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

+ **W.P.(C) 7854/2022 & CM APPLs.23968-23969/2022**

MEENU CHAUFLA

..... Petitioner

Through: Mr.Divyanshu Agrawal, Advocate
with Ms.Ritika Chawla and
Mr.Vaibhav Niti, Advocates.

versus

INCOME TAX OFFICER WARD 49(1), DELHI Respondent

Through: Mr.Ajit Sharma, Advocate.

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Date of Decision: 27th May, 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 Order dated 30th March, 2022 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by Respondent and notice dated 31st March, 2022 issued under Section 148 of the Act for the assessment year 2018-19.

2. Learned Counsel for the Petitioner states that a Show Cause Notice under Section 148A(b) of the Act was issued to the Petitioner on 17th March, 2022 and the Petitioner was directed to file its reply by 24th March, 2022. He states that an application for adjournment was filed by the petitioner on 18th

March, 2022 requesting the Respondent to grant time till 27th March, 2022 for filing the submission in response to the aforesaid notice. He states that submission was filed on 27th March, 2022 by way of email, as the online submission portal was closed by the Respondent on 24th March, 2022.

3. Issue notice. Mr.Ajit Sharma, learned counsel for the respondent, accepts notice. He states that the Assessing Officer was within his right to close the online portal, as the petitioner had been granted only seven days' time to file a response to the notice issued under Section 148A(b) of the Act dated 27th March, 2022. He further states that just because an adjournment application had been filed, the petitioner could not have presumed that the adjournment would be allowed.

4. 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 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 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.

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

6. In the present case, the petitioner had filed its response/submission on 27th March, 2022 by way of an email addressed to the Assessing Officer as the notice under Section 148A(b) had been received from the said email address.

7. Further, as the impugned order under Section 148A(d) of the Act had been passed after receipt of the said email, this Court is of the view that Assessing Officer should have considered the same as the reply was available on record. By not considering the reply of the Petitioner dated 27th March, 2022, the mandate of Section 148A(c) has been violated as it casts a duty on the Assessing Officer, by using the expression 'shall', to consider the reply of the Petitioner/assessee in response to notice under Section 148A(b) before making an order under Section 148A(d) of the Act.

8. Consequently, the impugned order dated 30th March, 2022 issued under Section 148A(d) of the Act and the notice dated 31st March, 2022 issued under Section 148 of the Act are set aside. The respondent is directed to take the submission filed on 27th March, 2022 on record and pass a reasoned order in accordance with law within eight weeks. 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.

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

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 27, 2022

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