
(2022) 09 DEL CK 0223

In the Delhi High Court

Case No : Civil Writ Petition No. 12851 Of 2022, Civil Miscellaneous Application
No. 39113-14 Of 2022

Civitech Developers Private Limited

APPELLANT

Vs

Income Tax Officer Ward & Anr.

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Income Tax Act, 1961 — Section 148, 148A, 148A(b), 148A(d), 149

Citation : (2022) 09 DEL CK 0223

Hon'ble Judges : Manmohan, J; Manmeet Pritam Singh Arora, J

Bench : Division Bench

Advocate : Lakshmi Gurung, R. Ramachandran, Poonam Datta, Zoheb Hossain,
Vipul Agrawal, Parth Semwal

Final Decision : Disposed Of

Judgement

Manmohan, J

CM APPL. 39114/2022

Exemption allowed, subject to all just exceptions.

Accordingly, this application stands disposed of.

W.P.(C) 12851/2022 & CM APPL. 39113/2022 (for interim relief)

1. Present writ petition has been passed challenging the order passed under section 148A(d) of the Income Tax Act, 1961 [the Act] and the consequential Notice issued under section 148 of the Act both dated 27th July, 2022 for the Assessment Year [AY] 2016-17.

2. Learned Counsel for the Petitioner states that the impugned notice and order have been passed in violation of principles of natural justice in as much as the detailed reply dated 8th June, 2022 to the Show Cause Notice dated 27th May, 2022 issued under section 148A(b) of the Act submitted by the Petitioner, even

though acknowledged by the Respondent, has not been considered while passing the impugned order dated 27th July, 2022 under section 148A(d) of the Act.

3. Today, learned counsel for the respondent states that he has received the following e-mail dated 26th September, 2022, from the Assessing Officer, which reads as under:-

"Kindly find attached reply in the case of Civitech Developer Pvt Ltd, AAEC0108J, AY 2016-17 filed by the assessee against the order u/s 148A(d) of the I.T.Act.

The reply was duly approved by the Competent Authority. The copy of approval and soft copy is enclosed for necessary action.

Further, I am directed to inform that the Hon'ble High Court may remand the matter for fresh adjudication in a time bound matter, as per the attached submission."

4. He has also handed over the proposed reply prepared by the Assessing Officer. The same is reproduced hereinbelow:-

· "In the case of the assessee company -M/s Civitech Developers Private Limited, the information forming the basis of reassessment proceedings is as follows:

"Information has been received from the SRO Noida which revealed that the assessee has sold immovable property amounting to Rs.7,74,40,422/-. Since, credible information was flagged by Investigation wing of the department and the information has been shared after due verification and enquiries."

. It is stated that based on the reasons recorded above, notice u/s 148 was issued to the assessee on 28.06.2021

. Subsequently, Hon'ble Supreme Court in its judgement in the case of UOI & Ors. vs Ashish Aggarwal dated 04.05.2022 has upheld the validity of the same and has directed that the above notice u/s 148 may be treated as show cause u/s 148A.

. Information in this case has been flagged and received from the Directorate of Income Tax (Intelligence & Criminal Investigation), New Delhi on insight portal that Sub Registrar Office, Noida has informed sale of immovable property amounting to Rs.7,74,40,422/ by the assessee company and the said information was treated as reason recorded under the old regime before the provision of new section 149 became applicable and under the old regime, there was no requirement of classification of information. Hence, the notice u/s 148 dated 28.06.2021 stands upheld by Hon'ble Supreme Court and the same was treated as showcause u/s 148A.

. It would be relevant here to refer to the judgement of Hon'ble Delhi High Court in the case of M/s Touchstone Holding Pvt Ltd. vs ITO dated 09.09.2022 upholding the reassessment proceedings in the case of M/s Touchstone Holding

Pvt Ltd for AY 2013-14 where in reference has been made to the case of Raymond Woollen Mills Ltd vs ITO and Ors. wherein the Supreme Court has held as under:

"3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see 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. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."

. The assessee in its submission dated 08.06.2022 has stated that it has submitted various details before the ADIT(I&CI), New Delhi. The assessee has adopted percentage completion method. Further, the assessee company has stated that it had made sale of 26 flats for which sale workout to Rs.18,80,40,945/-in aggregate. Further, the assessee has also stated that for the sale of 13 immovable properties workout to Rs.9,41,55,710-/. Since, the assessee has adopted percentage completion method, it has booked sale at Rs.2,59,72,635. However, the submission was found lacking in any supporting documentary evidence i.e. sale deed, ledger accounts, bank statement etc to substantiate the same. Also, Percentage Completion Method required reporting of revenues and expenses on a period by period basis, as determined by the percentage of the contract that has been fulfilled. The current income and expenses are compared with the total estimated costs to determine the tax liability. The determination of work completion also required for verification of percentage revenue offered by the assessee company which is lacking in submission. Further, it is contended that the merits of the case cannot be looked into at this stage under writ."

5. In view of the aforesaid instruction, the impugned order passed under Section 148A(d) of the Act and notice issued under Section 148 of the Act both dated 27th July, 2022 for the Assessment year 2016-17 are set aside and the matter is remanded back to the Assessing Officer for a fresh decision on merits within eight weeks in accordance with law. However, the Petitioner/Assessee is given liberty to file all supporting documents including the sale deed, ledger documents and bank statements within three weeks in accordance with law.

6. With the aforesaid directions, the present writ petition along with pending application stands disposed of.