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

\+ W.P.(C) 8764/2023 & CM APPL. 33132/2023

RAJNI GOEL LEGAL HEIR OF ASHOK KUMAR GOEL
.....Petitioner

Through: Mr Mani Bhadra Jain and Mr Sushant Singhal, Advocates.

versus

INCOME TAX OFFICER WARD 34(1) DELHI & ANR.
.....Respondents

Through: Mr Sanjay Kumar, SSC, Ms Monica Benjamin, and Ms Easha Kadian, JSCs for the Revenue.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **27.11.2024**

1. The petitioner has filed the present petition, *inter alia,* impugning an assessment order dated 22.05.2023 (hereafter *the impugned assessment order*) passed under Section 147 read with Section 144 of the Income Tax Act, 1961 (hereafter *the Act*). The petitioner also impugns the demand notice dated 22.05.2023 issued under Section 156 of the Act as well as the notice of initiation of the penalty proceedings under Section 274 of the Act for the assessment year (AY) 2014-15.

2. The petitioner is the widow and legal heir of late Mr Ashok Kumar Goel, who expired on 04.06.2017. He was a partner of the firm named M/s. Shakti Sales Corporation – which was formed in the year 1989. The

petitioner states that the partnership deed was executed between the constituent partners (Mr Ashok Kumar Goel and Smt. Raj Rani Goel – sister-in-law of Mr Ashok Kumar Goel) on 17.06.1992. It is stated that the said firm dissolved on 31.03.2000 and the partners executed the dissolution deed dated 04.05.2000. The said fact was duly communicated to the concerned authorities including the Registrar of Firms as well as the Delhi Sales Tax Department.

3. The Assessing Officer (AO) issued a notice dated 21.06.2021 under Section 148 of the Act seeking to reopen the assessment of the firm, M/s. Shakti Sales Corporation, which was dissolved in the year 2000. Immediately on receipt of the said notice, the petitioner, who is the widow of Shri Ashok Kumar Goel informed the AO by a letter dated 02.07.2021 that the firm M/s. Shakti Sales Corporation, had already been dissolved in the year 2000, and therefore, no proceedings for reassessment of the said firm could be initiated.

4. Notwithstanding the said communication, the AO passed an order dated 22.07.2022 under Section 148A(d) of the Act holding that it was a fit case for issuance of the notice under Section 148 of the Act.

5. In view of the decision of the Supreme Court in ***Union of India & Others v. Ashish Agarwal: (2023) 1 SCC 617***, the notices issued under Section 148 of the Act under the old regime were required to be construed as a notice under Section 148A(b) of the Act.

6. Apparently, a notice under Section 148A(b) of the Act was also issued to the petitioner, however the petitioner claims that no notice has

been received. The Revenue had also not produced a copy of the same.

7. The said order dated 22.07.2022 indicates that the AO had considered it a fit case to open the reassessment in respect of AY 2014-15 on the basis of the information available on the insight portal. The said information had also formed the basis of the assessment order passed subsequently. The relevant extract of the insight portal information and the AO's inference are set out below: -

> "4. As the judgment applies to all cases where extended reassessment notices have been issued irrespective of the fact whether such notices have been challenged or not. So, in compliance with the order of the Hon'ble Supreme Court, assessee was provided with information and material relied upon by this office for issue of the said show cause notice. The information was provided vide letter bearing DIN No. ITBA/COM/F/17/2022-23/1043192923(1) dated 26.05.2022. The said letter containing the information was issued to the assessee through Common Function ITBA functionality and declared e-mail of the assessee and also through speed post with tracking ID No. ED883428919IN. The details of the information provided is as under:
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> > *"In this case information has been share by the Investigation Wing and the details of the same as available in the INSIGHT PORTAL has been examined and analyzed and it has been found that the assessee has entered into transaction amounting to Rs.2,26,75,146/- with M/s Gayatri Maa Prop. Ashok Kumar Gupta, Ridhi Sidhi Impex Prop. Ashok Kumar Gupta and M/s Parth International*

Prop. Anuj Kumar Gupta son of Ashok Kumar Gupta on account of bogus sales made by the entities controlled and managed by Sh. Ashok Kumar Gupta. This Information suggest that income chargeable to tax has escaped assessment.

As the above information suggests that income chargeable to tax has escaped assessment, the assessee was asked to furnish the reply regarding why reassessment u/s 147 of the Income Tax Act may not be made in this case. Assessee was asked to furnish the relevant details along with supporting documentary evidence with respect to the information received, to this office by 09.06.2022."

5. In response to opportunity provided to the assessee u/s 148A (b) of the Act, till date no response has been received from the assessee. In this case information has been share by the Investigation Wing and the details of the same as available in the INSIGHT PORTAL has been examined and analyzed and it has been found that the assessee has entered into transaction amounting to Rs.2,26,75, 146/- with M/s Gayatri Maa Prop. Ashok Kumar Gupta, Ridhi Sidhi Impex Prop. Ashok Kumar Gupta and M/s Parth International Prop. Anuj Kumar Gupta son of Ashok Kumar Gupta on account of bogus sales made by the entities controlled and managed by Sh. Ashok Kumar Gupta. The modus operandi was that they give non-genuine entries to various parties without any physical transactions, these trades where just entries provided to beneficiaries to enable them to book bogus purchase and sales in their books.

> However, the assessee has not filed his ITR for A.Y 2014-15 thus does not give his income and sources thereof; Despite providing information and material to the assessee as detailed above, the assessee has not made any compliance to the Show Cause letter dated 26.05.2022 till date. Therefore, the assessee has failed to explain detail and source of such credits into the bank account. The information and material in hand therefore clearly suggests that income of Rs.2,26,75,146/- chargeable to tax has escaped assessment.
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> It is also evident from information available with Assessing Officer that the income chargeable to tax for this year, which has escaped assessment, is more than Rs. 50 lakhs and is represented in the form of asset i.e an income of Rs. 2,26,75,146/- (Credit in Bank) has accordingly escaped assessment.
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> On the basis of the material available on record, it is concluded that this is found to be a fit case for issuing notice u/s 148 of the I.T. Act for A.Y. 2014-15."

8. The AO has proceeded on the basis that the noticee had failed to explain the information available on the insight portal, which was suggestive of income escaping the assessment. It is material to note that the order has been passed in the name of the firm M/s. Shakti Sales Corporation, despite the AO being informed that no such firm exists.

9. According to the petitioner, after the dissolution of the firm, her late husband carried on similar business as a sole proprietor.

10. After the commencement of the reassessment proceedings under Section 147 of the Act, the AO issued a notice dated 31.01.2023 under Section 142(1) of the Act. The petitioner responded to the said notice by a

letter dated 07.02.2023 reiterating that the firm M/s. Shakti Sales Corporation (PAN: AACFS1812J) stood dissolved in the year 2000 and was not in existence.

11. Thereafter, the assessment proceedings culminated into the assessment order dated 22.05.2023. The AO also noted the reply received from the petitioner that the firm in question (M/s. Shakti Sales Corporation which was assigned PAN: AACFS1812J) was dissolved in the year 2000. Notwithstanding the said information, it proceeded to assess the income of the said firm at ₹2,26,75,146/-.

12. Apparently, the said addition was also made on the basis of the information available on the insight portal.

13. The order passed under Section 148A(d) of the Act as well as the impugned assessment order does not clearly reflect the transactions on the basis of which the AO has proceeded to tax the dissolved firm.

14. On a pointed query from the court, whether the learned counsel for the Revenue could throw any light as to - a) who was the seller of the goods; b) what were the goods sold; c) to which party were the goods sold; or d) the dates of the transactions. The learned counsel for the Revenue responded in the negative. He referred to the assessment order dated 22.07.2022, which is bereft of any particulars in regard to the transactions in question. The assessment order merely reproduces the information as available on the insight portal. Thus, it is apparent that the AO has not taken any steps to even examine the details of the transactions.

15. The petitioner also asserts that both the partners of the erstwhile firm

have since expired. The petitioner's husband expired on 04.06.2017 and Smt. Raj Rani Goel also expired in the year 2018.

16. It is also apparent that the entire basis of proceedings to make assessment of the AY 2014-15 is the use of the PAN of the erstwhile firm. Plainly, a firm that has already been dissolved several years ago cannot be assessed on account of misuse of the PAN in subsequent years. It was thus necessary for the AO to have conducted an exercise to ascertain the nature of the transactions and the parties that in fact had executed the transactions before proceeding to frame an assessment on a dissolved firm.

17. The provisions of Section 189 of the Act are of no assistance to the AO in the facts of the present case.

18. In view of the above, the impugned assessment order is set aside. However, we clarify that this would not preclude the AO from initiating any other proceedings against any delinquent assessee, in accordance with law, provided the AO has sufficient grounds to do so.

19. The petition is disposed of in terms of the above. Pending application stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 27, 2024
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Click here to check corrigendum, if any