IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-21827-2024 (O&M)
Date of Decision: 02.09.2024

Tajinder Singh @ Tejinder Singhh

. . . . Petitioner

Vs.

Income Tax Officer Ward 6(1) and others

. . . . Respondents

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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

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Present: Mr. Nikhil Goyal, Advocate,
for the petitioner.

Mr. Ranvijay Singh, Sr. Standing Counsel
for the respondents/Revenue.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. Notice of motion.
2. Mr. Ranvijay Singh, Senior Standing Counsel, accepts notice on behalf of the respondents.
3. Learned counsel for the petitioner submits so far as challenge to *vires* to explanation 2 (iv) to Section 148 of the Income Tax Act, 1961, the same may be left open and the case of the petitioner can be disposed of in terms of judgment passed by the Coordinate Bench in CWP-15745-

2024, titled as *Jatinder Singh Bhangu vs. Union of India and others*, decided on 19.07.2024.

4. Learned counsel submits that he does not press the other grounds in the present petition.

5. In CWP-21509-2023, titled as ***Jasjit Singh*** Vs. ***Union of India and Others*** and other bunch of petitions, decided by us on 29.07.2024, we have also concurred with the judgment passed by the Coordinate Bench in CWP-15745-2024 (Supra) and held as under:-

> *"16. We are in agreement with the view taken by the Coordinate Bench and hold that such circular or instructions by the Board could not have been issued to override statutory provisions or to make them otiose or obsolete. Legislative enactments having financial implications are required to be followed strictly and mandatorily. By exercising the powers contained in Sections 119 and 120 of the Act, 1961 as well as Section 144B (7 & 8), the authorities cannot be allowed to usurp the legal provisions to their own satisfaction and convenience causing hardship to the assessees. It also leaves confusion in the minds of the taxpayers. In the opinion of this Court, instructions and circulars can be issued only for the purpose of supplementing the statutory provisions and for their implementation.*
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> *17. In view of the aforesaid discussion, there is no occasion to distinguish or take a different view as suggested by the learned counsel for the revenue from what has already been held by the Coordinate Bench.*
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> *18. Keeping in view the law laid down by the Coordinate Bench (supra), notices issued by the JAO under Section 148 of the Act, 1961 and the proceedings initiated thereafter without conducting the faceless assessment as envisaged under Section 144B of the Act, 1961, have been found to be contrary to the provisions of the Act, 1961 and accordingly notices dated*

> *28.02.2023, 16.03.2023, 20.03.2024 and 30.03.2023 and order dated 30.03.2023, are set aside for want of jurisdiction.*
>
> *19. The respondents-revenue would be, however, at liberty to follow the procedure as laid down under the Act, 1961 and proceed accordingly, if so advised.*
>
> *20. All the writ petitions are allowed. The interim order passed by the Court shall stand merged with the present order."*

6. In view thereof, the Writ Petition is allowed and proceedings/notice dated 24.03.2024 is set aside. The observations and order passed above shall apply *mutatis mutandis* to the present case. However, the respondents-revenue would be, however, at liberty to follow the procedure as laid down under the Income Tax Act, 1961 and proceed accordingly, if so advised. It is made clear that challenge to *vires* to explanation 2(iv) to Section 148 of the Income Tax Act, 1961, is left open for proper adjudication.

7. Pending applications, if any, shall stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

September 02, 2024
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1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? ***Yes/No***