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

% *Date of Decision: 28.07.2023*

+ **W.P.(C) 9088/2023**

AVS INFRABUILD PRIVATE LIMITED Petitioner
Through: Mr Nischay Kantoor and Ms Sonia Dodeja, Advs. for Mr Ved Jain, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE
1(1), DELHI & ORS. Respondents
Through: Mr Sanjeev Menon, Standing Counsel for Mr Zoheb Hossain, Sr Standing Counsel.
Mr Ajay Kumar Pandey, Adv. for R-/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J.: (ORAL)

1. At the very outset, Mr Nischay Kantoor, who appears on behalf of the petitioner/assessee, submits that the relief sought by way of prayer clause (d) is not pressed.

1.1 The statement of Mr Kantoor is taken on record.

2. We had heard the matter on 11.07.2023, whereupon we had captured, broadly, the issue which arose for consideration in the present writ action. For the sake of convenience, the relevant parts of the order dated 11.07.2023 are set forth hereafter:

“...2. This writ petition concerns Assessment Year (AY) 2014-15.

3. Inter alia the petitioner seeks to assail the assessment order, demand notice and the penalty notice of even date i.e., 31.05.2023.



4. The principal grievance of the petitioner, is that the jurisdictional notice has been issued in the name a different entity i.e., Apollo Pipes Limited.

5. For this purpose, our attention has been drawn, inter alia, to Annexure-8 (colly)-II appended on page no. 245 of the case file.

6. The fact that this jurisdictional error occurred, was flagged by the petitioner/assessee in its reply dated 29.04.2023. [See Annexure P-13, appended page 266 of the case file].

7. Issue Notice.

7.1. Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the respondents/revenue accepts notice.

8. Mr Menon says that he will return with instructions. If instructions are received to resist the writ petition, a counter-affidavit will be filed before the next date of hearing.

9. In the meanwhile, no coercive measures will be taken against the petitioner.

10. List the matter on 28.07.2023... ”

3. As would be evident from the above extract, it is the petitioner’s case that the notice has jurisdictional errors embedded in it.

4. The jurisdictional notice dated 29.07.2022 was issued under Section 148 of the Income Tax Act, 1961 [in short, “Act”]. This notice which has been issued pursuant to an order of even date i.e., 29.07.2022 passed under Section 148A(d) of the Act.

5. We may emphasize the fact that while issuing notice in the matter on 11.07.2022, we had called upon Mr Sanjeev Menon to obtain instructions in the matter.

5.1 We had also indicated, in no uncertain terms, that if instructions were received to resist the petition, a counter-affidavit will be filed. No counter-affidavit has been filed.

6. Mr Menon says that insofar as the issue raised in the writ petition is concerned, it can be answered based on the record presently available with the court. In other words, Mr Menon submits that the response of the respondents/revenue is founded on the provisions contained in the Act.



7. What is not in dispute is that the notice dated 29.07.2022 issued under Section 148 of the Act contains the following errors:

- (i) First, the notice is directed to an entity going by the name “Apollo Pipes Limited”, whereas the petitioner is “AVS Infrabuild Private Limited” [in short, “AVS”].
- (ii) Second, the PAN indicated in the notice reads as: “AAACA1199D”, whereas, concededly, the petitioner’s PAN is: “AALCA2879D.”
- (iii) Third, the period i.e., the AY referred to in the impugned notice is AY 2013-14, whereas the correct AY is 2014-15.
- (iv) Fourth, the notice adverts to the order dated 29.07.2022 issued under Section 148A(b) of the Act and, in this regard, reference is made to the following Document Identification Number (DIN): ITBA/COM/F/17/2022-23/1044258302(1). Concededly, the correct DIN is ITBA/COM/F/17/2022-23/1044258434(1).

8. Clearly, the impugned notice issued under Section 148 of the Act does not concern the assessee.

9. We may note that the respondents/revenue seeks to defend its position by adverting to the intimation letter dated 29.07.2022. Mr Menon says that this letter is addressed to AVS i.e., the petitioner. It is also submitted that the intimation letter seeks to inform AVS that the notice dated 29.07.2022 has been issued to it under Section 148 of the Act.

9.1 In sum, the argument is that the petitioner had knowledge that a notice under Section 148 of the Act was issued.

9.2. Mr Menon builds upon this fact to contend that Section 292B would



cure the defects in the impugned notice. Mr Menon contends that the impugned notice was generated on account of human error and therefore, the respondents/revenue can correct the errors, which have crept in the impugned notice.

10. Mr Kantoor, on the other hand, reemphasizes the submission made in the opening that the notice under Section 148 triggers the jurisdiction of the AO to commence reassessment proceedings, and any defect in notice goes to the root of the jurisdiction of the Assessing Officer (AO).

10.1 In sum, Mr Kantoor submits that the aforesaid defects cannot be cured by the AO by taking recourse to Section 292B of the Act.

11. We have heard the learned counsels for the parties and examined the record.

12. As noted above, there are serious defects in the impugned notice, none of which are contested by the respondents/revenue. If these defects are excised, quite clearly, nothing will remain of the notice.

12.1 There are four serious errors in the notice (as noticed hereinabove); if all of them are excised, it would cease to be a notice which would bear the imprint of Section 148 of the Act.

13. Therefore, the intimation letter dated 29.07.2022, which seeks to communicate to AVS that a notice under Section 148 of the Act has been issued with the following DIN: “ITBA/AST/M/148_1/2022-23/1044294921(1)”, has not seen the light of the day.

14. As indicated above, the only notice that the petitioner received under Section 148 of the Act is the impugned notice. The fact that the notice under Section 148 is a jurisdictional notice emerges on plain reading of the provision. For the sake of convenience, the relevant part of Section 148 of



the Act is extracted hereafter:

“Issue of notice where income has escaped assessment.

148. *Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within a period of three months from the end of the month in which such a notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139...*”

14.1 A plain reading of the aforementioned extract Section 148 would show that the AO, before making the assessment, reassessment or recomputation under Section 147 of the Act, is required to serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of Section 148A of the Act.

15. Furthermore, as per the provision, the AO is required to call upon the assessee within a defined period, to furnish a return of his income or income of any other person, in respect of which he is assessable, under this Act during the relevant AY. The return filed is, in law, considered as if it was furnished under Section 139 of the Act.

16. Therefore, the reassessment proceedings can only commence once notice under Section 148 of the Act is issued. It is, clearly, a step which the AO is required to take before he assumes jurisdiction; *inter alia*, for reassessing the case.

17. Insofar as the reliance placed on Section 292B is concerned, the



observations made in *Commissioner of Income Tax v Spirit Global Construction Pvt. Ltd* 2023: DHC:4914-DB rendered in the context of Section 292B of the Act, being apposite, are extracted hereafter:

“23.1 A mistake, which can be corrected under Section 292B of the Act, should be such that if excised it does not change the tenor and scope of the documents/proceedings referred to therein i.e., the return of income, assessment, notice, summons or other proceedings, taken, furnished or made or issued or taken or purported to have been furnished or made or issued or taken against the assessee under the provisions of the Act.”

18. Undoubtedly, there is a misstep on the part of the AO since the AO has not assumed jurisdiction as per law. Therefore, we have no hesitation in quashing the impugned notice dated 29.07.2022 issued under Section 148 of the Act.

19. Consequently, the impugned order and notices, which preceded and followed the aforementioned notice shall also collapse; these being notice dated 26.05.2022 issued under Section 148A(b) of the Act, order dated 29.07.2022 issued under Section 148A(d) of the Act, assessment order dated 31.05.2023 and notices of demand and penalty of even date i.e., 31.05.2023.

20. The writ petition is disposed of, in the aforesaid terms.

21. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 28, 2023/pmc