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

\+ W.P.(C) 8079/2024 & CM APPL. 33287/2024 (Stay)

RITWICK DUTTA ..... Petitioner

Through: Mr. Sachit Jolly, Mr. Abhishek, Ms. Mansha Jolly, Ms. A.R. Shruti, Mr. Abhyudaya Shankar Bajpai and Mr. Aditya Rathore, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 14 ..... Respondent

Through: Mr. Zoheb Hossain, Spl. Counsel along with Mr. Vipul Agrawal, Mr. Sanjeev Menon, JSCs & Ms. Abhipriya Rai, Adv.

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\+ W.P.(C) 8083/2024 & CM APPL. 33297/2024 (Stay)

RITWICK DUTTA ..... Petitioner

Through: Mr. Sachit Jolly, Mr. Abhishek, Ms. Mansha Jolly, Ms. A.R. Shruti, Mr. Abhyudaya Shankar Bajpai and Mr. Aditya Rathore, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 14 ..... Respondent

Through: Mr. Zoheb Hossain, Spl. Counsel along with Mr. Vipul Agrawal, Mr. Sanjeev Menon, JSCs & Ms. Abhipriya Rai, Adv.

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

O R D E R

% **29.05.2024**

CM APPL. 33288/2024 (Ex.) & CM APPL. 33289/2024 (Ex.) in W.P.(C) 8079/2024

CM APPL. 33298/2024 (Ex.) & CM APPL. 33299/2024 (Ex.) in W.P.(C) 8083/2024

Allowed, subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 8079/2024 & CM APPL. 33287/2024 (Stay)
W.P.(C) 8083/2024 & CM APPL. 33297/2024 (Stay)

1. These two writ petitions impugn the reassessment action for Assessment Year [‘**AY**’] 2017-18 [W.P(C) 8079/2024] and AY 2020-21 [W.P(C) 8083/2024] that has been initiated against the petitioner-assessee and the final notices issued under Section 148 of the Income Tax Act, 1961 [‘**Act**’] which have come to be issued post disposal of the objections which were preferred and an order under Section 148A(d) framed.

2. We note that the principal dispute appears to be in respect of certain receipts received from an organization named Earth Justice and which were described by the petitioner as being recompense for legal services rendered. The allegation against the writ petitioner essentially appears to be that the funds which were essentially meant to carry out activities in relation to a trust ‘Legal Initiative for Forest and Environment’ were diverted to the account of the petitioner and that no professional services were either rendered or details thereof furnished.

3. We note that the respondent has while disposing of the objection which had been preferred, rendered the following observations:-

> “**5.3.7** Also, the assessee has submitted that the sum received for AY 2017-18 from Earth Justice is for the advisory/ legal research

services and enclosed a paper in his reply wherein plain details have been mentioned for various piece of works. However, no supporting documents are enclosed to substantiate that these works were actually carried out such as copy of email communication, various reports etc. The assessee had not provided any copy of agreement/contract for these pieces of works with its proprietorship concern i.e. Lawyers Initiative for Environment and Forest with Earth Justice, USA.

5.3.8 Further expenses claimed by the assessee against receipts from Earth Justice is also not genuine because Earth Justice is not the party to any of the litigation. Therefore, proportionate expenses corresponding to Earth Justice amounting to INR 85,46,090/-has escaped assessment which needs to be assessed u/s 148 of the Income Tax Act, 1961.

Sr. No.	**Total Receipts**	**Receipts from Earth Justice**	**% receipts from Earth Justice**
1	1,76,67,025/-	1,58,90,241/-	89.94%
2	**Total Expenses**	**Proportionate Expenses corresponding to Earth Justice**	
	95,01,680/-	85,46,090/-	

6. Conclusion:

6.1 As discussed above, funds made available by 'Earth Justice' are apparently being used for activities such as litigation against coal power plants in India routed through Shri Ritwick Dutta, Managing Trustee of the trust LIFE in the garb of professional fee, for activities which cannot be considered to be professional service rendered by Shri Ritwick Dutta to 'Earth Justice'.

Hence it can be concluded that:

• Transfer of funds did not appear to be transfer for cost in lieu of goods or services rendered by Shri Ritwick Dutta

• 'Earth Justice' is not a litigant (petitioner or respondent) in any case represented by Sh. Ritwick Dutta.

• Shri Ritwick Dutta was not providing consultancy services to Earth Justice. Ritwick Dutta has only provided update of status of litigation related to thermal power plants.

• Ritwick Dutta in association with Earth Justice is discussing strategies to put pressure on Indian or State Governments or project proponent.

• Planning targeting projects of Indian entities in foreign jurisdictions which can be challenged there.

• Attempt to create litigation and stalling thermal power plants.

• No proof of any retainership or any agreement reflecting the rates of advice or opinion given by assessee."

4. Mr. Jolly, learned counsel appearing in support of the writ petition would contend that the details of these services had been duly provided to the respondents while replying to the notice under Section 148A(b) of the Act. It was further submitted that the income in question had already been subjected to tax and had been duly included in the Return of Income which had been submitted by the petitioner.

5. Our attention was also invited to the Explanation to Section 147 as it stood prior to its amendment in terms of Finance Act, 2021. The submission of Mr. Jolly was that since the income had already been offered to tax, there could be no allegation of escapement. Mr. Jolly had also invited our attention to an interim order which has been passed inter partes on 01 June 2023 and more particularly on W.P.(C) 8052/2023.

6. Having heard learned counsels for parties, we find no justification to entertain the challenge at this stage bearing in mind the conclusions which stand incorporated in the order passed under Section 148A(d) and which have been extracted hereinabove.

7. Quite apart from the issue of Section 68 which may arise, we are concerned with the allegation of diversion of income. We also bear in mind that at the stage of initiation of action for reassessment, the writ court would only consider whether the Assessing Officer had duly applied its mind with respect to aspects pertaining to escapement of income. As is evident on a consideration of the conclusions tentatively arrived at by that authority and which constitutes its prima

facie opinion, it cannot be said that the authority has failed to bear in consideration the principles that govern the commencement of action under Section 148 or that the opinion formed is wholly untenable or perverse.

8. The writ petitions shall consequently stand dismissed. However, this order shall be without prejudice to the rights and contentions of the petitioner which are kept open to be addressed in the ongoing reassessment proceedings and which may be considered uninfluenced by any observation appearing in the present order bearing in mind that they were rendered only in the context of evaluating whether a challenge under Article 226 of the Constitution was liable to be entertained.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

MAY 29, 2024/RW