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

\+ W.P.(C) 9689/2024

AJAY SINGH HUF .....Petitioner

Through: Ms. Kavita Jha, Mr. Vaibhav Kulkarni, Mr. Himanshu Agarwal, Advs.

versus

INCOME TAX OFFICER WARD 52(1) DELHI AND ANR .....Respondents

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan, Mr. Vikramaditya, Mr. Ojaswa, Ms. Anautta Shankar, Mr. Vineet, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 18.07.2024

CM APPL. 39780/2024 (Exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

W.P.(C) 9689/2024 & CM APPL. 39779/2024 (Stay)

1. This writ petition impugns the initiation of reassessment action in terms of an order under Section 148A(d) of the Income Tax Act, 1961 ["**Act**"] dated 28 February 2024 as also the consequential notice under Section 148 of the Act. The reassessment proceedings pertain to Assessment Year ["**AY**"] 2017-18.

2. As is manifest from the reading of the original notice under Section 148A(b), the proceedings under Section 148 was proposed to be initiated based on a common Suspicious Transaction Report ["**STR**"] which had been obtained by the respondents. As becomes

manifest from a consideration of the order passed in respect of the individual assessee and is dated 29 March 2024, the respondents ultimately chose to drop the proceedings.

3. Quite apart from the above and although the petitioner sought to explain the individual transactions which were noticed in the STR, the Assessing Officer ["**AO**"] while passing the order under Section 148A(d) has observed as follows:-

> "5. The submission of the assessee considered carefully and found not acceptable due to the reasons summarized as under:-
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> (i) The proceedings are not time barred since the provisions of clause (b) of section 149 of I.T.Act prescribe an extended period of 10 years from the end of assessment year under consideration and the same is clearly invoked as per clause (b) of section 149(1)(b)(i) since the credits in bank account clearly represents in the form of "Asset".
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> (ii) The information uploaded by the investigation wing on portal is clearly and information and suggestion for taking an action u/s 148 of the I.T.Act.
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> (iii) The information on insight portal is already shared to the assessee in which bank account (HDFC Bank A/c No.50100022455894) clearly confronted to the assessee. The STR report contain confidential/vital information of the other entities hence the same was not provided to the assessee.
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> (iv) As per the STR report – the STR No.10944050 filed by the HDFC bank limited in the case of M/s Ajay Fincap Consultants Private Limited and other. With reference to this STR the assessee already replied to investigation wing on 12.11.2022, hence the assessee was very well known about the STR.
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> (v) The assessee filed return for the year under consideration declaring income of Rs.3,01,170/-. The ITR profiling done by the investigation wing/department in the case of assessee and amount of transactions (credit/debit) in assessee's bank account is not matching. Most of transaction is done with the group entities without any business rationale.
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> (vi) As per the finding of investigation wing in STR report the assessee did not explain the transactions in its bank account despite summons/letters issued.

(vii) The payment through banks and other features are only apparent features and real feature are the manipulated. The transaction would fall the realm of suspicious and dubious transaction – the authority is entitled to look behind the transactions and ascertain the motive behind the transaction. It is worthwhile to mention here that the merits of the matter are not relevant at this state; the AO is only to have a prima facie belief or opinion that income chargeable to tax.

(viii) The Hon'ble Apex Court clearly held in its decision rendered on 2.9.2022 in the case of Anshul Jain Vs. Principal Commissioner of Tax& Anr.(SPL No.14823/2022) – that the notice of re-opening was issued alongwith 148A(d) order after considering assessee's objection and if the petitioner has any grievance on merits the same has to be agitated before the assessing officer in the re-assessment proceedings."

4. We find ourselves unable to sustain the view which is taken and which clearly ignores the right of an assessee to raise a jurisdictional challenge to the assumption of jurisdiction under Section 148. It becomes pertinent to note that in **Anshul Jain vs. Principal Commissioner of Income Tax and Anr.** [2022 SCC OnLine SC 1756] the Supreme Court on the facts of that case had taken the position as follows:-

"**1.** What is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

2. Under the circumstances, the High Court has rightly dismissed the writ petition.

3. No interference of this Court is called for.

4. The present Special Leave Petition stands dismissed."

5. As we read the judgment rendered in *Anshul Jain*, we find that the assessee in that matter does not appear to have raised any jurisdictional challenge apart from having merely asserted that its

reply had not been examined.

6. More importantly, in a subsequent judgment rendered in **Red Chilli International Sales vs. Income Tax Officer and Anr.** [2023 SCC OnLine SC 237]**,** the Supreme Court while examining challenges to reassessment actions under Section 148 had observed as follows:-

> "**2.** We with the petitioner that the impugned judgment rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this Court, on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice under Section 148 of the Income Tax Act, 1961 is satisfied. The provisions of reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in depth consideration keeping in view the earlier case law. Accordingly, we set aside the observations made by the High Court in the impugned judgment observing that the writ petition would not be maintainable in view of the alternative remedy, clarify that this issue would be examined in depth by the High Court if and when it arise for consideration. We do deem it open to examine this issue in the present case after having examined the notice under Section 148A (b) including the annexure thereto, the reply filed by the petitioner and the order under Section 148A(d) of the Income Tax Act, 1961.
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> **3.** Recording the aforesaid, the special leave petition is disposed of. We clarify that the dismissal of the special leave petition would not be construed as a findings or observations on the merits on case."

7. In our considered opinion, once the assessee raises a jurisdictional challenge and questions the very commencement of an action on a ground which would go to the root of the authority of the AO to reassess, those questions cannot be deferred to final assessment proceedings that may be drawn. We thus find ourselves unable to sustain the Section 148A(d) order on this short ground.

8. We accordingly allow the instant writ petition and quash and set aside the order under Section 148A(d) dated 28 February 2024 and notice referrable to Sections 148 Act dated 28 February 2024. The

matter shall stand remanded to the desk of the AO who shall commence proceedings afresh bearing in mind the reply that has been tendered as also the factum of the case for reassessment against the individual assessee having been brought to a close. The AO may consider according a personal hearing to the writ petitioner, if such a request is made.

9. All rights and contentions of respective parties are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 18, 2024/neha