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

\+ W.P.(C) 8228/2023 & CM APPL 31574/2023

JOHN ALOK MARIO DE CRUZ ..... Petitioner

Through: Mr. Vineet Trehan, Mr. Kunwar Karan, Mr. Aditya Trehan, Ms. Bhavya Jain and Mr. Aman, Advocates

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Abha Malhotra, Sr. CGC for UOI
Mr. Sunil Agarwal, Sr. SC alongwith Mr. Shivansh B. Pandya and Mr. Utkarsh Tiwari, Advocates

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

O R D E R

% **28.03.2024**

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

> "(a) Issue a writ of CERTIORARI or any other appropriate writ, order or direction quashing the Impugned Notice dated 27.07.2022 and consequential reassessment proceedings including but not limited to the Impugned Order dated 29.05.2023 and all consequential Demand and Penalty Notices dated 29.05.2023;
>
> (b) Declare the Explanation to clause (A)(a) of Notification No. 20/2021 dated 31.03.2021 and Explanation to clause (A)(b) of Notification No.3.8 of 2021 dated 27.04.2021 as ultra-vires the parent Act, i.e., Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and hence, unconstitutional; and

> (c) For such further and other reliefs; including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

2. Undisputedly and as would be evident from a reading of the order referable to Section 148A(d) of the Income Tax Act, 1961 the income alleged to have escaped assessment falls below INR 50,00,000/-

3. The challange would thus have to be answered in favour of the petitioner in light of the judgment rendered by our Court in **Ganesh Dass Khanna v. ITO & Anr** [2023 SCC OnLine Del 7286].

4. While dealing with an 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.

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54. Therefore, having regard to the foregoing discussion, we are of the opinion that the impugned actions, which include orders passed under section 148A(d) and the consequent notices issued under section 148 of the amended 1961 Act, concerning the assessment year 2016-2017 and the assessment year 2017-2018 cannot be sustained. It is ordered accordingly."

5. Accordingly and for the reasons assigned above, the writ petition is allowed. The impugned notice referrable to Section 148 of the Act dated 29 July 2022 is set aside alongwith all consequential proceedings.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 28, 2024
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