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

\+ W.P.(C) 9312/2023 & CM APPL. 35451/2023 (stay)

RAKESH KUMAR NANGIA ..... Petitioner

Through: Mr.Salil Kapoor, Mr.Sumit Lal Chandani and Mr.Shivam Yadav, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 28-1 & ORS. ..... Respondents

Through: Mr.Gaurav Gupta, Sr.SC with Mr.Shivendra Singh and Mr.Puneet Singhal, Jr.SC for I.T.Dept.

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

ORDER

% **06.05.2024**

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

> "A. Issue a writ of and/or order and or directions in the nature of certiorari or any other appropriate writ, order or direction quashing notice dated 25.05.2022 issued under Section 148A(b) of the Act, the impugned order dated 30.07.2022 passed under Section 148A(d) of the Act, impugned notice dated 30.07.2022 issued under Section 148 of the Act and the impugned assessment order under Section 147 r.w.s 144B of the Act;
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> B. Issue a writ in the nature of Prohibition to restrain the Respondents from giving effect to/proceeding further pursuant to the impugned assessment order dated 19.05.2023 passed under section 147 r.w.s. 144B of the Act for AY 2016-17 along with the impugned demand notice dated 19.05.2023 issued under section 156 of the Act and the impugned penalty notice dated 19.05.2023

issued under section 274 r.w.s. 271(1)(c) of the Act;

C. Issue a writ of and/or order and or directions in the nature of certiorari or any other appropriate writ, order or direction quashing the Instruction No. 01/2022 dated 11.05.2022 issued by the Respondent No 3 as the same is ultra vires to the provisions of the Act and in contravention of the Judgment of the Hon'ble Supreme Court in the case of UOI v. Ashish Agarwal (Supra);

D. Issue any other Writ, order or Direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

E. To dispense with from filing certified copies of Annexures; and

F. To allow the writ petition with cost in favor of the Petitioner and against the Respondents."

2. As would be evident from a reading of the order of 14 July 2023, one of the issues which was sought to be canvassed was the violation of principles of natural justice and the submission that a fresh link for hearing was not provided.

3. Although pursuant to the aforesaid order and those following the directions contained in the order of 14 July 2023 have led to the respondents placing the video clip as well as the transcript form on the record, we find that the validity of the assessment ultimately undertaken would have to be examined in the light of the decision in **Twylight Infrastructure Private Ltd. v. Income Tax Officer Ward & Ors** [2024 SCC OnLine Del 330].

4. Dealing with the validity of initiation of proceedings under Sections 147 and 148 of the Income Tax Act, 1961, this Court had in *Twylight Infrastructure* held as follows:

"**25.** Clauses (i) and (ii) of Section 151 of the amended Act (which has been extracted hereinabove) clearly specify the authority whose approval can trigger the reassessment proceedings. Thus, if three (3) years or less have elapsed from the end of the relevant AY, the specified authority who would grant approval for initiation of reassessment proceedings will be the Principal Commissioner or

Principal Director or Commissioner or Director. However, if more than three (3) years from the end of the relevant AY have elapsed, the specified authority for according approval for reassessment shall be the Principal Chief Commissioner or Principal Director General or, where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General.

26. That the approval is mandatory is plainly evident on perusal of the first proviso appended to Section 148 of the Act. the said proviso, at the risk of repetition, reads as follows:

> *"...Provided that* ***no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice....***"

27. In these cases, there is no dispute that although three (3) years had elapsed from of the end of the relevant AY, the approval was sought from authorities specified in clause (i), as against clause (ii) of Section 151.

xxxx **xxxx** **xxxx**

29. Therefore, having regard to the aforesaid, the impugned notices and orders in each of the above-captioned writ petitions are quashed on the ground that there is no approval of the specified authority, as indicated in Section 151(ii) of the Act. The direction is issued with the caveat that the revenue will have liberty to take steps, if deemed necessary, *albeit* as per law.

30. Needless to add, the rights and contentions of both the sides will remain open, in the event the revenue triggers reassessment proceedings."

5. However, and since the writ petition itself came to be preferred and instituted only after a final assessment order had come to be passed, we dispose of the same and leaving it open to the writ petitioner to institute a statutory appeal in which it shall be open to it to assail the final assessment order on the aforenoted grounds as well as those which may otherwise be permissible as per law.

6. Subject to the aforesaid observation, the petition shall stand disposed of.

7. We accord two weeks time to the writ petitioner to institute an appeal before the Commissioner of Income Tax (Appeals).

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 06, 2024/p