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

\+ W.P.(C) 15243/2022 & 47204/2022

M/S SA MALLIKA VENTURES LIMITED ..... Petitioner

Through: Mr.Percy Pardiwala, Sr.Advocate with Mr.Harsh Kothari, Mr.Kishore Kunal and Ms.Ankita Prakash, Advocates.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE INTERNATIONAL TAX 3(1)(2), DELHI & ORS. ..... Respondents

Through: Mr.Ruchir Bhatia, Sr.Standing Counsel for the Revenue.
Mr.Jatin Singh, advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% **04.11.2022**

Present writ petition has been filed challenging the notice dated 02nd June 2022 issued under Section 148A(b) of the Income Tax Act, 1961 (the Act') as well as the order dated 25th July 2022 passed under Section 148A(d) of the Act and the notice dated 28th July 2022 issued under section 148 of the Act for the Assessment Year 2015-16.

Learned senior counsel for the Petitioner states that the Petitioner had not challenged the notice dated 30th June 2021 by way of a writ petition before this Court and, accordingly, the direction given in para 10 of the decision of the Supreme Court in the case of ***Union of India vs. Ashish Agarwal, 2022 SCC OnLine SC 543*** is not applicable to the facts of the Petitioner's case. Consequently, he states that the impugned order passed under Section 148A(d) of the Act and the impugned notice issued under Section 148 of the Act are bad in law and liable to be quashed.

He also states that both the reasons recorded and the order passed under Section 148A(d) of the Act make it clear that there is no allegation of the Revenue that any income has escaped assessment and the only issue is with respect to the rate at which such income is to be taxed. He states that prior to the amendments made by the Finance Act, 2021, Explanation 2(c)(ii) to Section 147 of the Act deemed a case where an assessment was made but income had been assessed at too low a rate to be of the type where income chargeable to tax has escaped assessment. He states that this Explanation to Section 147 of the Act was omitted by the Finance Act, 2021 and is no longer applicable.

He further emphasises that in the impugned order passed under Section 148A(d) of the Act, there is no allegation of Treaty Shopping.

Issue notice. Mr.Ruchir Bhatia, learned senior standing counsel accepts notice on behalf of the Revenue and Mr.Jatin Singh, Advocate accepts notice on behalf of UOI. Mr.Ruchir Bhatia vehemently opposes the submissions advanced by learned senior counsel for the Petitioner.

He is directed to file a short affidavit placing on record the stand of the Respondent-Revenue, within two weeks. Rejoinder affidavit, if any, be filed before the next date of hearing.

List on 12th January, 2023.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 4, 2022/KA