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

+ W.P.(C) 11338/2022

BEST BUILDWELL PRIVATE LIMITED Petitioner

Through: Mr.Salil Kapoor with Ms.Ananya
Kapoor, Mr.Tarun Chanana and
Mr.Sumit Lal Chandani, Advocates.

versus

INCOME TAX OFFICER, CIRCLE 4 (2), DELHI AND ANR.

..... Respondents

Through: Mr.Kunal Sharma, Sr.Standing
Counsel for the Revenue.

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Date of Decision: 01st August, 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.33396/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.11338/2022 & C.M.No.33395/2022

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

[‘the Act’] and notice dated 31st March, 2022 issued under Section 148 of the Act as well as show cause notice dated 16th March, 2022 issued under Section 148A(b) of the Act for the Assessment Year 2018-19.

2. Learned counsel for the Petitioner states that the Petitioner had filed its return of income for the Assessment Year 2018-19 declaring an income of Rs.6,32,45,180/- and loss of Rs.74,36,185/-. He states that the case of the Petitioner was picked up for scrutiny and after examination of all the submissions of the Petitioner, an assessment order dated 27th April, 2021 under Section 143(3) read with Section 144B of the Act was passed assessing the income of the Petitioner at Rs.6,41,76,500/-. He points out that one of the points for selecting the Petitioner’s case for scrutiny was ‘Business Purchases’ and after analysing the documents submitted by the Petitioner, no additions were made by the Assessing Officer on account of business purchases.

3. Learned counsel for the Petitioner states that the impugned show cause notice dated 16th March, 2022 issued under Section 148A(b) of the Act did not provide any information and/or details regarding the income that has been alleged to have escaped assessment. He states that the Petitioner filed a response to the impugned show cause notice dated 16th March, 2022 specifically requesting the Respondent to provide the details of the transaction and also for providing the details of the vendors from whom the Petitioner had made purchases and raised invoices, which Respondent No.1 considered bogus. He further states that Respondent No.1 failed to consider the fact that the Petitioner had made purchases from vendors who were registered under GST and had claimed input tax credit of GST on the purchases made from them as per statement 2A reflected on the

GST portal based on the invoices raised by the vendors. He points out that the credit claimed by the Petitioner has not been rejected.

4. Learned counsel for the Petitioner states that the impugned order dated 30th March, 2022 under Section 148A(d) of the Act merely relies on an alleged report prepared against the assessee company. He emphasises that no such report was ever furnished to the Petitioner.
5. Issue notice. Mr.Kunal Sharma, learned Senior Standing Counsel accepts notice on behalf of the Respondents. He states that notice under Section 148A(b) of the Act had been issued in the present instance as the Petitioner's ITR and GST Data did not reconcile. He also states that the analysis of GST information of third parties reveal substantial routing of funds by way of bogus purchases.
6. In rejoinder, learned counsel for the Petitioner states that the impugned order passed under Section 148A(d) of the Act does not refer to any lack of reconciliation between the ITR and GST Data of the Petitioner. He also states that no GST information showing substantial routing of funds was ever furnished to the Petitioner.
7. Having heard the counsel for parties, this Court is of the view that the impugned show cause notice as well as the impugned order under Section 148A(d) of the Act are based on distinct and separate grounds.
8. The show cause notice primarily states that "*it is seen that the Petitioner has made purchases from certain non-filers*". However no details or any information of these entities was provided to the Petitioner. It is not understood as to how the Petitioner was to know which of the entities it dealt with were filers or non-filers!

9. Further, the impugned order states that a report was prepared against the Petitioner-company which concludes that the assessee had shown bogus purchases from bogus entities to suppress the profit of the company and reduce the tax liability during the years 2015-16 to 2020-21. However, no such report which forms the basis for the 'information' on which the assessment was proposed to be reopened had been provided to the Petitioner. In fact, there are no specific allegations in the show cause notice to which the Petitioner could file a reply.

10. Keeping in view the aforesaid, the impugned order dated 30th March, 2022 passed under Section 148A(d) and notice dated 31st March, 2022 issued under Section 148 of the Act are quashed and the Respondents are given liberty to furnish additional materials in support of the allegations made in the show cause notice dated 16th March, 2022 within three weeks including reports, if any. Thereafter, the Assessing Officer shall decide the matter in accordance with law. With the aforesaid directions, the present writ petition along with pending application stands disposed of. The rights and contentions of all the parties are left open.

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MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 1, 2022
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