



2023:DHC:8150-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 09.11.2023

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W.P. (C) 4913/2023 & CM APPLN. 19009/2023

BHOLI KUMAR

..... Petitioner

versus

ITO WARD 51(1) DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Nagesh Behl, Advocate.

For the Respondents : Mr. Abhishek Maratha, Sr. Standing Counsel with Mr. Akshat Singh, Jr. Standing Counsel.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****TUSHAR RAO GEDELA, J. (ORAL)**

1. This writ petition has been filed under Article 226 of the Constitution of India seeking setting aside of the order dated 29.07.2022 issued under section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") as well as notice dated 30.07.2022 issued under section 148 of the Act by the respondent No. 1.

2. The prayers made in the writ petition are as under:-

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W.P. (C) 4913/2023**Page 1 of 4**



“A. Issue a writ in the nature of Mandamus/Certiorari or any other like writ, order or direction, setting aside and quash the order dated 29.07.2022 issued u/s 148A(d) as well as second notice dated 30.07.2022 u/s 148 of the Act issued by the Respondent No. 1 and entire assessment proceedings after issue of said notice; and/or

B. Issue a writ of and/or order and/or direction in the nature of Prohibition commanding Respondents to forbear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said order passed u/s 148A(d) of the Act; and/or

C. Issue a writ in the nature of Mandamus/Certiorari or any other like writ, order or direction, setting aside and quash the first notice dated 29.06.2021 issued u/s 148 and entire assessment proceedings after issue of said notice; and/or

D. Pass any such other order(s) or direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

3. According to Mr. Nagesh Behl, learned counsel for the petitioner/assessee, the income chargeable to tax which has escaped assessment is not more than Rs. 12,800. He submits that even if the case set up by the revenue is taken into account, the income chargeable to tax cannot be more than the aforesaid amount.

4. On 25.09.2023, Mr. Abhishek Maratha, learned Senior Standing Counsel for the respondent/ revenue submits that he would take instructions in the matter as to whether the Revenue would like to pursue the matter having regard to the amount involved.



5. Today, Mr. Maratha brought the notice of this Court to a letter dated 09.10.2023 and the relevant paragraphs are extracted hereunder:-

“A mail was received in writ petition (C) No. 4913 of 2023 in the matter of Bholi Kumar, PAN-ATJPK4166B, AY-2017-18. The captioned matter was listed on 25.09.202, wherein, the Counsel for Petitioner has said that now after the filing of the counter Affidavit the income escaping has come down to Rs. 12,800/-. Therefore, the Hon’ble court has asked the standing counsel to write to the Ld. PCIT concerned that” whether the revenue wishes to continue with the escapement of such meager amount of income.’

In this regard, the matter was discussed with Ld. Pr. CIT and following observation has been made by Ld. Pr CIT:

“As the Hon’ble High Court has observed that the amount being agitated is meager, the undersigned does not wish to continue further on this issue. Other than that on the Substantial Questions of Law, however, we stand by the submission made in the Counter Affidavit.”

(Bold portion marked as per the letter dated 09.10.2023)

6. Mr. Maratha, Senior Standing Counsel submits that in view of the above, this Court may dispose of the present petition and leave the Question of Law open.

7. In view of the submissions made by Mr. Maratha, learned Senior Standing Counsel coupled with the letter placed on record on behalf of the Revenue, we dispose of the present writ petition in



2023:DHC:8150-DB



terms of the fact that the Revenue does not wish to pursue the case on the ground that the amount is meager. However, the Question of Law, if any, are left open to be decided in an appropriate case.

8. The petition is disposed of in above terms, alongwith the pending applications, if any.

(TUSHAR RAO GEDELA)
JUDGE

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

NOVEMBER 9, 2023/rl

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W.P. (C) 4913/2023

Page 4 of 4