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

\+ ITA 685/2023 & CM APPL. 62396/2023

NAVDEEP SHARMA ..... Appellant

Through: Mr. J.M. Kalia with Mr Dhurv Kalia, Advs.

versus

ITO, WARD-71(1) ..... Respondent

Through: Mr.Sunil Agarwal, Sr.SC along with Mr.Shivansh B.Pandya, Jr.SC and Mr.Utkarsh Tiwari, Adv.

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

<u>O R D E R</u>

% **24.01.2024**

1. The solitary question which is raised in the instant appeal and is pressed before us is a purported failure on the part of the Assessing Officer [**'AO'**] to follow the procedure as contemplated under Sections 147 and 148 of the Income Tax Act, 1961 ['**Act'**] as they stood at the relevant time.

2. We note that proceedings referable to Section 148 of the Act came to be initiated against the appellant in terms of a notice dated 30 March 2017. The said notice is extracted hereinbelow:-

> "To
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> SH NAVDEEP SHARMA,
> C-6, 1ST FLOOR, SARASWATI GARDEN,
> DELHI-110015
>
> Sir,
>
> Whereas I have reason to believe that your income /the income of **_______** in respect of which you are assessable, chargeable to tax for Assessment Year 2010-11 has escaped

> assessment within the meaning of section 147 of the Income Tax Act, 1961.
>
> 2. I, therefore, propose to assess/re-assess the income/recomputed loss/depreciation allowance for the said assessment year and I hereby require you to deliver me within 30 days from the date of service of this notice, a return of income in the prescribed form of your income/the income in respect of which you are assessable, for the said assessment year."

3. Learned counsel for the appellant has contended that in the absence of any reason to believe or satisfaction being recorded by the AO, there was no justification for invoking the provisions of Section 148 of the Act. It is the submission of the learned counsel that it is only once the AO forms an opinion that income chargeable to tax has escaped assessment that proceedings under the aforesaid provision could be initiated. It was additionally contended that it was also incumbent upon the AO to follow the procedure prescribed under Section 148 of the Act.

4. Mr.Agarwal, learned counsel appearing for the respondent, however, has drawn our attention to Explanation 2 as placed in Section 147 of the Act as it stood at the relevant time which reads as under:

> "*Explanation 2.*—<u>For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—(*a*) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax</u> ;
>
> (*b*) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;
>
> (*c*) where an assessment has been made, but—
>
> (*i*) income chargeable to tax has been underassessed ; or
>
> (*ii*) such income has been assessed at too low a rate ; or

(*iii*) such income has been made the subject of excessive relief under this Act ; or

(*iv*) excessive loss or depreciation allowance or any other allowance under this Act has been computed.]"

5. Based on the aforesaid Explanation, Mr. Agarwal contends that the since assumption of jurisdiction in the facts of the present case was triggered by a failure on the part of the assessee to furnish a return, in such a situation, there is a deemed fiction created in terms of the Explanation of income chargeable to tax having escaped assessment.

6. We also note that at the relevant time, Section 148 of the Act as it existed, did not adopt measures referable to clauses (b) and (d) of Section 148A of the Act as it stands presently. All that Section 148 of the Act at the relevant time required was of the assessee being called upon to furnish a Return of Income once jurisdiction had been assumed under Section 147 of the Act.

7. We note that while dealing with this aspect, the Tribunal has observed as under:-

> "11. It is observed, the assessee in course of assessment proceeding, has not furnished any supporting evidence, either to explain the source of cash deposit in the saving bank account or share transaction, for which loss was claimed. Even, at the time of hearing before me, in response to query raised, learned counsel for the assessee repeated the stand taken before the Assessing Officer that after expiry of three years, the assessee cannot be called upon to furnish any evidence or account.
>
> 12. The aforesaid facts clearly reveal that the assessee does not have any case on merits and wants to take shelter behind technical issue. On perusal of record, it is observed that the Assessing Officer has reopened the assessment after complying with all legal requirements. In fact, he has also obtained approval/ sanction of the competent authority before issuing notice under section 148 of the Act. Further, on perusal of the sanction granted under section 151 of the Act, I am of the view that it cannot be said that sanction granted is without proper application of mind. Therefore, the contention of learned counsel regarding improper sanction granted under section 151 of the Act is rejected.

> 13. As regards assessee's contention that after expiry of three years from the end of the assessment year, the assessee cannot called upon to furnish any accounts/evidences, in my view, such contention is liable to be rejected at the threshold. Since, if such contention is to be accepted, then reassessment proceedings under section 147 of the Act will become redundant, as, the Assessing Officer would be powerless to call for any accounts/ information/ details from the assessee after expiry of three years. In my view, the contention of learned counsel in this regard is totally misconceived. Hence, are rejected."

8. In view of the aforesaid facts, we find no merit in the challenge as raised.

9. The appeal fails to raise any substantial question of law which would merit consideration. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 24, 2024/MJ