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

Decision delivered on: 06.12.2022

+ **W.P.(C) 16718/2022 & CM APPL. 52748-49/2022**

ADM AGRO INDUSTRIES PRIVATE LIMITED Petitioner

Through: Mr Salil Kapoor, Ms Ananya Kapoor
& Mr Tarun Chanana, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE
1-1, DELHI Respondent

Through: Mr Zoheb Hossain, Sr. Standing
Counsel with Mr Vipul Agrawal &
Mr Parth Semwal, Advs.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

06.12.2022

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[Physical Hearing/Hybrid Hearing (as per request)]

TARA VITASTA GANJU, J. (ORAL):

CM APPL. 52749/2022 (for exemption)

1. Allowed, subject to just exceptions.

**W.P (C) 16718/2022 & CM APPL. 52748/22 (Application filed on behalf
of the petitioner seeking interim relief)**

2. The present Writ Petition has been filed challenging the notice dated 26.05.2022 issued under Section 148A(b) of the Income Tax Act, 1961 (hereinafter referred as "the Act") along with order dated 23.07.2022 passed under Section 148A(d) of the Act and the consequent notice dated 23.07.2022 issued under Section 148 of the Act by the Respondent/Revenue.

2.1. To be noted, the period under consideration is Assessment Year ('AY') 2014-15.

3. The notice dated 26.05.2022 issued under Section 148A(b) of the Act states that the Petitioner had engaged in bogus sales transaction worth Rs 9,40,58,944/- with one Mr Rohit Bharat Nilakhe (Proprietor of Adima Impex) resulting in inexplicable cash credit. The relevant extract reads as follows:

“3.1 Detailed perusal of information shows that Shri Rohit Bharat Nilakhe and his concerns do not have business activity as during verification proceedings it was not able to produce the bills & vouchers to establish the genuineness of his business activity. It has been established that Shri Rohit Bharat Nilakhe alongwith others is engaged in providing accommodation entries transactions of various nature. Further, it is seen that there is layering of these entries' transactions involving various individuals/concerns/accounts During the year under consideration, assessee company, i.e. M/s ADM Agro Industries India Pvt Ltd, has also undertaken entry transactions totaling to Rs 9,40,58,944/-.”

4. The Petitioner filed its objections *via* reply dated 10.06.2022 whereby *inter-alia* it was submitted that during the period under consideration i.e., AY 2014-2015, it had not undertaken any sale, purchase, loan or any other kind of transaction with Adima Impex and that it had only received an advance amounting to Rs.4,50,000/- from the said entity. Besides this, it was submitted that the reassessment proceeding was time barred.

5. The Respondent/Revenue thereafter passed the impugned order dated 23.07.2022 under Section 148A(d) of the Act and issued a consequential notice of the even date i.e., 23.07.2022 under Section 148 of the Act.

6. A perusal of the order dated 23.07.2022 passed under Section

148A(d) of the Act, shows that the Respondent/Revenue have completely ignored the response of the Petitioner and have instead simply stated that the evidences had not been filed.

6.1 The relevant part of the aforesaid order is extracted hereinafter :

*“8. It is important to mention that the assessee did not comment with evidences as on the merit of the case, it did accepted the transaction as to made with Rohit Bharat Nilakhe (Prop. M/s Adima Impex) as advanced received for only Rs.4,50,000/-, **but did not furnish any evidences in this regard i.e. Bank statement, List of Debtors-Creditors or such other details in support of its contention so as to deny the allegation. Considering above the insufficiency in the reply of the assessee, it is inferred that the assessee had availed bogus sale transactions with the said entry operators amounting to 9,40,58,944/-resulting into unexplained credits in the hands of the assessee as per the provisions of the Income Tax Act.**”*

Further, the above-mentioned information suggests that the transaction amounting to 9,40,58,944/- in the A.Y. 2014-15 which is more than threshold amount of Rs. 50 lacs has escaped assessment. As the income represented in the form of “asset” (deposit in bank account) as per Section 149(1)(b) of the Income Tax, 1961.

*9. In light of the above facts and on the basis of material available on records, it is decided that the case of **ADM AGRO INDUSTRIES INDIA PVT LTD, PAN AAHCA6963E** is a fit case for issuing notice u/s 148 of the I.T. Act, 1961 for A.Y. 2014-15.*

6.2 It is contended on behalf of the Petitioner that it is not possible for the Petitioner to prove the negative and file the “evidences” which it had not been asked for.

7. We are in agreement with the Counsel for the Petitioner. Clearly, there has been non-application of mind while passing the order under Section 148 A (d) of the Act.

8. Issue notice.

8.1. Mr Zoheb Hossain accepts notice on behalf of respondent/revenue.

9. In view of the directions we propose to pass, Mr Hossain says that in

the instant matter, counter affidavit is not required to be filed.

10. Having regard to the fact that the reply filed had not been considered, the impugned order and the notice issued under Section 148 of the Act of even date, i.e., 23.07.2022 are set aside.
- 10.1 The matter is remitted to the Assessing Officer for a *de novo* hearing.
- 10.2 The Assessing Officer will grant a personal hearing to the authorised representative of the Petitioner and thereafter pass a speaking order taking into account the reply filed and the submissions tendered before him.
11. The Writ Petition is disposed of in the aforesaid terms. Consequently, the pending application shall stand closed.
12. The Parties will act on the basis of the digitally signed copy of the order.

TARA VITASTA GANJU, J

RAJIV SHAKDHER, J

DECEMBER 6, 2022/r [Click here to check corrigendum, if any](#)