$~261

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

\+ **W.P.(C) 17052/2024**

LONGI SOLAR TECHNOLOGY CO. LTD.

.....Petitioner

Through: Mr S. Vasudevan, Mr Karanjot Singh Khurana and Ms Vrinda Agrawal, Advocates.

versus

ASSISTANT COMMSIONER OF INCOME TAX CENTRAL CIRCLE 3 DELHI & ANR.

.....Respondents

Through: Mr Sunil Aggarwal, SSC, Mr Shivansh B Pandya, Mr Viplav Acharya, JSCs and Mr Utkarsh Tiwari, Advocate.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

% **10.12.2024**

CM APPL. 72322/2024(exemption)

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 17052/2024 CM APPL. 72321/2024(Stay)

3. The petitioner has filed the present petition, *inter alia*, impugning the notice dated 31.08.2024 (hereafter *the impugned notice*) issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) for reopening the petitioner's assessment for the assessment year (AY) 2022-23. The petitioner also challenges the constitutional validity of Explanation 2 (iv) to Section 148 of the Act as well as the Clause (c) of proviso to Section 148A

of the Act.

4. The petitioner submits that the procedure as provided under Section 148A of the Act, which entitled an assessee to an opportunity to allay any apprehension that its income has escaped assessment, is excluded in the cases where search is conducted. According to the petitioner, the said exclusion is without any rational basis and is prejudicial to the assessee in whose case search is conducted or in cases where information is obtained during the course of a search conducted in respect of a third party.

5. In so far as the impugned notice is concerned, the learned counsel for the petitioner submits that the same is not accompanied by an approval from the competent authority. It is also not accompanied by any information which could possibly lead to the conclusion that the petitioner's income escaped assessment.

6. Issue notice.

7. Mr Aggarwal, learned counsel for the Revenue accepts notice and fairly states that as far as the approval of the competent authority is concerned, the same would be provided to the petitioner within a period of one week from date. He objects to the petitioner's prayer for any interim order on the ground that unless the provisions of Explanation 2 (iv) to Section 148 of the Act and Clause (c) of the proviso to Section 148A of the Act are held to be unconstitutional, the same would continue to be on the statute book and, therefore, will require to be implemented.

8. In view of the above, we consider it apposite not to stay the reassessment proceedings pursuant to the impugned notice. The proceedings may continue however, we clarify that any order passed, would be subject to the outcome of the present petition.

9. The counter affidavit be filed within a period of four weeks from date. Rejoinder thereto, if any, be also filed before the next date of hearing.

10. List on 25.03.2025.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 10, 2024

M

Click here to check corrigendum, if any