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

+ W.P.(C) 8589/2022 & CM APPL. 25865/2022 (for interim relief)

KAMDHENU ENTERPRISES LTD. Petitioner
Through: Mr. Ved Jain, Ms. Richa Mishra,
Mr. Nishchay Kantoor, Advocates.

versus

INCOME TAX OFFICER WARD 14-2,
DELHI & ORS. Respondents
Through: Mr. Abhishek Maratha, Senior
Standing Counsel for Revenue.

% Date of Decision: 27th October, 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 15th May, 2020, issued under Section 148 of the Income Tax Act, 1961 (the 'Act'), for the Assessment Year 2013-14, the reasons recorded for re-opening and the approval granted by the Respondent No.2; the assessment order and demand notice dated 30th March, 2022 and proceedings initiated

pursuant thereto; the show cause notices dated 20th September, 2021 and 13th January, 2022 and the notice dated 25th March, 2022, show cause notice dated 30th March, 2022, issued by the Respondent No. 3 for imposition of penalty under Section 271(1)(c) of the Act, notice dated 07th June, 2021 issued under Section 148 of the Act for the Assessment Year 2013-14 and notices dated 18th May, 2022 and 23rd May, 2022.

2. Learned counsel for the Petitioner states that in the present case, two reassessment notices have been issued to the Petitioner under Section 148 of the Act for the same assessment year. He states that the first notice is dated 15th May, 2020, which has been issued by the Assessing Officer, Ward 14(2), Delhi, whereas the second notice has been issued on 07th June, 2021, by the Assessing Officer, Ward 14(1). He contends that Assessing Officer, Ward 14(2) is not the Jurisdictional Assessing Officer ('JAO') of the Petitioner. In the alternative, learned counsel for the Petitioner submits that two reassessment notices could not have been issued simultaneously.

3. Learned Counsel for the Petitioner further states that the assessment order dated 30th March, 2022, has been passed without disposing of the objections raised by the Petitioner vide letter dated 22nd July, 2021. He submits that non-disposal of objections before passing the assessment order is in disregard of the law laid down by the Supreme Court in the case of *M/S GKN Driveshafts (India) Ltd vs. Income Tax Officers & Ors. (2003) 1 SCC 72*.

4. Learned counsel for the Petitioner also states that despite several requests made by the Petitioner to share the copy of statement of Sh. Kewal Krishna Arora, which formed one of the main grounds for making the addition, the said statement was not shared till the conclusion of personal

hearing on 25th March, 2022. He states that copy of the statement of Shri Kewal Krishna Arora, relied upon by the Assessing Officer, was shared with the Petitioner vide notice dated 25th March, 2022, digitally signed on 14:25:55 PM requiring the Petitioner to make compliance on or before 25th March, 2022 by 9:42 AM i.e. compliance date and time was set even prior to the date of issuance of notice.

5. Learned counsel for the Respondent-Revenue, on instructions states that notice dated 15th May, 2020 under Section 148 of the Act was issued by the Assessing Officer Ward 14(2), Delhi, as on the said date, the said Assessing Officer had jurisdiction over the Petitioner. He points out that since August, 2020, current Ward 14(1), Delhi, and Ward 14(2) had been merged. He also emphasizes that both the reassessment notices had been issued on the same information. He also states that there has been no violation of the principles of natural justice as the petitioner was given an oral hearing by way of a video conference on 25th March, 2022.

6. In rejoinder, learned counsel for the Petitioner states that he does not wish to press the first issue of jurisdiction of the Assessing Officer Ward 14(2) to issue notice under Section 148 of the Act.

7. Having heard learned counsel for the parties, this Court is of the view that it is settled law that during the subsistence of a reassessment proceedings, another reassessment notice cannot be issued for the same assessment year. The Division Bench of this Court in ***CIT v. Sanjay Kumar Garg, [2015] (9) TMI 390 – Delhi High Court*** has held as under:-

“9. The contention of the Assessee which has been accepted by the ITAT is that when the re-assessment proceedings pursuant to the notices issued on 21st September 2005 were still pending and had not

been completed by 31st December 2006 as was required by law, it was legally impermissible that fresh notices under Section 148 of the Act could be issued to the Assessee. The ITAT has after examining a large number of decisions of the High Court and the Supreme Court come to the conclusion that the issuing of fresh notices under Section 148 of the Act for AYs 2001-02 to 2004-05 was impermissible in law. The assessments for the said AYs were annulled as being barred by limitation.

10. The legal position appears to be fairly well settled. In S.B. Jain, Income Tax Officer, Nagpur v. Mahendra [1972] 83 ITR 104 (SC) a notice was issued a notice has been issued to the Assessee on 5th January 1962 under Section 34(1)(a) of the Income Tax Act, 1922 seeking to reopen the assessment for AY 1946-47. While the said proceedings were pending, the Income Tax Act, 1961 came into force with effect from 1st April 1962. The challenge by the Assessee to the validity of the notice issued under the 1922 Act succeeded with the Bombay High Court quashing the said notice by the order dated 6th March 1963. Thereafter the Income Tax Officer issued a fresh notice on 26th March 1963 under Section 148 of the Act in respect of the very assessment which had sought to be reopened by the earlier notice under Section 34(1)(a) of the 1922 Act. The Supreme Court held that the proceedings initiated under Section 34 (1)(a) of the 1922 Act were pending at the time when the 1961 Act came into force and, therefore, the Income Tax Officer was not competent to issue a fresh notice under Section 148 of the Income Tax Act, 1961.

11. In Nilofer Hameed v. Income Tax Officer [1999] 235 ITR 161 (Ker) after referring to a number of judgments of the High Courts, it was held by the Kerala High Court that "if an assessment is pending either by way of original assessment or by way of reassessment proceedings, the Assessing Officer cannot issue a notice under Section 148 but if no proceedings are pending either by way of original assessment or by way of reassessment, he can issue a notice under Section 148 within the time mentioned."

11. This Court is further in agreement with the submission of the learned counsel for the Petitioner that non-disposal of petitioner's objections dated 22nd July, 2021, was contrary to the law laid down by the Supreme Court in the case of *M/S GKN Driveshafts (India) Ltd.* (supra).

12. This Court, is also in agreement with the contention of the learned counsel for the Petitioner that there has been a violation of principles of natural justice inasmuch as the Petitioner was not given a reasonable opportunity to respond to the statement of Sh. Kewal Krishna Arora shared by the AO with the petitioner on 25th March, 2022.

13. For the aforesaid reasons, the impugned second notice dated 07th June, 2021 issued under Section 148 of the Act during the pendency of reassessment proceedings as well as the consequential notices dated 18th May, 2022 and 23rd May, 2022 are quashed.

14. Further, the assessment order dated 30th March, 2022, as well as the demand and penalty notices dated 30th March, 2022 issued in pursuance to first reassessment notice dated 15th May, 2020, are quashed and the matter is remanded back for fresh decision by the Assessing Officer with a direction to first decide the objections filed by the Petitioner in accordance with the judgment of the Supreme Court in *M/S GKN Driveshafts (India) Ltd.* (supra) within eight weeks and thereafter carry out the assessment in accordance with law.

15. The Assessing Officer while disposing of the objections shall take into account the reply/response filed by the Petitioner dated 22nd July, 2021. If the 29th March, 2022. If the Assessing Officer wishes to issue any notice or seek any further information, he shall be at liberty to do so.

16. With the aforesaid direction, the present writ petition alongwith the pending application stands disposed of. The rights and contentions of all the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 27, 2022/msh

