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

% *Date of Decision : 15.10.2024*

+ **W.P.(C) 14429/2024 & CM APPL. 60462/2024, CM APPL. 60463/2024**

VIVEK KUMAR .....Petitioner

Through: Mr. Nitin Kanwar, Mr. Dushyant Nayak, Mr. Jitender Singh, Mr. Parul Kanwar and Mr. Rajiv Kumar, Advocates

versus

INCOME TAX OFFICER & ANR. .....Respondents

Through: Mr. Puneet Rai, Senior Standing Counsel with Mr. Ashvini Kumar, Mr. Rishabh Nangia, Standing Counsels and Mr. Nikhil Jain, Advocate

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (*ORAL*)

1. The petitioner has filed the present petition, *inter alia,* praying as under:

> "(1) Issue a writ of CERTIORARI or any other appropriate writ, order or direction quashing the Impugned notice u/s 148A(b) vide dated 17.08.2024, impugned Order u/s 148A(d) dated 31.08.2024, and Impugned notice u/s 148 dated 31.08.2024 of the Income Tax Act, 1961 and other Consequential proceedings;

> (2) Issue a writ of PROHIBITION or any other appropriate writ, order or direction to prohibit the Assessing Officer and any other income Tax Authority regarding the Impugned Order u/s 148A(d) dated 31.08.2024, and Impugned notice u/s 148 dated 31.08.2024 of the Income Tax Act, 1961 to do any consequential reassessment proceedings and any other Consequential proceedings..."

2. The petitioner is, essentially, aggrieved by an order dated 31.08.2024 (hereafter *the impugned order*) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*), and the initiation of re-assessment proceedings for the assessment year (hereafter *AY*) 2018-19 pursuant to the notice dated 31.08.2024 issued under Section 148 of the Act.

3. The petitioner's challenge principally rests on two grounds. First, that the impugned order has been passed without considering the reply furnished by the petitioner; and second, that the assessing officer (hereafter *the AO*) had no jurisdiction to initiate the re-assessment proceedings after the Central Board of Direct Taxes notification dated 29.03.2022 (hereafter *the notification*).

4. Insofar as the first contention is concerned, the same appears to be merited.

5. The AO had issued a notice dated 17.08.2024 under Section 148A(b) of the Act, proposing to initiate the re-assessment proceedings for the AY 2018-19. The AO had enclosed an Annexure with the said notice, which indicated the material that suggested that the petitioner's income had escaped assessment.

6. One of the allegations was that the petitioner had transactions with the

entities that were engaged in the practice of availing/issuing bogus sale/purchase bills, including an entity named M/s Riddhi Siddhi Polymers. According to the information available with the AO, the petitioner had the transactions of ₹1,55,29,650/- from the entities which included M/s Riddhi Siddhi Polymers in the supply chain. The second information was regarding the Tax Deducted at Source (hereafter *TDS*) by various entities on the income which was chargeable in respect of the interest other than the interest on securities. The deduction of TDS suggested that the corresponding income from the interest on which TDS had been deducted, had escaped assessment.

7. The petitioner replied to the aforesaid notice furnishing certain details. He stated that the income from the interest had not escaped assessment as the same was brought to tax. He also filed a copy of the return which reflected that the interest received by the petitioner was included in his total income had been assessed to tax.

8. Notwithstanding the reply, the AO has proceeded to pass the impugned order which is, in effect, is a substantial reproduction of the said notice. The impugned order also indicates that the AO has not considered the petitioner's response that the interest, which according to the AO had escaped assessment, had been assessed to tax. This clearly indicates that the AO did not apply his mind to the reply furnished by the petitioner.

9. In view of the above, the impugned order is set aside and the matter is remanded to the AO for considering the petitioner's reply afresh and to pass a reasoned order within a period of four weeks from date, after making

necessary inquiries, in accordance with law.

10. In so far as the petitioner's challenge to the jurisdiction of the AO is concerned, the said issue is pending for consideration before this Court in a batch of matter. Notwithstanding the same, this Court has not considered it apposite to interdict the proceedings.

11. In view of the above, this Court directs that the proceedings as initiated by issuance of the said notice for the AY 2018-19 shall continue, however, the same would be subject to any order that may be passed in the batch of matters with regard to the jurisdiction of the AO to initiate the proceedings and to re-assess the income after issuance of the notification. All rights and contentions of the petitioner in this regard are reserved.

12. The petition is disposed of in the aforesaid terms. Pending applications, also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 15, 2024
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