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

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Date of Decision: 17.08.2023

+ **W.P.(C) 13342/2018**

SHRI TARLOCHAN LAL GOEL

..... Petitioner

Through: Mr Ved Kumar Jain with Mr Nischay
Kantoor and Mr Animesh Tripathi,
Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE-62(1)

..... Respondent

Through: Ms Dacchita Shahi, Standing
Counsel.

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. This writ petition concerns Assessment Year (AY) 2011-12.
2. *Via* this writ petition, the petitioner seeks to assail the notice dated 30.03.2018 issued under Section 148 of the Income Tax Act, 1961 [in short, "The Act"] and the order dated 30.11.2018, passed by the Assessing Officer (AO), disposing of his objections.
3. The record shows that the petitioner had filed its Return of Income (ROI) concerning the aforementioned AY, on 28.02.2012. In the ROI, the petitioner had declared his income as Rs. 23,66,050/.



4. The return was processed under Section 143(1) of the Act and an intimation on that behalf was furnished to the petitioner on 20.03.2012.
5. On 20.09.2018, the petitioner, as required, electronically filed its ROI in response to the notice issued under Section 148 of the Act.
6. Significantly, what the petitioner had declared in this return was substantially the same as that was disclosed in the original return. The amount declared by the petitioner as total income was Rs. 23,66,047/-.
7. It appears that thereafter, the petitioner called upon the AO to supply reasons for reopening the assessment.
8. The AO supplied reasons on 26.11.2018. Upon receipt of reasons for reopening the assessment, the petitioner filed its objections, which were disposed of by AO on 30.11.2018.
9. The record seems to reveal that the AO issued the notice for reopening the assessment principally for the following reasons:
 - (i) First, the petitioner had earned monies against contracts, amounting to Rs. 2,93,11,125/-.
 - (ii) Second, that the petitioner had invested in bonds/debentures in Financial Year (FY) 2010-11. The investment made, according to the AO, amounted to Rs 5 lakhs.
 - (iii) Third, that the petitioner had earned interest on refund under Section 244A of the Act, amounting to Rs. 85,155/-.
10. The record shows that although all these three aspects are mentioned in the reasons to believe, the trigger for reopening the assessment was the purported failure on the part of the petitioner to file a return.
11. As indicated in the narration of events hereinabove, the ROI was filed by the petitioner as far back as on 28.02.2012. This ROI, as noticed



hereinabove, was processed, *albeit*, under Section 143(1) of the Act, and an intimation to that effect was given on 20.03.2012.

12. Therefore, the AO's apprehension that the aforementioned aspects could not be examined because the ROI was not filed, was factually unfounded.

13. This is evident upon a bare perusal of the reasons to believe as recorded by the AO. For the sake of convenience, the reasons to believe as recorded by the AO are extracted hereafter:

"Reasons for reopening of the assessment in case of Tarlochan Lal for A.Y. 2011-12 u/s 147 of the Act.

The assessee is a contractor. The assessee has filed return for A.Y. 2003-04 to 2016-17.

*As per data available in ITD, return for A.Y. 2011-12 was filed on 29.03.2012 and was processed u/s 143(1) on 17.08.2012. **As per information available in the ITS, assessee has received contractual receipts of Rs. 2,93,11,125/- and has paid Rs. 5,00,00/- for acquiring bonds/debentures during the F.Y.2010-11. Further, assessee is also in receipt in interest income from refund u/s 244A amounting to Rs.85,155/-.***

After analyzing the information it has been observed that the receipts of Rs. 2,93,11,125/- is being reflected in the 26 AS of the assessee. But no information was available regarding the source of investment done in acquiring bonds/debentures and interest income received from refund. As the assessee has not filed the return of the income for year considered, there are high chances that income has escaped assessment that need to be scrutinized.

***A system generated letter regarding Non-filing of Income Tax return dated 04.09.2017 was sent to the assessee asking to clarify the reason for non-filing of the return for the concerned year.** So far, no compliance has been made by the assessee.*

As the assessee has not filed any reply to the Non-filing of Income Tax return letter (mentioned in above para), it can be concluded that assessee willfully has not filed the return of income for the year under consideration.

In view of the CBDT instruction No.14/2013 dated 23.09.2013 and



based on the above discussions, I have reason to believe that the total amount of Rs. 5,85,155/- (Rs.5,00,000/- + Rs.85,155/-) has escaped assessment for A. Y.20 11-12 for the reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The same needs to be brought to tax by invoking provisions of section 147 of the I.T. Act. Therefore, the case is fit for reopening the assessment u/s 147/148 of IT Act.

In this case, since four years have escaped but not more than six years from the end of the assessment year, it is therefore proposed as per provisions of Sec 149(1)(b) read with section 151 (2) of the IT Act, 1961 that approval for initiating action u/s 147 of the IT Act,1961 for the A.Y. 2011-12 may be granted in the instant case.

Submitted for your kind perusal and approval.”

[Emphasis is ours]

14. As would be evident, the reasons to believe recorded by the AO have strangely also received the approval of the superior i.e., the Principal Commissioner of Income Tax (PCIT).

15. Ms Dacchita Shahi, learned standing counsel, who appears on behalf of respondent/revenue, seeks to defend the revenue's position by stating that what was recorded in the reasons to believe i.e., that ROI had not been filed by the petitioner, was an inadvertent error.

16. In this context, Ms Shahi has drawn our attention to the first part of the reasons to believe wherein, the AO had recorded that the assessee had filed its returns for AY 2003-04 to 2016-17.

17. We would have accepted this defence put forth by Ms Shahi, had the remaining part of the reasons to believe have not proceeded on the lines that because ROI had not been filed, the aforesaid three aspects i.e., the money received on contracts by the petitioner, the investment made by him in the bonds and debentures and the amounts received by way of interest, were required to be examined and analysed.



18. As a matter of fact, because the AO proceeded on a factually erroneous ground, he also took recourse to CBDT Instruction No. 14/2013, dated 23.09.2013, which framed the Standard Operation Procedure (SOP) in the cases concerning non-filers i.e., those assesses who have not filed returns.

19. Furthermore, we find that in the ROI, the petitioner has disclosed, not only the investments made, but also the amount earned as interest.

19.1 The amount which the assessee has disclosed by way of Investment is Rs. 10,74,800/-. Likewise, insofar as the interest is concerned, the amount disclosed in the ROI is Rs. 1,23,857/-. The gross receipts noted in the ROI is the figure that is noted in the reasons to believe, which is shown as Rs. 2,93,11,115/-.

20. Therefore, the petitioner was entitled to contend that, not only the contractual receipts were disclosed, but also the investment in debentures/bonds amounting to Rs. 5 lakhs and the interest earned, also formed part of its ROI.

21. In our opinion, the reasons to believe are the foundation on the basis of which the reassessment proceedings can be triggered against any assessee. Once the foundation is removed, the entire edifice would axiomatically collapse.

22. In this case, as noted hereinabove, the foundation was completely absent. The AO's reason to reopen the assessment proceedings was founded on an erroneous fact, which was that the petitioner had possibly not filed its ROI. The record has shown the contrary. Therefore, the reassessment proceedings will crumble.

23. Accordingly, the prayer made in the writ petition will have to be allowed.



24. It is ordered accordingly.
25. Consequently, the impugned notice dated 30.03.2018 and objections dated 30.11.2018 are quashed.
26. The writ petition is disposed of, in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 17, 2023/RV

Click here to check corrigendum, if any