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

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Date of Decision:11.09.2023+ **W.P.(C) 9732/2023****SATEESH KUMAR**

..... Petitioner

Through: Mr. Shafiq Khan and Mr. Tariq
Munesh, Advocates.

versus

**INCOME TAX OFFICER WARD-28(5),
DELHI & ORS.**

..... Respondents

Through: Mr. Gaurav Gupta, Senior Standing
Counsel with Mr. Shivendra Singh,
Mr. Puneet Singhal, Junior Standing
Counsel and Ms. Mahima Garg,
Advocate.
Mr. Vinish Phoghat, Senior Panel
Counsel for Respondent No. 4.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. We heard Mr. Shafiq Khan, the counsel who appears on behalf of the petitioner, for some time on the previous date, i.e., 25.07.2023, whereupon we had set out the broad contours obtaining in the matter.
2. For the sake of convenience, the relevant parts of the order dated 25.07.2023 are set forth hereafter:

"2. The record shows that the order under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"] was passed by the Assessing Officer (AO) as far back as on 28.07.2022, which was followed by an assessment order dated 31.05.2023.



3. *The assessment order has been passed under Section 147, read with Section 144 of the Act.*

4. *This assessment order concerns Assessment Year (AY) 2016-17.*

5. *The AO appears to have formed the view that income amounting to Rs.30,85,500/-, which is otherwise chargeable to tax, has escaped assessment.*

6. *It is the petitioner's case that he has moved from Quetta in West Pakistan. While moving to India, he brought with him cash amounting to approximately Rs.27,50,000/-, and jewellery weighing 150 grams.*

6.1 *So far as the cash is concerned, Rs. 27,50,000 was deposited by the petitioner in Bank of India, Khanpur Branch, Delhi.*

7. *It is the cash and the value of the jewellery, as arrived at on 01.04.2015, that forms the income, which is said to have escaped assessment. The AO has valued the jewellery at Rs.3,85,500/-, which has been added to Rs. 27,00,000/-, i.e., cash brought by the petitioner from Pakistan. Consequently, the escaped income was pegged, as noticed above, at Rs. 30,85,500/-.*

8. *Since an assessment order has been passed, we have indicated to Mr Shafiq Khan, learned counsel for the petitioner, that the petitioner could take recourse to a statutory appellate remedy.*

8.1 *Mr Khan says that under Section 251 of the Act, the appellate authority will not be able to set aside the impugned assessment order dated 31.05.2023.*

9. *According to us, prima facie, this is a misreading of the provision.*

10. *The provision, inter alia, confers power of annulment on the appellate authority. The expression 'annul' is wider in scope than the power to set aside.*

11. *Furthermore, we have queried Mr Khan as to how the petitioner got Indian currency into the country, and deposited the same in the aforementioned bank.*

11.1 *Mr Khan says that he will obtain instructions in that regard.*

12. *At the request of Mr Khan, list the matter on 11.09.2023."*

3. After hearing the learned counsels for the parties, we had expressed a *prime facie* view that the appeal was not maintainable. We had also indicated that the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] had wide powers, whereby, if he was convinced of the case set up by the assessee, he could annul the assessment order, which would include the power to set it aside. Annulment of the assessment order would lead to its cancellation. In other words, the assessment order would cease to



exist, relegating parties to the position obtaining before the order was passed.

4. Although Mr Khan contends to the contrary, we are not able to accept his submission that the CIT(A) cannot nullify and/or set aside the assessment order.

5. The writ petition is, accordingly, closed.

6. Liberty, however, is given to the petitioner to take recourse to an appropriate statutory remedy.

7. In case an appeal is filed by the petitioner within the next three (3) weeks, the same will be heard by the CIT(A) on merits, including the aspect concerning limitation raised by the counsel for the petitioner.

RAJIV SHAKDHER
(JUDGE)

GIRISH KATHPALIA
(JUDGE)

SEPTEMBER 11, 2023/ms

Click here to check corrigendum, if any