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

+ W.P.(C) 6738/2016 & CM APPL. 27644/2016

ANAND SHUKLA

..... Petitioner

Through: Ms. Sonia Mathur, Mr. Abhishek
Chauhan, Mr. Sushil Kumar Dubey and Mr.
Rakshit Thakur, Advs.

versus

INCOME TAX OFFICER & ORS.

..... Respondents

Through: Mr. Asheesh Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **04.01.2017**

1. The petitioner seeks a direction for quashing of a notice under Section 147/148 of the Income Tax Act, 1961 (in short the Act) proposing to open the completed assessment for Assessment Year (AY) 2009-10. The facts of the case are that the petitioner acquired immovable property i.e. 300 sq. mtrs. plot in Sector-72, NOIDA for Rs. 52,92,000/- through an allotment letter dated 05.01.2009. Upon allotment, the petitioner had to pay Rs. 15,86,660/-, which he did. The balance was payable, according to the schedule indicated in the terms of the allotment. Apparently, in the given year for AY 2009-10 the petitioner had not borrowed any amounts and utilized his own funds for the acquisition of the property. The returns filed were accepted under Section 143(1) of the Act.

2. Basing himself upon some information received with respect to

registration of the property subsequently from the NOIDA Authority, the Income Tax Authorities as well as New Delhi Income Tax Authorities issued notices under Section 147/148 of the Act. The “reasons to belief” recorded by the Assessing Officer (AO) read as follows:

“.... Reason for the belief that income has escaped assessment

An AIR information in the case of Sh. Anand Shukla was received in this office on 30.03.2016 through DCIT Cr -72(1), Delhi that the assessee has entered into the transaction regarding purchase of immovable property amounting to Rs. 52,92,000/- during the FY 2008-09 relevant to AY 2009-10.

On perusal of AST data for AY 2009-10 the assessee has filed return of income of Rs. 14,97,311/- and for AY 2015-16 of Rs. 16,33,050. Deduction claimed for house loan payment under Chapter- VIA or loss under the head income from house property in respect of interest has not been revealed from the ITRs.

In view of above, I have reason to believe that the assessee during the AY 2009-10 has been escaped assessment of Rs. 52,92,000/- invested in purchase of immovable property. Therefore this case is fit for issuing notice u/s 148 of the I.T. Act, 1961. The approval of Pr. CIT under section 151(1) of the I.T. Act is sought to issue notice u/s 148 of the Act...”

3. The petitioner wrote to the AO requesting for a copy of the “reasons to belief”. In that letter he also stated the circumstances surrounding the acquisition of the property. Apparently, a query had been made sometime in early January, 2016 from the Income Tax Authorities with respect to the sources of the petitioner’s income and a pointed reference to the property. The petitioner had replied

indicating that after the allotment, the balance sum was funded through a bank loan; apart from the initial deposit of Rs. 15,86,660/- from his own funds. In support, the petitioner had also supplied copies of the bank account statements and other related documents. The petitioner preferred objections upon receipt of the copy of the “reasons to belief” recorded by the AO on 20.06.2016. However, even before that day, proceeding on assumptions that the objections had been lodged on 12.04.2016, the AO proceeded to reject the objections on 13.06.2016. Significantly, the same order showed that the documents containing “reasons to belief” justification for the re-assessment were in fact furnished on 04.05.2016.

4. It is argued that the information received from NOIDA Authorities notwithstanding, the AO should have taken due care to scrutinize and examine the materials placed in January, 2016 and later along with the objections filed on 20.06.2016. In completely ignoring them and proceeding mechanically on the assumption that since the returns originally filed did not disclose any borrowings and, therefore, prima facie re-assessment was justified by virtue of information supplied by the NOIDA Authorities, the impugned notice is unsustainable.

5. The learned counsel for the Revenue urges that the impugned notice cannot be termed as illegal because it is based upon objective information received by the NOIDA Authorities. At the point of time when the Income Tax Authorities received the information, it is a matter of record that the property- valued at Rs. 52 lacs, was not reflected in the original return for AY 2009-10 and could not be

justified by the returns filed. It was submitted that having regard to these and the fact that the Court has often reiterated that it is only a prima facie opinion, which has to be formed, the re-assessment notice in this case should be left undisturbed.

6. The materials brought on the record which were supplied to the concerned AO in January, 2016, in the course of the inquiry, clearly reveal that the borrowing to the tune of about Rs. 37 lacs – towards which subsequent interest payments became due, did not accrue in the year under question i.e. AY 2009-10. At the point of time the petitioner was allotted the plot (in January, 2009), the initial deposit or amount payable, was met with by his own funds. In these circumstances, the question of the petitioner disclosing a loan, which was not even within his contemplation, much alone an existed reality, could not have arisen. Although the subsequent information with respect to the value of the property having been registered in favour of the petitioner may be also a reality, at the same time we are of the opinion that the logic which compelled the Supreme Court to direct that assessee should be afforded an opportunity to lodge their objections in ***GKN Driveshafts (India) Ltd. vs ITO (2003) 259 ITR 19(SC)***, was to provide a realistic opportunity and a chance to the AO wherever needed to revisit the re-assessment notice. The consideration by the AO has to be meaningful and objective. In the present instance the very fact that the AO disregarded all the documents furnished in January itself and proceeded to issue notice under section 147/148 of the Act, and compound his conduct by not even awaiting the objections to deal with them, showed that there was

a pre-disposition to reject the explanations offered by the petitioner. In the facts of this case that explanation was full and sufficient and was reasonable enough to drop the entire re-assessment proceedings.

7. Having regard to the totality of the circumstances, this Court is of the opinion that ends of justice could be met with in this case if the impugned re-assessment notice under Section 147/148 of the Act is quashed. The impugned notice and all proceedings emanating therefrom are, accordingly quashed. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 04, 2017/kk