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

+ W.P.(C) 12677/2022

M/S ESTER INDUSTRIES LTD. Petitioner

Through: Mr.Arjun Prasad Sinha, Advocate.

versus

ASSTT. COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

Through: Mr.Zoheb Hossain, Sr.Standing
Counsel for the Revenue with
Mr.Vipul Agrawal and Mr.Parth
Semwal, Advocates.

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Date of Decision: 02nd September, 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):

C.M.No.38500/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**W.P.(C) No.12677/2022 & C.M.No.38501/2022**

1. Present writ petition has been filed challenging the order passed under Section 148A(d) of the Income Tax Act, 1961 [‘the Act’] and the notice issued under Section 148 of the Act, both dated 23rd July, 2022 for the Assessment Year 2018-19.
2. Learned counsel for the Petitioner states that the monetary requirement for reopening assessment is Rs.50 lakhs which is not fulfilled in the present matter as the amount sought to be added in the income of the Petitioner is only Rs.34,62,830/-.
3. Learned counsel for the petitioner also states that the Respondents seek to initiate reassessment against the Petitioner based on incorrect facts as the impugned order alleges that the Petitioner has made bogus sales to one Mr.Dev Narayan proprietor of the firm Nitin Trading Company. He, however, points out that the Petitioner had sold its products to Nitin Trading Company, which is a proprietorship firm of Mr. Aman Bhalla and not Mr. Dev Narayan.
4. He further states that the entire sales and records of the assessee had been verified and accepted in the original scrutiny assessment concluded vide assessment order dated 4th March, 2021 and therefore, the sale proceeds of goods sold by the assessee and monies received for the purpose from the buyer through RTGS in the bank cannot be regarded as unexplained cash credit under Section 68 of the Act, as the same had been offered to tax.
5. Having heard learned counsel for the Petitioner, this Court is of the view that the condition precedent of an asset in the form of Rs.50 lakhs is not be attracted to the present case, as the notice under Section 148A(b) of



the Act had been issued on 17th March, 2022 i.e. within three years of the assessment year sought to be assessed, namely, 2018-19 and Section 148A(d) order as well as Section 148 notice issued on 31st March, 2022 was within prescribed time. The said Section 148 notice and the order passed under Section 148A(d) were set aside by this Court on the petition of the assessee vide order dated 27th May, 2022 and the matter was remanded to the Assessing Officer to decide the matter in time bound manner. The impugned Section 148 notice dated 23rd July, 2022 has been passed by the Assessing Officer within the time granted by the Court and, therefore, the said notice cannot be considered time barred as sought to be alleged by the Petitioner.

6. This Court is of the view that the issue whether the transaction was executed by the Petitioner with Nitin Trading Company, a proprietorship of Mr. Aman Bhalla or Mr. Dev Narayan, cannot be adjudicated upon in writ proceedings and that too, when the assessment proceedings are pending.
7. This Court is also of the view that if the allegations in the order passed under Section 148A(d) of the Act are correct, then the Petitioner's defence that the transaction had already been subjected to tax is not correct inasmuch as the sale would be treated as unexplained cash credit under Section 68 of the Act and the full value would be liable to tax.
8. The fact that a scrutiny assessment had been undertaken in the present case would not come to the Petitioner's rescue, as the Respondents had subsequently received information that one of the parties with whom the Petitioner had transacted was an alleged entry operator- which fact was not known to the revenue when the scrutiny assessment was carried out.



9. Consequently, the present writ petition along with pending application is dismissed. However, the Petitioner is given liberty to raise all contentions and submissions before the Assessing Officer.
10. Needless to state that the Assessing Officer shall decide the matter on its own merits in accordance with law.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

**SEPTEMBER 1, 2022
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