

Sec 148 Notice cannot be issued for a non existent firm: Delhi HC

RAJINDER NATH KAPOOR (W.P.(C) 5135/2023 & CM APPL. 20059/2023)

Facts:

1. The present petitioner alongwith his father and brother constituted a partnership firm under the name and style M/s Kapoor Electric Mart by way of partnership deed dated 20.04.1982 and started business under PAN Card bearing No. AAAFK4540P.
2. After death of their father, the petitioner and his brother executed fresh partnership deed and continued the business under the same PAN Card No. AAAFK4540P from 29.12.2003 to 31.03.2004. With effect from 01.04.2004, the firm M/s Kapoor Electric Mart was dissolved and business of the firm was taken over by the petitioner as a sole proprietor of M/s Kapoor Electric Mart.
3. The petitioner received first notice dated 22.02.2023 under Section 148A(b) of the Income Tax Act addressed to the erstwhile partnership firm, alleging that no return of income for the Assessment Year 2016-17. After sending 4 similar notices, by way of impugned order dated 31.03.2023 under Section 148A(d) of the Act, the concerned Income Tax Officer held that it was a fit case to issue notice under Section 148 of the Act for Assessment Year 2016-17.
4. The petitioner contended that the impugned order under Section 148A(d) as well as the impugned notice under Section 148 of the Act are not sustainable in the eyes of law as the same were passed and issued in the name of non-existent entity.

Hon. Delhi HC held as below:

1. The impugned order under Section 148A(d) and notice under Section 148 of the Act were passed and issued against a non-extant entity, as such the same cannot be complied with.

2. Therefore, the impugned order under Section 148A(d) and notice under Section 148 of the Act both dated 31.03.2023 are set aside.

3. The respondents would be at liberty to take further steps in accordance with law.

4. Accordingly the writ petition allowed. Pending application shall stand closed.