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

% *Date of Decision: 05.09.2023*

+ W.P.(C) 8288/2023

RAMINDER SINGH Petitioner

Through: Mr. K.R. Manjani & Mr. Tarun
Aswani, Advs.

Versus

ASSISSTANT COMMISSIONER OF INCOME
TAX CIRCLE 52(1) NEW DELHI Respondent

Through: Mr. Vipul Agrawal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM No.44632/2023 (of petitioner for rectification/review of the order dated 07.08.2023)

1. The petitioner has filed the present application seeking review of the order dated 07.08.2023 whereby the above captioned petition was dismissed. The petitioner had filed the above captioned petition challenging a notice dated 17.04.2023 (hereafter '**the impugned notice**') issued under Section 148 of the Income Tax Act 1961 (hereafter '**the Act**') for reopening the assessment for the Assessment Year 2019-2020.

2. The impugned notice indicated the transactions forming the basis of income that had escaped assessment, related to supplies from two



parties: Milap Advertising and Marketing Private Limited for an aggregate amount of ₹47,67,772/-; and Angel Enterprises for an aggregate value of ₹44,80,000/-. In so far as the supplies received from Angel Enterprises are concerned, it was not disputed that the petitioner had provided copies of the ledger account which indicated that the said supplies were booked on 31.03.2018 (Financial Year 2017-2018) and did not pertain to the Assessment Year 2019-2020. However, the expenses relating to supplies from Milap Advertising and Marketing Private Limited were booked in the Financial Year 2018-2019 relevant to the Assessment Year 2019-2020. The value of supplies from Milap Advertising and Marketing Private Limited were less than ₹50,00,000/- (Rupees Fifty Lakhs) and therefore, the income for Assessment Year 2019-2020 escaping assessment could not exceed the said amount. Consequently, the period of limitation for reopening the assessment was three years and not ten years.

3. This court held that the impugned notice was within the stipulated period after excluding the period afforded to the petitioner to respond to the notice under clause (b) of Section 148A of the Act and the time for passing the order under clause (d) of Section 148A of the Act under the fifth and the sixth proviso to Section 149 of the Act. Accordingly, the petition was rejected.

4. The petitioner seeks review of the order dated 07.08.2023, essentially on four grounds. First, that there were no accommodation entries in its books as the proper purchase bills for the work done by the supplier were provided along with the applicable GST. In addition, TDS was also deducted on the amounts paid/credited. Second, that the



impugned notice is vague and unspecific, and has no nexus with the petitioner. Third, that the proposals and approvals for issuing the impugned notice under clause (b) of Section 148A of the Act were not provided to the petitioner. And fourth, that the income alleged to have escaped assessment is less than ₹50,00,000/-; therefore, the notice beyond the period of three years could not be issued.

5. The petitioner's claim that there is no escapement of income from assessment is a matter of merits, which is required to be decided by the Assessing Officer. We are also unable to accept that the notice under Section 148A(b) of the Act is vague or cryptic. The said notice sets out the transactions alleged to have escaped assessment under the Act. The petitioner has also contested the said allegation by providing details of the said transactions.

6. The contention that any approval for issuance of the impugned notice is required to be provided along with the notice is unmerited. However, if the petitioner desires to obtain a copy of the approval, it would be open for the petitioner to apply for the same and the respondent shall provide a copy to the petitioner.

7. As noted above, it is the petitioner's contention that the amount of ₹50,00,000/- has been incorrectly calculated and therefore, the limitation for issuing a notice under Section 148 of the Act is three years from the end of the relevant Assessment Year. According to the petitioner, the impugned notice under Section 148 of the Act was issued beyond the said period of limitation.

8. It is contended on behalf of the Revenue that the notice under



Section 148 of the Act was issued within the period of limitation of three years and therefore, the question whether the quantum of income that had allegedly escaped assessment exceeded ₹50,00,000/- is inconsequential.

9. This court had accepted the contention that by virtue of the fifth and the sixth proviso to Section 149(1) of the Act, the period provided to the assessee to respond to the notice under clause (b) of Section 148A of the Act is required to be excluded. Further, if the period of limitation remaining after such exclusion, is less than 7 days, then by virtue of the sixth proviso of Section 149(1), the period of limitation is extended by a period of 7 days.

10. The impugned notice under Section 148A(b) of the Act was issued on 31.03.2023, and provided the petitioner an opportunity to respond to the same on or before 10.04.2023. Thus, the period between 31.03.2023 and 10.04.2023 is required to be excluded by virtue of the fifth proviso to Section 149(1) of the Act. Since, the period of limitation remaining thereafter is less than 7 days, by virtue of the sixth proviso to Section 149(1) of the Act, the period gets extended by 7 days.

11. In view of the above, this court held that the impugned notice was issued on the last date of the limitation period – 17.04.2023 – and the petitioner's contention that the same was issued beyond the period of limitation was erroneous.

12. Mr. K.R. Manjani, the learned counsel appearing for the petitioner submits that the aforesaid conclusion that the impugned notice was issued within the period of limitation, is erroneous. He states that the



sixth proviso to Section 149(1) of the Act is not applicable since the said proviso applies in respect of an order under clause (d) of Section 148A of the Act and not to a notice under Section 148 of the Act. He submits that the petitioner was granted ten days time to respond to the notice dated 31.03.2023 issued under clause (b) of Section 148A of the Act and this is the only period that can be excluded from the period of limitation by virtue of the fifth proviso to Section 149(1) of the Act.

13. He submits that sixth proviso to Section 149(1) of the Act is not applicable as the Assessing Officer had time till 31.05.2023 to pass an order under clause (d) of Section 148A of the Act. He referred to the language of Clause (d) Section 148A of the Act and submitted that the same expressly provides a period of one month from the end of the month in which the time or extended time allowed to the assessee to respond to notice issued under Clause (b) of Section 148A of the Act expires.

14. Clause (d) of Section 148A of the Act is set out below:

“(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned



under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, ²⁴[relate to, the assessee; or
- (d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

15. The Assessing Officer has one month from the end of the month in which time provided to the assessee to furnish a reply expires, to pass an order under clause (d) of Section 148A of the Act. However, it is also clear that the said order is to accompany the notice under Section 148 of the Act. This is apparent from the opening sentence of Section 148(1) of the Act, which is reproduced below:

“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 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....”

16. It is apparent that an order under clause (d) of Section 148A of the Act must precede the issuance of notice under Section 148 of the Act. It follows that although in terms of clause (d) of Section 148A of the Act, the time available to the Assessing Officer to make an order under the said clause is one month from the end of the month in which the time provided to the assessee to respond to a notice under clause (b) of Section 148A of the Act expires; the said order is required to be necessarily passed within the time period available for issuing a notice under Section 148 of the Act. This is so because in terms of Section 148 of the Act, the order under clause (d) of Section 148A of the Act is required to accompany the notice under Section 148 of the Act.

17. Section 149(1) of the Act expressly provides the time limit for issuing the notice under Section 148 of the Act. The relevant extract of the Section 149(1) of the Act is set out below:

“149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

[(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents



or evidence which reveal that the income chargeable to tax, represented in the form of—

- (i) an asset;
- (ii) expenditure in respect of a transaction or in relation to an event or occasion; or
- (iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

...

...

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A [does not exceed seven days], such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.”

18. Thus, the notice under Section 148 of the Act (accompanied by an order under clause (d) of Section 148A of the Act) is required to be issued within the period of three years from the end of the relevant assessment year if the income escaping assessment is less than ₹50,00,000/-. The sixth proviso to Section 149(1) of the Act makes it amply clear that if the time available to the Assessing Officer to pass an order under Clause (d) of Section 148A is truncated to less than 7 days on account of the period of limitation available for issuing a notice under Section 148, the same shall be extended for the said period.

19. In our view, the period of one month from the end of the month in



which the time available to the assessee to respond to the notice under Clause (b) of Section 148A expires, is available to the Assessing Officer to pass an order under clause (d) of Section 148A of the Act only within the rubric of Section 149 of Act, that is, within the overall time available in terms of Section 149(1) of the Act for issuance of a notice under Section 148 of the Act. This is because a notice under Section 148 of the Act which is not accompanied with the order under Clause (d) of Section 148 of the Act would be non-compliant with the Act. And, no such notice can be issued beyond the period as specified under Section 149(1) of the Act.

20. In view of the above, we find no ground to review the order dated 07.08.2023, the application is accordingly dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 5, 2023

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