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

+ **W.P.(C) 5787/2022 & CM APPL.17297/2022**

GULMUHAR SILK PVT LTD Petitioner

Through: Mr.Kapil Goel, Advocate with
Mr.Sandeep Goel and Mr.Venkatesh
Chaurasia, Advocates.

versus

INCOME TAX OFFICER WARD 10(3) DELHI Respondent

Through: Ms.Vibhooti Malhotra, Sr.Standing
Counsel with Mr.Shailendra Singh,
Jr.Standing Counsel and Mr.Udit
Sharma, Advocates.

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Date of Decision: 7th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order dated 28th March, 2022 passed by Respondent under Section 148A(d) of the Income Tax Act, 1961 [‘the Act’] for the assessment year 2018-19, Show Cause Notice dated 7th March, 2022 issued under Section 148A(b) of the Act as well as notice dated 28th March, 2022 purportedly issued under Section

148 of the Act.

2. Learned counsel for the petitioner states that the impugned order dated 28th March, 2022 is a non-speaking order which does not deal with the contentions raised by the Petitioner in reply to the impugned Show Cause Notice dated 7th March, 2022. In support of his submission, he relies upon the judgment of the Supreme Court in **Kranti Associates Pvt. Ltd. & Anr. Vs. Mashook Ahmed Khan and Ors, SLP (C) No.20428/2007**.

3. He states that the impugned order dated 28th March, 2022 has been issued in a mechanical manner and without any independent application of mind by placing reliance on the information provided by the investigation wing which does not have any rational nexus with the petitioner. He states that the information mentioned in the Show Cause Notice pertains to the Assessment Year 2014-15 which has been used to frame reason to believe escapement of income for the Assessment year 2018-19.

4. A perusal of the paper book reveals that in the impugned order dated 28th March, 2022, the respondent has opined that the petitioner-assessee has not been able to rebut the statement made on oath by the entry provider. It is also stated that the DGGI, Ghaziabad had conducted a search and seizure action in this case under CGST Act, 2017 at Shop No.10, Aman Banquet, Sector-5, Rajendra Nagar, Sahibabad, Ghaziabad on 18th and 19th April, 2018 and had reached the same conclusion. Consequently, this Court is of the view that the impugned order is a speaking and reasoned order. Accordingly, the judgment of the Supreme Court in **Kranti Associates Pvt. Ltd. & Anr.** (supra) has no application to the facts of the present case.

5. Pertinently, the assessee has only submitted bank statements and not the books of accounts before the Assessing Officer. Further, this Court is of

the view that the ratio of the Supreme Court judgment in ***Raymond Woollen Mills Ltd. vs. Income-tax Officer, Centre Circle XI, Range Bombay and Ors. (2008) 14 SCC 218***, is clearly attracted to the facts of the present case inasmuch as in the said judgment it has been held, “*In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage*”.

6. Though it is the petitioner’s case that the impugned order is erroneous on facts, yet this Court is of the opinion that the petitioner would have ample opportunity during the course of proceedings before different statutory forums to show that the finding of fact arrived at was erroneous. Moreover, at this stage, no assessment order has been passed and it has only been observed that it is a fit case for issuance of notice under Section 148 of the Act. In fact, the Supreme Court in ***Commissioner of Income Tax and Ors. Vs. Chhabil Das Agarwal, (2014) 1 SCC 603*** has held that as the Income Tax Act, 1961 provides complete machinery for assessment/reassessment of tax, assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226. Consequently, the present case does not fall under the exceptional grounds on which a writ petition is maintainable at the interim stage in tax matters. [See: ***Ghanashyam Mishra And Sons Private Limited Vs. Edelweiss Assetre Construction Company Limited, (2021) 9 SCC 657*** and ***M/S Radha Krishan Industries vs. State of Himachal Pradesh and Ors, (2021) 6 SCC 771***].

7. Accordingly, the present writ petition along with pending application stands dismissed with liberty to the petitioner to raise all its grounds before the Assessing Officer and the subordinate forums.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 7, 2022
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