

(2022) 06 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No. 7074 Of 2022, Civil Miscellaneous Application
No. 21705-21706 Of 2022

Karida Real Estates Private Limited (Successor In Interest Of
Damian Estate Developers Private Limited) **APPELLANT**

Vs

Assistant Commissioner Of Income Tax & Anr **RESPONDENT**

Date of Decision : 02-06-2022

Acts Referred:

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

Citation : (2022) 06 DEL CK 0036

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

Bench : Division Bench

Advocate : Kavita Jha, Vaibhav Kulkarni, Anant Mann, Aditeya Bali, Himanshu,
Udit Naresh, Zoheb Hossain, Vipul Agarwal, Parth Semwal

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the order dated 4 th April, 2022 passed by Respondent No.1 under Section 148A(d) of the Income Tax Act, 1961 [for short 'the Act'] as well as the notice dated 4 th April, 2022 issued under Section 148 of the Act for the Assessment Year 2018-19.

2. Learned counsel for the petitioner states that the reassessment proceedings are void ab initio as they have been issued in the name of "Damian Estate Developers Private Limited a non-existent entity as it had amalgamated with the Petitioner company with effect from 1st April, 2016 vide order dated 7th February, 2018 passed by the National Company Law Tribunal. She relies on the decision of the Supreme Court in Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited, (2019) 416 ITR 613 (SC), wherein it has been held that the issuance of a notice to a non-existent company is a substantive illegality and not a procedural violation.

3. Learned counsel for the petitioner further states that there is no information and/or suggestion in respect of escapement of income of the petitioner, which is a sine qua non for taking an action under Section 148 of the Act as each and every amount/transaction mentioned in the show cause notice had been appropriately disclosed and offered to tax while computing taxable income of the Petitioner in Assessment Year 2018-19. She also states that the impugned order has been passed in violation of principles of natural justice without taking into consideration the reply dated 25th March, 2022 filed by the Petitioner.

4. Issue notice. Mr. Zoheb Hossain, learned counsel accepts notice on behalf of the Respondents-Revenue. He on instructions of the Assessing Officer admits that the Petitioner's reply was not taken into consideration while passing the impugned order under Section 148A(d) of the Act.

5. Keeping in view the fact that the impugned order and notice have been issued without considering the reply filed by the Petitioner, this Court sets aside the impugned order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act by the Respondent No.1 both dated 4th April, 2022 for the Assessment Year 2018-19. The Assessing Officer is directed to pass a fresh reasoned order in accordance with law after considering the reply filed by the Petitioner within eight weeks.

6. With the aforesaid direction, the present writ petition and applications are disposed of. This Court clarifies that it has not commented on the merits of the controversy. The rights and contention of all the parties are left open.