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

\+ W.P.(C) 4586/2020 & CM APPLs.16573/2020

DIGVIJAY JAIN & ORS. ..... Petitioners

Through Ms. Arti Agrawal and Mr. Sushil Kumar, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr. Zoheb Hossain, Advocate.
Mr. Anurag Ahluwalia, CGSC with
Mr. Danish Faraz Khan, Advocate.

% Date of Decision: 22nd 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):

CM. APPL.12609/2022

1. Present application has been filed on behalf of Petitioner seeking an interim order quashing the alleged non-jurisdictional and time barred notices and summons issued by the Respondents.

2. Learned counsel for the petitioner states that the proceedings against petitioner no.1 under Section 153A of the Income Tax Act, 1961 [the Act] admittedly became time barred on 30th September, 2021. In support of her contention, she relies upon the statement made by learned counsel for the respondents on 9th April, 2021 before this Court.

3. Learned counsel for the petitioner further states that even though proceedings are now time barred, yet the Respondents have issued notice dated 4th January, 2022 in respect of proceedings under Section 153A of the Act requiring the Petitioner to give submissions. She states that Petitioner no.1 filed its statement in response to the notice dated 4th January, 2022 and intimated the Respondents that the proceedings were barred by limitation. She, however, states that despite the intimation the Respondents continued issuing summons to the Petitioner, requiring attendance before the Respondents.

4. Mr. Zoheb Hossian, learned counsel for the Revenue has today in Court handed over instructions received by him from Dy. Commissioner of Income Tax, Central Circle-17, New Delhi. The instructions read as under:-

> " *Office of the*
> *Dy. Commissioner of Income Tax, Central Circle-17, New Delhi.*
>
> *F. No. DCIT/CC-17/2021-22/367 Date:21/03/2022*
>
> *...2. In this regard, a mail dated 19/03/2022 has been received in this office. Over telephonic conversation you have informed that you need explanation in respect to the Urgent Application filed by the assessee on 01/03/2022 before the Hon'ble High Court in respect to W.P.(C) 4586/2020 filed by Shri Digvijay Jain.*
>
> *3. It is to inform that vide its order dated 09/04/2021 the Hon'ble High Court directed as under:*
>
>> *"4. In view of these circumstances, it is directed that the assessment proceedings be carried on and, in the event, an order is passed, the same shall not be given, effect to, during the pendency of the writ Petition."*

3.1 However, the then Assessing Officer interpreted the order as the assessment proceeding could not be completed during the pendency of the writ Petition. Hence, the assessment order was not passed till 30/09/2021 in the case of Shri Digvijay Jain, the Petitioner No. 1.

3.2 It is also to mention that CBDT did not extend the timeline for completion of proceedings in relation to this case, beyond 30/09/2021. However, this is not applicable in the present case.

4. Further, it is pertinent to mention here that the notices u/s 153A were issued on 07/02/2021 for the assessment years 2014-15 to 2019-20 to comply within 15 days of the receiving of the notices but no compliance has been made by the assessee. Another notice u/s 142(1) dated 30/07/2021 along with the questioner was issued to the assessee in all the assessment years to comply by 16/08/2021. But the assessee did not comply till 16/08/2021. On 06/12/2021, the assessee filed its return of income in compliance to the notice u/s 153A dated 07/02/2021. However, later on the assessee has filed requisite documents/details which has been examined.

5. Further, during the search proceeding in the case of Shri Digvijay Jain, petitioner No.1, had admitted in his statement recorded u/s131 and 132(4) of the Income Tax Act, on oath, that jewellery found in his possession belong to the other 3 petitioners. Therefore, proceedings have to be initiated u/s 153C of the Income Tax Act, 1961 separately in the cases of the Petitioner No. 2, 3 and 4 namely M/s DD Diamonds, M/s JM Jewellers and M/s Varda Jewellers respectively.

6. The above-mentioned comments are being sent with prior approval of the Pr. CIT, Central - 2, New Delhi.

Yours faithfully,

Sd/-
(Bal Krishan Gopal)

Dy. Commissioner of Income tax, Central Circle-17, New Delhi"

5. Since the present matter involves interpretation of the order dated 9th April, 2021, the same is reproduced herein below in its entirety:-

"CM APPL. 13319/2021

1. Issue notice.

2. Mr. Zohaib Hossain accepts service on behalf of the revenue. Mr. Hossain, on instructions, says that the limitation, for passing the assessment order will expire on 30.09.2021.

3. The record shows that the matter is coming up for hearing, in the ordinary course, on 23.04.2021.

4. In view of these circumstances, it is directed that the assessment proceedings be carried on and, in the event, an order is passed, the same shall not be given, effect to, during the pendency of the writ petition.

5. The application is, accordingly, disposed of."

6. From the aforesaid order, it is apparent that the limitation for passing the assessment order was 30th September, 2021 and it was in view of the said circumstance the Court had directed that the assessment proceeding be carried on and, in the event, an order is passed, the same would not be given, effect to, during the pendency of the writ petition.

7. This Court is of the view that the order dated 9th April, 2021 is clear, categorical and cogent. It admits of no ambiguity. The Assessing Officer's interpretation that assessment proceeding was not to be completed during the pendency of the writ petition is untenable in law.

8. Consequently, this Court is of the view that proceedings against petitioner no.1 under Section 153A of the Act have become time barred. Accordingly, the same are quashed.

9. Since, no notice had been issued under Section 153C of the Act to petitioner nos.2 to 4 till date, the present writ petition is disposed of qua them with liberty to them to agitate their grievances in accordance with law in the event notices are issued to them under Section 153C of the Act.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MARCH 22, 2022
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