



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

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Judgment reserved on: 08 April 2024
Judgment pronounced on: 07 May 2024

+ W.P.(C) 16680/2022

ASHOK KUMAR MAKHIJA

..... Petitioner

Through: Mr. Kalrav Mehrotra, Adv.

versus

UNION OF INDIA (THROUGH SECRETARY) AND ORS.

.....Respondents

Through: Mr. Ranvir Singh, CGSPC for
UI.

Mr. Abhishek Maratha, Sr. SC
with Mr. Parth Semwal and
Ms. Nupur Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The present petition, filed at the instance of the assessee, seeks quashing of the notices dated 26 May 2022 and 30 July 2022, issued under Section 148A(b) and Section 148, respectively and the consequential order dated 30 July 2022 passed under Section 148A(d) of the Income Tax Act, 1961 [“Act”] for the Assessment Year [“AY”] 2017-18.

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W.P.(C) 16680/2022



2. The petitioner is stated to have been deriving income from the business of wholesale trading of pan masala and beetle nut (*supari*) through his proprietorship concerns namely, M/s Neelkanth Trades and M/s Prem Supari Bhandar. On 28 March 2017, he was served with a summon under Section 131(1A) of the Act, seeking verification of cash deposits made by him in his bank account during the period of demonetization i.e., 08 November 2016 to 31 December 2016 [**“demonetization period”**].

3. Accordingly, on 14 October 2017, the Income Tax Return [**“ITR”**] was filed by the petitioner for AY 2017-18 declaring a total income of INR 1,70,43,590/-. The said ITR was subjected to scrutiny assessment on the issues of capital gains/loss on sale of property and cash deposits made during the demonetization period.

4. The petitioner claimed that the said cash deposit in his bank account represents the sale proceeds of the business. While issuing notice dated 20 November 2019 under Section 133(6) of the Act, the Revenue sought confirmation from M/s Mahalaxmi Devi Flavours Pvt. Ltd., from whom the petitioner claimed to have made the purchases. Consequently, on 28 December 2019, an assessment order under Section 143(3) of the Act came to be passed accepting the aforesaid ITR.

5. Later, on 08 April 2021, a notice under Section 148 of the Act was issued, reopening the assessment of the petitioner for AY 2017-18 on the ground that the income of the petitioner which was chargeable to tax, had escaped assessment. However, the said notice was quashed following the decision rendered by several High Courts and this Court



in the case of **Man Mohan Kohli v. ACIT**¹, which *inter alia* declared that all notices issued under Section 148 of the Act after 01 April 2021 under the erstwhile law (un-amended provision of Section 148 of the Act) could not have been issued.

6. In the meantime, the Supreme Court in the case of **Union of India v. Ashish Agarwal**² rendered a decision declaring that notices issued under Section 148 of the Act between 01 April 2021 to 30 June 2021, under the old provisions shall be treated as notices under Section 148A(b) of the Act and the same shall be dealt with in the light of the directions contained in the aforesaid decision.

7. As a sequitor, the Revenue issued the impugned notice dated 26 May 2022, under Section 148A(b) of the Act and initiated reassessment proceedings by supplying the petitioner with the information in its possession i.e., an exponential increase in the sales turnover of the petitioner during AY 2017-18, alleging that the same has escaped assessment. Consequently, the impugned order under Section 148A(d) dated 30 July 2022 was passed by the Revenue.

8. Mr. Kalrav Mehrotra, learned counsel for the petitioner argued that the reassessment proceedings for AY 2017-18 lack requisite jurisdiction and are entirely unlawful. He asserted that the initiation of these proceedings stems solely from a change of opinion without providing any new substantial evidence which would warrant such action by the Revenue.

9. He, however, restricted his submission to the extent that as per Section 151 of the Act and considering the fact that the reopening of the case is occurring after a lapse of more than three years, the appropriate

¹ 2021 SCC OnLine Del 5250



authority for issuance of the notice under Sections 148 and 148A(b) of the Act should have been either the Principal Chief Commissioner or Principal Director General, or in their absence, the Chief Commissioner or Director General, instead of the Principal Commissioner of Income Tax, Delhi-10, who does not fall within the specified authorities outlined in Section 151 of the Act. He relied on the decision of this Court in the case of **Twylight Infrastructure Pvt. Ltd. v. ITO & Ors.**³, to substantiate his argument that the impugned notice is bad in law.

10. Mr. Abhishek Maratha, learned counsel for the Revenue was unable to controvert the aforesaid submission *qua* the issue being covered as per the decision of this Court in the case of *Twylight Infrastructure (supra)*.

11. On hearing learned counsels for parties, we find that the challenge raised herein, stands concluded in light of the judgment rendered by this Court in *Twylight Infrastructure (supra)*.

12. Accordingly, for the reasons assigned in the aforenoted judgment, we allow the instant writ petition and quash the impugned notices dated 26 May 2022 and 30 July 2022 and the impugned order dated 30 July 2022, subject to liberty reserved as per paragraph Nos. 28 to 30 of *Twylight Infrastructure (supra)*, which read as under:-

“28. Before us, the counsel for the revenue continue to hold this position. The only liberty that they seek is that if, based on the judgment in *Ganesh Dass Khanna*, the impugned orders and notices are set aside, liberty be given to the revenue to commence reassessment proceedings afresh.

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.”

13. The writ petition is disposed of accordingly alongwith pending application(s), if any.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

MAY 07, 2024/p

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