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

\+ **W.P.(C) 229/2018**

Date of decision: 12th January, 2018

GEETIKA JAIN ..... Petitioner

Through Mr. Sudhir Nandrajog, Sr. Advocate with Mr. H.S. Bhullar, Ms. Bhawani Gupta and Ms. Karishma Thakur, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondent

Through Mr. Gigi C. George, Sr. Panel Counsel for R-1.
Mr. Ashok K. Manchanda, and Mr. Raghvendra Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Geetika Jain has filed the present writ petition for the following reliefs:-

> "(a) Issue a writ of Certiorari or any other or similar writ, order or direction, quashing the Show cause notice F. No. Pr.DIT (Inv)-1/Delhi/Show Cause Notice/2017-18/58 dated 09.06.2017; or in the alternative,
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> (b) Issue a writ of Mandamus or any other similar or other writ, order or direction, directing the Respondents to afford adequate opportunity to the petitioner by supplying all material and documents and thereafter to grant to the petitioner

adequate opportunity to respond to the allegations and thereafter to complete the assessment proceedings and pass a reasoned order dealing with all contentions of the petitioner, before any prosecution can be initiated by the respondents, and

(c) Stay the proceedings arising out of the said show cause notice and grant an opportunity to the Petitioner to file an effective final reply to the show cause notice, after supply of all material and documents in the possession of the respondents, and further directing the Respondents to consider the reply on merits; and

(d) Direct the respondents not to initiate any prosecution proceedings against the petitioner prior to finalizing the assessment proceedings and fulfilling the pre-conditions, mandatory under Section 276 of the Income Tax Act, including the computation of the tax liability, necessary for launching a prosecution.

(e) And any other order(s) may kindly be passed, which this Hon'ble Court deems fit and proper in the interest of justice."

2. The petitioner has placed reliance upon the order dated 8th May, 2017 passed in W.P. (C) No.3732/2017, ***Poonam Jain Vs. Union of India & Ors.*** and W.P. (C) No. 3749/2017, ***Surendra Kumar Jain Vs. Union of India & Ors.***, wherein a Division Bench of this Court after referring to Article 26(2) of the OECD Model Convention had directed the respondents authorities to supply copies of the documents referred to and relied upon in the show cause notice to the petitioners therein including copy of statements made by the petitioners and copy of statement of bank accounts.

3. In view of the said order, we had directed the counsel for the respondent-Revenue to obtain instruction, whether the relied upon documents had been furnished to the petitioner.

4. Counsel for the respondent-Revenue, on instructions, states that the relied upon documents were furnished to the petitioner vide letter dated 16th June, 2017, which refers to furnishing of Annexures - I, II and III consisting of pages 11, 117 and 856, respectively and copy of the hard disc of digital data seized during the course of search from the premises at B-5, Mahrani Bagh, Delhi.

5. Thereafter, vide letter dated 12th December, 2017, Annexure-1 (pages 1 to 326), Annexure-2 (pages 1 to 460) and Annexure-3 (Pages 1 to 271), being copy of documents received from the competent authority of British Virgin Islands and competent authority of Singapore along with statement of petitioner Geetika Jain recorded on 27th April, 2017, were furnished.

6. Counsel for the petitioner submits that though the letter dated 16th June, 2017, refers to documents received by the petitioner on 21st March, 2017 and 1st June, 2017, but in fact no documents were furnished on the said dates to the petitioner. It is also pointed out that this letter dated 16th June, 2017 refers to the show cause notice dated 28th March, 2017, whereas the show cause notice issued to the petitioner is dated 9th June, 2017. Counsel for the respondent-Revenue has stated that this is factually correct. Reference to the documents received on 21st March, 2017 and 1st June, 2017 is with reference to identical documents, which were furnished to the parents of the petitioner, namely, Poonam Jain and Surendra Kumar Jain, who were the writ petitioners in W.P. (C) Nos. 3732/2017 and 3749/2017. Show Cause Notice dated 28th March, 2017 was issued to the parents.

7. Counsel for the petitioner has submitted that these documents must be authenticated. Counsel for the petitioner has further submitted that prior to 1st April, 2016, there was no requirement under the Income Tax Act, 1961 (Act, for short) to specifically declare foreign assets in the income tax return. A reasoned order disposing of the Show cause Notice must be passed.

8. We do not see any reason to entertain the present writ petition on the said contentions. Issue of show cause notice and reply is an internal mechanism, which is normally adopted by the Income Tax Department before they examine whether or not to initiate and file prosecution under the Act. There is no statutory compulsion or mandate for the same. This enables the person concerned to give and project his point of view, which is considered and examined by the authorities before they decide to launch prosecution and by the competent authority which grants sanction under Section 279 of the Act. A similar issue was examined by the Supreme Court in ***Union of India & Anr Vs. Banwari Lal Agarwal,*** (1998) 7 SCC 652. The assessee had challenged prosecution filed for delay in filing of return under Section 482 of the Code of Criminal Procedure, 1973,on several grounds, including failure to accord opportunity of hearing before prosecution was launched. Rejecting the said contention, the Supreme Court, held that there was no such provision or requirement in the Act and there was no warrant for interfering on account of earlier failure to issue show cause notice or opportunity to compound the matter.

9. We are, at this stage, not required to go into the question and answer whether or not the petitioner has committed any offence and therefore should or should not be prosecuted. As per the respondents, the issue relates

to foreign bank accounts and whether income or amounts mentioned therein represent undisclosed income, etc. These are matters for the authorities to decide on the basis of documents available. The sanctioning authority would also decide whether or not to grant sanction. Again, whether or not prosecution should be filed before or after completion of the assessment proceedings is a matter for the authorities to decide. After prosecution or complaint is filed, the competent court would consider whether or not cognizance should be taken and the persons who should be summoned. List of witness and documents would be examined keeping in view allegations made in the written complaint. In case cognizance and summoning order is passed, the person aggrieved can challenge the summoning/cognizance order in accordance with law. A pre-emptory order at this stage examining merits and de-merits on whether or not prosecution should be filed, would not be correct and warranted.

10. It may be noted that during the course of hearing, controversy had arisen whether the show cause notice issued is under the Black Money Act. We need not go into this aspect for the aforestated reasons.

11. In view of the aforesaid discussion, the writ petition is dismissed. We clarify that we have not expressed any opinion on merits.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 12, 2018
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