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

+ **W.P.(C) 6861/2022**

**M/S ESTER INDUSTRIES LTD**

..... Petitioner

Through: Mr. R. Santhanam, Advocate with Mr.  
Arjun Prasad Sinha, Advocate.

versus

**THE ASSTT. COMMISSIONER OF INCOME TAX & ANR.**

..... Respondents

Through: Mr. Zoheb Hossain, Senior Standing  
Counsel for Revenue with Mr. Vipul  
Agrawal, Mr. Parth Semwal and Mr.  
Aditya Chhajed, Advocates.

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Date of Decision: 27<sup>th</sup> May, 2022

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J:(ORAL)**

**CM APPL. 20872/2022**

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**W.P.(C) 6861/2022 & CM APPL. 20873/2022**

1. Present writ petition has been filed challenging order dated 31<sup>st</sup> March, 2022 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and notice dated 31<sup>st</sup> March, 2022

issued under Section 148 of the Act for the Assessment Year 2018-19 by the respondent.

2. Learned counsel for the petitioner states that show cause notice under Section 148A(b) of the Act was issued to the petitioner on 17<sup>th</sup> March, 2022 and the petitioner was directed to file its reply by 24<sup>th</sup> March, 2022. The said notice and the reply were handed over by the petitioner at the hearing dated 2<sup>nd</sup> May, 2022 and were taken on record.

3. Learned counsel for the petitioner states that an application for adjournment was filed by the petitioner on 24<sup>th</sup> March, 2022 seeking extension of time to file a reply to the said notice. In the request, it was stated that since the petitioner company is listed on the stock exchange, it was then working to complete its statutory compliances scheduled to be completed before 31<sup>st</sup> March, 2022. In the said request, it was further stated that since the past financial records of the petitioner are stored in a factory in Uttarakhand, the petitioner required additional time to collate the said financial records.

4. The petitioner submits that, however, that though the request for extension was duly registered on the online portal, the respondent has proceeded to pass the impugned order under Section 148A(d) of the Act wherein at paragraph No. 4, the order erroneously records that the petitioner has filed a reply which has been found to be devoid of merit. The petitioner submits that it is *ex-facie* contrary to request for adjournment sought *vide* letter dated 24<sup>th</sup> March, 2022. He further contends that the impugned order and the notice under Section 148 of the Act has been passed in violation of principles of natural justice.

5. Issue notice. Mr Zoheb Hossain, learned Senior Standing Counsel for

respondent, accepts notice. He states that just because an adjournment application has been filed, the petitioner could not have presumed that the adjournment would be allowed. He further states that the request for adjournment was made on 24<sup>th</sup> March, 2022 which was admittedly the last date.

6. Having heard learned counsel for the parties, this Court is of the view that the petitioner/assessee has the right to get adequate time in accordance with the Act to submit its reply. It is pertinent to mention that Section 148A(b) permits the Assessing Officer to suo moto provide up to thirty day's period to an assessee to respond to the show cause notice issued under Section 148A(b), which period may in fact be further extended upon an application made by the Assessee in this behalf, and such period given to the petitioner-assessee is excluded in computing the period of limitation for issuance of notice under Section 148A(d) of the Act in terms of the third proviso to Section 149 of the Act.

7. In the present case, though the petitioner had filed an application for adjournment immediately after receipt of notice dated 17<sup>th</sup> March, 2022, the respondent had neither rejected the request for adjournment nor directed the petitioner to file a reply within the original stipulated time.

8. By denying an opportunity of adequate time to the petitioner, the mandate of Section 148A(b) has been violated. This Court in the ***Divya Capital One Private Limited (earlier known as Divya Portfolio Private Limited) vs. Assistant Commissioner of Income Tax Circle 7(1) Delhi & Anr. in W.P.(C) 7406/2022*** has observed as under:

*“13. It is pertinent to mention that Section 148A(b) permits the Assessing Officer to suo moto provide up to thirty days period to an assessee to respond to the show cause notice issued under Section*

*148A(b), which period may in fact be further extended upon an application made by the Assessee in this behalf, and such period given to the assessee is excluded in computing the period of limitation for issuance of notice under Section 148 of the Act in terms of the third proviso to Section 149 of the Act.”*

9. Consequently, the impugned order dated 31<sup>st</sup> March, 2022 issued under Section 148A(d) of the Act and the notice dated 31<sup>st</sup> March, 2022 issued under Section 148 of the Act are set aside.

10. The petitioner is directed to file its reply within a period of 02 (two) weeks.

11. The respondent is directed to open the e-portal to enable the petitioner to upload its reply. In the event, the Assessing Officer wants clarification or would like the petitioner's response to any specific information received by the revenue, it shall be open to give a supplementary notice. The respondent is directed to pass a reasoned order within 08 (eight) weeks after duly considering the reply filed by the respondent. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.

12. With the aforesaid direction, the present writ petition along with pending applications stands disposed of.

**MANMEET PRITAM SINGH ARORA, J**

**MANMOHAN, J**

**MAY 27, 2022/msh**