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

\+ W.P.(C) 864/2023

DUSHYANT PODDAR ..... Petitioner

Through: Mr. Shivang Bansal, Advocate

Versus

PR COMMISSIONER OF INCOME TAX DELHI-10 & ANR. ..... Respondents

Through: Mr. Abhishek Maratha, Sr. SC

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **12.03.2024**

1. We note that the challenge to the initiation of action under Section 148 of the Income Tax Act, 1961 **[“Act”]** is primarily based on the contention of the writ petitioner that the incriminating material chargeable to tax, does not represent an asset amounting to INR 50,00,000/- or more.

2. It is in the aforesaid context that the learned counsel sought to draw sustenance from the judgment rendered by our Court in **Ganesh Dass Khanna v. ITO & Anr,** [2023 SCC OnLine Del 7286].

3. While dealing with the identical question, this Court in *Ganesh Dass Khanna* had held as follows:-

> “**26.** Section 149(1) of the amended 1961 Act mandates that no notice under section 148 would be issued for the relevant assessment year if three (03) years have elapsed from the end of the said assessment year. The Assessing Officer can take recourse to the extended limitation period if the conditions precedent prescribed in clause (b) of sub-section (1) of section 149 are fulfilled. In other words, in a case where three (03) years from the end of the relevant assessment year have elapsed, the Assessing Officer can issue a notice under section 148 provided the conditions prescribed in clause (b) of section 149(1) of the amended 1961 Act are fulfilled. The relevant part of the said provision reads as follows:

"149. Time limit for notice.-(1) No notice under section 148 shall be issued for the relevant assessment year,-
(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year."

(emphasis is ours)

27. A careful perusal of clause (b) of section 149 would show that one of the conditions for triggering the extended period, which goes up to ten (10) years in cases where three (03) years have elapsed, is that income chargeable to tax which has escaped assessment amounts to, or is likely to amount to Rs. 50 lakhs or more for the assessment year in issue.

28. Therefore, after the coming into force of the Finance Act, 2021, in cases where, for the relevant assessment year, the alleged escaped income was less than Rs. 50 lakhs, notice under section 148 could only be issued for commencement of reassessment proceedings within the limitation period provided in clause (a) of section 149(1) of the amended 1961 Act."

4. In view of the aforesaid and the undisputed fact that the income escaping assessment for Assessment Year ["**AY**"] 2016-17 is INR 81,600, we allow the instant writ petition and quash the impugned order dated 29 July 2022 issued under Section 148A(d) and the impugned notice dated 29 July 2022 issued under Section 148.

5. The petition shall accordingly stand disposed of.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 12, 2024/*p'ma*