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

\+ W.P.(C) 1990/2019

SCAN HOLDINGS PRIVATE LIMITED ..... Petitioner

Through: Mr. S. Krishnan, Advocate.

versus

DCIT, CIRCLE 22(2) ..... Respondent

Through: Mr. Raghvendra Singh, Senior Standing Counsel & Mr. Vipul Agrawal, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **03.09.2019**

1. We have heard learned counsels and proceed to dispose of the writ petition with their consent.

2. The petitioner has preferred the present writ petition to seek the following substantive reliefs:

> *"b. Direct the Respondent to file the tax evasion complaints in the subject case before this Hon'ble Court, along with evidence if any led by the complainant in support thereof;*
>
> *c. Quash notice u/s.148 dated 31.03.2015, and orders dated 18.12.2018 and 27.12.2018, passed by the Respondent in the Petitioner's case for AY 2008-09, and all proceedings pursuant thereto;*

d. Direct the Respondent to show-cause as to why proceedings under the Contempt of Courts Act 1971 not be initiated against her, for willful defiance of this Hon'ble Court's directions in WP(C) 9800/2015;

e. Direct exemplary costs to be imposed on the Respondent as well as the complainant;

f. Direct the Respondent's department to lay down binding guidelines as to proper examination of tax evasion complaints by field officers prior to taking action on such basis;"

3. The petitioner had earlier preferred W.P. (C) No. 9800/2015, which was decided by this Court on 08.01.2018 by a judgment reported as ***Scan Holding (P) Ltd. Vs. Assistant Commissioner of Income-tax***, (2018) 402 ITR 290 (Delhi). The Court set aside the order dated 11.09.2015, whereby the objections preferred to the notice issued to the petitioner assessee under Section 148 of the Income Tax Act had been disposed of, and remanded the matter back to the Assessing Officer to pass a speaking order after hearing the petitioner or its authorised representative, without being influenced by the earlier order dated 11.09.2015, or the order passed by the Court. The Court had directed in paragraphs 16 & 17 as follows:

"*16. Accordingly, we set aside the order dated 11th September, 2015 with a direction of remand to the Assessing Officer to pass a fresh order after hearing the petitioner or its authorised representative, without being influenced by the earlier order dated 11th September, 2015 or by this order. We have not formed any firm opinion on merits.*

17. To cut short delay, the petitioner/authorised representative will visit the office of the Assessing Officer on 31st January, 2018 at 2.30 P.M., when a date of hearing will be fixed."

4. Consequently, the Assessing Officer passed the order disposing of the objections to the notice under Section 148 by the order dated 18.12.2018. The grievance of the petitioner is that this order does not deal with the petitioner's objections and, therefore, it is not in compliance of the judgment rendered by this Court in W.P. (C) No. 9800/2015.

5. We are not setting out the facts in which the impugned order dated 18.12.2018 has come to be passed, since they have elaborately been stated in the aforesaid decision. It is not clear as to whether, or not, the petitioner assessee appeared before the Assessing Officer on 31.01.2018 at 02:30 p.m. for the purpose of fixing a date for hearing of the objections of the petitioner to the notice under Section 148 of the Act. There is no averment made by the petitioner that the petitioner had so appeared, though learned counsel for the petitioner submits that the petitioner had appeared and that there was no officer present to attend to him. This position is disputed on behalf of the Department, and it was contended that the petitioner never appeared as directed by the Court. It appears that the Assessing Officer issued notices on 30.09.2018, 16.10.2018, 16.11.2018, 22.11.2018 & 03.12.2018 to the petitioner requisitioning details for framing of assessment. At that stage, the petitioner assessee appeared before the Assessing Officer and demanded a hearing and a speaking order on its objections to issuance of notice under Section 148 of the Act. The petitioner had already preferred its objections on 11.06.2015. Consequently, the Assessing Officer heard the petitioner on the said objections, and vide order dated 18.12.2018 rejected those objections. The Assessing Officer thereafter proceeded to pass the assessment order dated 27.12.2018. The petitioner had already preferred its

appeal before CIT (Appeals) in respect of the assessment order dated 27.12.2018, and has also assailed the reasons for re-opening of assessment, and the order dated 18.12.2018.

6. The submission of learned counsel for the petitioner is that the Assessing Officer has acted on a mere complaint, without any application of mind and without following the dictum of this Court in ***Scan Holding (P) Ltd.*** (supra). The submission is that the Assessing Officer has not examined the complaint on aspects, such as, credibility and seriousness of the complaint. The further submission is that the Assessing Officer, while passing the order dated 18.12.2018 – rejecting the objections of the petitioner, has not complied with the aforesaid decision of this Court in ***Scan Holding (P) Ltd.*** (supra).

7. We are not inclined to entertain the present writ petition insofar as the challenge to the order dated 18.12.2018 is concerned. The petitioner has already invoked the statutory remedy available to it by preferring its appeal against the assessment order dated 27.12.2018 before the CIT (Appeals), and it shall be open to the petitioner to assail the issuance of notice under Section 148; the reasons for re-opening furnished by the Assessing Officer; as well as the order dated 18.12.2018 disposing of the petitioner's objections to the re-opening of the objections under Section 148.

8. Insofar as the petitioner's prayer that the respondent Department should lay down binding guidelines for proper examination of tax evasion complaints by field officers, prior to taking action on such complaints is concerned, in our view, the decision rendered in ***Scan Holding (P) Ltd.***

(supra) lays down sufficient guidelines and the said decision is binding on all the Revenue Authorities.

9. In respect of the grievance of the petitioner, that the order dated 18.12.2018 is contemptuous, since it has allegedly been passed in breach of the decision of this Court in ***Scan Holding (P) Ltd.*** (supra), it shall be open to the petitioner, if he is so advised, to take appropriate proceedings in that respect independently.

10. We, however, make it clear that we have not expressed any opinion on the merits of any submission advanced by the petitioner. The CIT (Appeals) shall dispose of the appeal pending before it in accordance with law.

11. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 03, 2019

B.S. Rohella