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

\+ W.P.(C) 4014/2022 & CM APPLs.12015-12016/2022

ANIL SACHDEVA ..... Petitioner

Through Mr. Sunil K. Mukhi, Advocate.

versus

ITO, CIRCLE-7(1) & ANOTHER ..... Respondents

Through Mr. Kunal Sharma, Advocate

% Date of Decision: 25th March, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the notice dated 31st March, 2021 issued under Section 148 of Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Learned Counsel for the Petitioner states that the sanction was granted by sanctioning authority on 31st March, 2021 at 4:21 PM on the proposal sent by the Assessing Officer, on the same day. He further states that the impugned notice under Section 148 of the Act was issued at 05:51 PM on the same day. He states that sanction has been granted without application

of mind in a mechanical exercise of power without affording opportunity of hearing to the petitioner/assessee.

3. Learned counsel for the respondents raises preliminary objection on the maintainability of the present writ petition. He states that the present writ petition is liable to be dismissed as the petitioner has not filed any objection with the Assessing Officer prior to the filing the present writ petition. In support of his submission, he relies on the judgment of the Supreme Court in ***GKN Driveshafts (India) Ltd. vs. Income Tax Officer, (2003) 259 ITR 19 (SC)***.

4. In rebuttal , learned counsel for the petitioner places reliance on the judgment passed by Gujarat High Court in ***Kanubhai M. Patel HUF vs. Hiren Bhatt or his Successors to Office & 4, 2010 SCC OnLine Gujarat 7005*** to contend that the judgment of the Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra) has been distinguished. The relied upon portion of the judgment of the Gujarat High Court is reproduced hereinbelow:-

> *"17. As regards the contention that the petitioners have not filed objections against the reasons recorded for reopening assessment under section 147 as laid down in the decision of the apex court in the case of GKN Driveshafts Ltd. (supra), in the light of the facts which have come on record, no useful purpose would have been served by asking the petitioner to first undertake the said exercise. The decision of the apex court is required to be applied after considering the facts and circumstances of each case. In a given case, considering the facts and circumstances, the Court may not find it necessary to ask an assessee to first undertake the exercise of filing objections and thereafter to approach the Court."*

5. Having heard learned counsel for the parties, this Court is of the view that the present writ petition is not maintainable inasmuch as the petitioner has not followed the procedure laid down in ***GKN Driveshafts (India) Ltd.*** (supra) prior to the filing of present writ petition. It is pertinent to mention that in the said judgment, it has been held by the Supreme Court that if an assessee is aggrieved by a reassessment notice, he is entitled to file objections before the Assessing Officer, who is bound to dispose of the same by way of a speaking order. Consequently, this Court is of the view that since the alternative effective remedy has not been resorted to, the present writ petition is not maintainable.

6. Further, this Court is of the view that the judgment of the Gujarat High Court is not applicable to the facts of the present case. In any event, it is not open to a High Court to distinguish a judgment of the Apex Court especially when the latter is clear and categorical. Consequently, this Court is in agreement with the preliminary objection raised by the learned counsel for the respondent-revenue that the present writ petition is premature.

7. Accordingly, the same is dismissed with liberty to the petitioner to raise all its objections before the Assessing Officer in accordance with the judgment of the Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra).

MANMOHAN, J

DINESH KUMAR SHARMA, J

MARCH 25, 2022
AS