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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 472/2023
ANKIT GAURPetitioner

Through: Mr. Yogesh Jogia, Mr Amit
Sood & Mr. Chandan Dutta,
Advs.

versus

INCOME TAX OFFICER, WARD 60(5), NEW DELHI AND
ORS.Respondents

Through: Mr. Abhishek Maratha, SCC
with Mr. Apoorv Agarwal &
Mr. Parth Samiwal, JSCs, Ms.
Nupur Sharma, Mr. Gaurav
Singh, Mr Bhanukaran Singh
Jodha & Mr. Nimit Saigal,
Advs.

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+ W.P.(C) 483/2023
RAJ LAXMI GAURPetitioner

Through: Mr. Yogesh Jogia, Mr Amit
Sood & Mr. Chandan Dutta,
Advs.

versus

INCOME TAX OFFICER, WARD 58(1), NEW DELHI AND
ORS.Respondents

Through: Mr. Abhishek Maratha, SCC
with Mr. Apoorv Agarwal &
Mr. Parth Samiwal, JSCs, Ms.
Nupur Sharma, Mr. Gaurav
Singh, Mr Bhanukaran Singh
Jodha & Mr. Nimit Saigal,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
25.07.2024

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1. These two writ petitions impugn the reassessment action



pertaining to **Assessment Year**¹ 2014-15. The challenge principally stands raised in light of the judgment rendered by the Court in **Ganesh Dass Khanna Vs. Income-Tax Officer and Anr.**² and with it being asserted that since the respondents themselves had in the course of proceedings come to the conclusion that the income which is likely to have escaped assessment falls below INR 50 lakh, the reassessment action is liable to be quashed and set aside.

2. For the purposes of disposal of these writ petitions, we deem it apposite to notice the facts in W.P.(C) 472/2023. For the concerned AY 2014-15, petitioner filed a Return of Income under Section 139(1) of the **Income Tax Act, 1961**³ on 30 July 2014, and which is stated to have been processed in terms as contemplated under Section 143(1)(a) of the Act.

3. On 31 March 2021, the respondents issued a notice purporting to be under Section 148 of the Act. During the course of the reassessment which was undertaken, a **Show Cause Notice**⁴ came to be issued, suggesting various additions which were proposed to be made. The aforesaid proceedings came to be assailed by the petitioner by way of W.P.(C) 6401/2022. The writ petition was ultimately disposed of by this Court on 27 September 2022, consequent to the judgment in **Union of India Vs. Ashish Agarwal**⁵ coming to be rendered by the Supreme Court in the meanwhile.

4. Shorn of unnecessary details and since it would appear that the original action, though initiated after 01 April 2021 had followed the statutory procedure which prevailed prior thereto, the principles laid

¹ AY

² 2023 SCC OnLine Del 7286

³ Act

⁴ SCN

⁵ (2023) 1 SCC 617



down in *Ashish Aggarwal* came to be attracted and consequently, the respondents were liable to treat the original notice under Section 148 as being referable to Section 148A(b) of the Act. This fact was duly communicated to the petitioner as would be evident from the subsequent notice under Section 148 which came to be issued on 24 November 2022.

5. While responding to the aforesaid, the Petitioner furnished a detailed response in respect to the transaction in question. Ultimately, and in the course of the said assessment, one of the grounds which appears to have been taken was of the SCN dated 19 March 2022, having suggested the following additions:-

“5. Considering the principal of natural justice, another notice u/s.142(1) was issued requesting the details of business, audited financials and details with regard to the property purchased in Red Mall, Ghaziabad and source of payment. In submission dated 10.03.2022, the assessee claimed that he has purchased Virtual space out of shop No.A-101, 1st floor, Red Mall, Ghaziabad, U.P vide cheque payment totalling to Rs.27,78,960/- and no cash payment was made during the purchase. However, the assessee is able to justify only the amount of Rs.31,24,308/- only, out of the total amount of Rs.1,33,36,000/- out of which the assessee's share is deemed to be Rs. 44,45,333/-. Hence, the balance amount i.e Rs.13,21,025/- is unaccounted and proposed to be added to the total income as unexplained investment u/s 69A of the IT Act.”

6. It is on the aforesaid basis that learned counsel seeks to place reliance on the judgment of *Ganesh Dass Khanna* and with it being contended that since the petitioner/assessee's share was identified as being INR 44,45,333/- out of the total of INR 1,33,36,000/- and the tax liability is to be computed with reference to INR 13,21,025/-, the impugned action is liable to be quashed on this short ground alone.

7. We find ourselves unable to sustain the aforesaid contention since the pecuniary limit of INR 50 lakh which stands embodied in the statute is only a trigger for commencement of action under Section



148 of the Act. It is quite possible that in the course of that reassessment, the additions may ultimately be found to fall below that figure.

8. However, that in itself would not invalidate the initial assumption of jurisdiction of the issuance of notice. We take note of identical pecuniary preconditions which stood embodied in the Fourth Proviso to Section 153A of the Act. While dealing with a similar submission which was addressed in the context of notices issued under Section 153A of the Act and failing to record escapement of income or an asset above INR 50 lakh, we had in **Principal Commissioner of Income Tax Central – 1 vs. Ojjus Medicare Pvt. Ltd**⁶ observed as follows:-

“G. Insofar as the thresholds put in place by virtue of the Fourth Proviso to Section 153A are concerned and the argument of the writ petitioners of the condition of INR 50 lakhs being an unwavering precondition, we find ourselves unable to sustain that submission bearing in mind the indubitable fact that proceedings for search assessment commence upon the issuance of a notice and the AO at that stage having really not had the occasion to undertake a detailed or in depth examination of the evidence collected or come to a definitive opinion with respect to the total income which may have escaped assessment. Since the computation and assessment of income that is likely to have escaped assessment would at this stage be provisional, it would be incorrect to strike down initiation of action on a mere ex facie examination of the Satisfaction Note. We also in this regard bear in mind the Fourth Proviso using the expression “*amounts to or is likely to amount*”. The usage of the phrase “*likely to*” is indicative of the Legislature being conscious of the provisional character of the opinion that the AO may have formed at that stage.

H. However, and at the same time, even if the identified asset at that stage be quantified as less than INR 50 lakhs, the AO must for reasons to be duly recorded, be of the opinion that the ultimate computation of escaped income is likely to exceed INR 50 lakhs. The aforesaid satisfaction would have to be based on an assessment of the material gathered and the potentiality of the same being indicative of the escaped assessment exceeding INR

⁶ 2024 SCC Online Del 2439



50 lakhs. The formation of opinion in this respect would have to be based not on mere ipse dixit but reflective of a fair assessment of the quantum of income likely to have escaped assessment as distinct from mere speculation and conjecture.

I. We further hold that since the precondition of INR 50 lakhs or more constitutes a sine qua non for initiating action for the extended ten year block, the aforesaid satisfaction and the reasons in support thereof would have to borne out from the Satisfaction Note itself. We are also of the opinion that the precondition of INR 50 lakhs is not liable to be viewed as being the qualifying criteria for each “*relevant assessment year*” that may be thrown open and that the said condition would stand satisfied if the escaped income cumulatively or in the aggregate meets the minimum benchmark of INR 50 lakhs.

9. Following the principles enunciated in that decision, albeit in the context of Section 153A of the Act, we find no merit in the challenge which stands raised.

10. Accordingly, while we dismiss the writ petitions and negate the challenge to those under Section 148 of the Act, all rights and contentions of respective parties in that respect are kept open for consideration and examination in the course of those proceedings.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

JULY 25, 2024/*RM*