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

\+ W.P.(C) 2734/2024 & CM APPL 11133/2024

SANJAY GOEL ..... PETITIONER

Through: Mr. Sandeep Khurana, Mr. Shiven Khurana & Mr. Manjit Singh, Advs.

Versus

INCOME TAX OFFICER, WARD 28(1), NEW DELHI & ANR. ..... RESPONDENTS

Through: Mr. Gaurav Gupta, SSC

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

O R D E R

% **15.03.2024**

PER: PURUSHAINDRA KUMAR KAURAV, J.

1. By way of the present writ petition, the petitioner impugns the order and notice issued under Section 148(A)(d) and Section 148 of the Income Tax Act, 1961 [**"Act"**], respectively, both dated 07.04.2023 for the Assessment Year [**"AY"**] 2016-17. The petitioner also prays for the issuance of directions to the respondents to rectify the patent error committed while issuing show cause notice under Section 148(A)(b) of the Act dated 24.03.2023, which led to the passing of the impugned order and notice.

2. Learned counsel appearing for the petitioner submitted that respondent no.1 has erroneously passed the order under Section

148(A)(d) of the Act, without extending an opportunity of hearing to the petitioner. According to him, a notice under Section 148(A)(b) of the Act was issued to the petitioner on 24.03.2023 based on the information which allegedly suggested that the income chargeable to tax for the concerned AY had escaped assessment. However, it was contended by the learned counsel that the said notice was issued manually, without Document Identity Number [**"DIN"**] and more importantly, on the old address of the petitioner and hence, the petitioner did not have any occasion to file any response which was stipulated to have been done by 31.03.2023.

3. While drawing our attention to *Annexure-P4,* which is a copy of the petitioner's details downloaded from the Income Tax Portal, learned counsel contended that despite the current address being available with respondent no.1, the notice under Section 148(A)(b) was served on theold address of the petitioner. He also submitted that since the petitioner has been regularly filing his Income Tax Return [**"ITR"**] and his Permanent Account Number [**"PAN"**] is duly linked with the Aadhar Card, the details of the petitioner was easily verifiable by respondent no.1, which it had failed to do.

4. Learned counsel for the petitioner, therefore, restricted his prayer to the extent that the petitioner be provided an opportunity of hearing and to respond to the notice issued under Section 148(A)(b) of the Act.

5. On the contrary, learned counsel for the respondents opposed the submissions made by the learned counsel appearing on behalf of the petitioner to submit that the speed post reports would show that the notice under Section 148(A)(b) of the Act was duly issued to the petitioner. He alluded to the details mentioned in Form No.16A,

which has been annexed with the instant writ petition, to submit that the notice in question was rightly issued to the address of the petitioner available in the said form.

6. Learned counsel additionally submitted that the petitioner is a non-PAN assessee and based upon the information received by respondent no.1 of escapement of income, the concerned notice was issued to the address mentioned in the said information. He, therefore, submitted that there is no cogent reason which would warrant an interference with the impugned order and notices.

7. We have heard the learned counsels appearing on behalf of the parties and perused the record.

8. The short controversy involved in the instant writ petition pertains to the service of notice under Section 148(A)(b) of the Act on the old address of the assessee, which consequently led to the non-grant of opportunity to the petitioner to reply to the said notice.

9. Admittedly, it has been conceded by the respondents that the notice in question was issued on the basis of the information received through Insight portal which was uploaded in the category of "no PAN" from DDIT Investigation 2(4), New Delhi. The respondents have failed to sufficiently prove that any effort was made by them to ascertain the latest address of the petitioner, which ought to have been diligently done before the issuance of notice. It is also not the case of the respondents that it was impossible to fetch the requisite details of the petitioner with the help of the information already available with them.

10. Further, no challenge has been laid to the veracity of the details placed by the petitioner at *Annexure 4,* which evidently reflects the

recent address of the petitioner, which is different from the one on which the notice was issued by the respondents.

11. Therefore, the incidental question which emanates at this juncture is whether there existed any obligation on the part of the respondents to verify the address of the petitioner before sending the notice. It is useful to draw an inference from the decision of the High Court of Bombay in the case of **Mrs. Chitra Supekar v. ITO** [2023 SCC OnLine Bom 409], wherein, while relying upon the decision of this Court in **CIT v. Eshaan Holding (P.) Ltd.** [2022 SCC OnLine Del 4241] and the decision of the Punjab and Haryana High Court in the case of **CIT v. Avtar Singh** [2008 SCC OnLine P&H 2035], the Court has held as under:-

> "7. We have heard both counsel at length and have perused the proceedings. **<u>We agree with the view taken by the Delhi High Court in the case of CIT v. Eshaan Holding (Pvt.) Ltd. [2012] 344 ITR 541 (Delhi) upholding the view of the Income-tax Appellate Tribunal that if there is no valid service of notice under section 148, the reassessment proceedings are null and void as also the decision of the Punjab and Haryana High Court in the case of CIT v. Avtar Singh [2008] 304 ITR 333 (P&H) which held that service of notice under section 148 is a condition precedent for making re-assessment or recomputation under section 147 of the Act.</u>**
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> **<u>8. In our view, before issuing the notice under section 148A(b) it was imperative for the Assessing Officer to have checked if there was a change of address. A condition precedent for any proceeding including a proceeding under section 148A, is a valid service of notice, lest it would be a jurisdictional error.</u>** With regard to, the first notice dated March 20, 2022, it is the case of the petitioner that they had not received any notice dated March 20, 2022 and the Revenue contended that it was served through speed post at the last known address. It is evident that though the respondents had the new address of the petitioner as evinced from the Income-tax return (ITR) filed on January 10, 2021, the respondents chose to send the notice to their old address. We also find no averment or proof of the service of notice dated March 20, 2022 on the petitioner in the respondent's affidavit-in-reply dated November 14, 2022. The cascading effect of non-service was that

> the petitioner did not get an opportunity to respond to the notice. Consequently, the notice dated March 20, 2022 and the proceedings thereafter are void. Apropos section 151(ii) of the Act the sanction from the Principal Chief Commissioner of Income-tax ought to have been taken when the order was sought to be passed beyond the period of three years, i.e., beyond March 13, 2022 on April 5, 2022. Consequently, the notice dated March 20, 2022 and order dated April 5, 2022 deserves to be set aside on account of jurisdictional error, i.e., for want of service and consequently, for non-compliance with the provisions of the Act."
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> [Emphasis supplied]

12. Taking a cue from the aforesaid decision in *Mrs. Chitra Supekar (supra),* we find that the respondents, in the given circumstances, were saddled with the onus to verify the details of the address of the petitioner, rather than placing a blanket reliance upon the information received from the DDIT Investigation 2(4), New Delhi. In any case, a valid service of notice is a condition precedent for any proceeding under Section 148A or Section 148 of the Act, which has not been fulfilled. In view of the aforesaid, we do not find any force in the arguments put forth by the respondents.

13. Consequently, the writ petition is allowed and the impugned order passed under Section 148(A)(d) of the Act dated 07.04.2023 and the notice issued under Section 148 of the Act of even date are, hereby, quashed.

14. Acceding to the prayer made by the petitioner, we deem it appropriate to remand the matter back to the file of the respondents at the stage of issuance of notice under Section 148(A)(b) of the Act. The respondents are accorded a liberty to proceed with the assessment and complete the proceedings as expeditiously as possible, not exceeding a period of sixty days from the date of passing of this order, after giving an opportunity of hearing to the petitioner.

15. We, accordingly, allow the writ petition in the aforesaid terms and dispose of alongwith pending application.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 15, 2024/p