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

% **Date of decision: 17.02.2023**

+ **W.P.(C) 2019/2023 & CM APPL. 7666/2023**

PALMTREE INFRACON PRIVATE LIMITEDPetitioner

Through: Mr Anand Kiran Chaudhuri,
Advocate.

versus

INCOME TAX OFFICER WARD 19(3) DELHIRespondent

Through: Mr Sunil Agarwal, Sr. Standing
Counsel with Mr Shivansh B. Pandya,
Standing Counsel & Mr Utkarsh
Tiwari, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

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

RAJIV SHAKDHER, J.: (ORAL)

**W.P.(C) 2019/2023 & CM APPL. 7666/2023 [Application filed on behalf
of the petitioner seeking interim relief]**

1. Issue notice.
 - 1.1 Mr Sunil Agarwal accepts notice on behalf of the respondent/revenue.
2. Mr Agarwal says, that in view of the directions that we propose to pass, no counter-affidavit is required to be filed.
 - 2.1 Therefore, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.
3. This writ petition is directed against the order dated 25.07.2022

passed under Section 148A(d) of the Income Tax Act, 1961 [in short ‘the Act’] and the consequential notice dated 26.07.2022 issued under Section 148 of the Act. Besides this, challenge has also been laid to the notice dated 21.05.2022 issued under Section 148A(b) of the Act.

3.1 To be noted, the impugned notices and order concern Assessment Year (AY) 2017-18.

4. The record seems to indicate, that a survey was carried out under Section 133A of the Act against Rockman Advertising and Marketing Limited and other related entities.

4.1 The extract of the survey shows, that the petitioner’s name finds mention at serial No.18. [See page 54 of the case file].

4.2. The record also seems to suggest, that a survey under Section 133A of the Act was also carried out *vis-à-vis* business premises of two individuals i.e., Mr Chander Shekhar Aggarwal and his accomplice Mr Sarang Mohiley.

5. The survey, apparently, brought forth the following facts qua the petitioner i.e., that during the period spanning between 01.04.2016 and 08.11.2016, it had made a cash deposit amounting to Rs.9,90,000/-. However, insofar as the period spanning between 09.11.2016 and 31.12.2016 is concerned, no deposits were made by the petitioner. Concededly, the demonetization period spanned between 08.11.2016 and 31.12.2016.

6. A perusal of the notice dated 30.06.2021 issued under the old regime shows, that survey action was carried out *inter alia*, against, one, Mr Chander Shekhar Aggarwal. The notice dated 21.05.2022 issued under the new regime adverted to the earlier notice dated 30.06.2021. In sum the allegation made against the petitioner is, that there was a suspicion that

income chargeable to tax had escaped assessment, in view of the fact that there were credit entries in the subject bank account amounting to Rs.83,58,82,035/-, during Financial Year (FY) 2016-17 [AY 2017-18].

6.1 This suspicion was prefaced with the fact, that the petitioner had, during the very same period i.e., during the relevant AY i.e., AY 2017-18, declared taxable income amounting to Rs.36,100/-.

7. Counsel for the petitioner says, that firstly, what is stated in the survey report is not in sync with what is alleged against the petitioner. Secondly, the reassessment proceedings have been triggered on a mere suspicion.

8. Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that given the income declared by the petitioner in its ITR, and the credits found in the bank account during the same period, further inquiry was required, which is why reassessment proceedings had been triggered.

9. Given the basis, on which the impugned order dated 25.07.2022 is founded, i.e., a mere suspicion, we are inclined to set it aside, with liberty to the Assessing Officer to carry out a *de novo* exercise.

9.1 It is ordered accordingly.

10. Consequently, the notice dated 26.07.2022 issued under Section 148 of the Act will collapse.

11. The Assessing Officer, if he so chooses, will be at liberty to take the next steps in law. However, before the AO carries out a fresh exercise, he will furnish the entire information and/or material which he has in his possession, besides the bank statement to which reference has been made in the order passed under Section 148A(d) of the Act.

11.1 In case any fresh information and/or material is furnished, the

petitioner will be given an opportunity to file a supplementary reply. The Assessing Officer will also accord personal hearing to the authorized representative of the petitioner.

12. The writ petition is disposed of in the aforesaid terms.
13. Parties will act based on the digitally signed copy of the judgement.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

FEBRUARY 17, 2023/ ha