$~54

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

\+ W.P.(C) 1268/2023

ASHWANI SHARMA ..... Petitioner

Through: Mr. Anirudh Wadhwa and Ms. Ridhi Arora, Advocates.

versus

ASSESSING OFFICER WARD 72(1), DELHI & ORS. ..... Respondent

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary and Mr. Naveen Rohila, Advocates for Revenue.

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

<u>O R D E R</u>

% **16.05.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "a. Quash the order dated 20.07.2022 having No. ITBA/COM/F/17/2022-23/1043961958(1) issued by Respondent No. 1;
> b. Quash the Notice u/s 148 of the Act dated 20.07.2022 issued by Respondent No. 1 consequent to order dated 20.07.2022 having No. ITBA/COM/F/17/2022-23/1043961958(1);
> c. Quash the Instruction No. 01/2022 on 11.05.2022 issued by Respondent No. 2;
> d. Pass *ad-interim* including ex-parte *ad interim* reliefs in terms of the above;
> e. Pass such other further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. Undisputedly, the income which is alleged to have escaped assessment is below INR 50 Lakhs.

3. In view of the above, it is the decision of the Court in **Ganesh**

Dass Khanna v. ITO & Anr, [2023 SCC OnLine Del 7286] which would prevail.

4. We note that while dealing with the aforesaid aspect, the 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."

5. In view of the undisputed position which thus emerges from the

record, we allow the instant writ petition and quash the impugned order dated 20 July 2022 under Section 148A(d) of the Income Tax Act, 1961 ["**Act**"] and the impugned notice dated 20 July 2022 under Section 148 of the Act.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 16, 2024/neha