the Act as well as first proviso of un-amended Section 147 of the Act. He states that the Assessee also contended that the income alleged to have escaped assessment is not represented in the form of ‘asset’ and thus, the proceedings are barred by limitation. He states that on merits, the Assessee filed its reply highlighting that the expenditure under consideration has crystallized during the year under consideration and thus, is an allowable expenditure. He states that thus, there is no escapement of income.

6. He states that the re-opening is sought on the basis of the change of opinion, which is not permissible. In support of his contention he has relied upon *SMCC Construction India Ltd. vs. Assistant Commissioner of Income Tax, [2013] 38 Taxmann.com 146 (Delhi)*.



7. The learned counsel for the petitioner contends that the AO has not even considered the aforesaid submissions of the Assessee and has passed the impugned order without returning any finding on the aforesaid submissions.

8. Issue notice. Mr. Ruchir Bhatia, learned Senior Standing Counsel accepts notice on behalf of the respondent-revenue. He states that he has instructions that the impugned order and the impugned notice may be set aside and the matter may be remanded to the AO for re-consideration.

9. We have heard the learned counsel for the parties.

10. A perusal of the paper book reveals that the petitioner's responses dated 13th June, 2022, and 30th June, 2022, have not been considered by the AO while passing the impugned order under Section 148A(d) of the Act.

11. Consequently, the impugned order passed under Section 148A(d) of the Act as well as the notice issued under Section 148 of the Act, both dated 25th July, 2022, are set aside and the matter is remanded back to the AO for a fresh decision to be given in accordance with law within eight weeks from today.

12. With the aforesaid directions, the present writ petition along with the pending application stands disposed of. It is clarified that the rights and contentions of all the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 10, 2022/kv/msh