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

\+ W.P.(C) 37/2017

SCAN HOLDINGS (P) LTD ..... Petitioner

Through Mr. S. Krishnan, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. ..... Respondent

Through Mr. Ruchir Bhatia and Mr. Puneet Rai, Advocates.

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

O R D E R

% **08.01.2018**

The petitioner submits that the reasons to believe were furnished on 31st October, 2016, nearly eight months after the request. The order disposing of the objections to initiation was passed on 28th November, 2016. Thereafter, the present writ petition was filed on 21st December, 2016 and listed in January, 2017.

2. Before the first listing and as limitation period was expiring, assessment order was passed on 31st December,2016.

3. It is accepted that the petitioner has filed an appeal against the assessment order dated 31st December, 2016 before the Commissioner of Income Tax (Appeals).

4. Numerous contentions and issues have been raised in the present writ petition on the question of initiation of proceedings under Section 147 read with Section 148 of the Income Tax Act, 1961 (Act, for short).

5. As the petitioner has already filed an appeal against the assessment order, it may be appropriate and proper for the petitioner to raise the

contentions raised in the writ petition before the first appellate authority, rather than the writ court examining the issue of initiation of proceedings under Sections 147/148 of the Act. We say so, for the reason that proceedings for the same assessment year should not become subject matter of challenge partly before the High Court in a writ petition and partly before the first appellate authority. This would create difficulties and may result in anomalous situations.

6. The second contention of the petitioner, we may record, is that Section 6(3)(ii) of the Act invoked by the Assessing Officer to tax the income of the subsidiary, is contrary to the Act and law declared by different Courts. This issue is directly a subject matter of the appeal.

7. The present writ petition has remained pending since January, 2017. We accordingly, direct that till the disposal of the appeal before the Commissioner of Income Tax (Appeals), the impugned demand will not be enforced. The petitioner would file additional grounds of appeal, which would be accepted.

8. We, however, make it clear that we have not expressed any opinion on merits, which will be examined by the Commissioner of Income Tax (Appeals). The writ petition is accordingly disposed of, without any costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 08, 2018
MR/VKR