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

\+ ITA 437/2024

PR. COMMISSIONER OF INCOME TAX-12, DELHI .....Appellant

Through: Mr. Sanjay Kumar and Ms. Easha, Standing counsels.

versus

SMT. SALONI NARANG .....Respondent

Through: None

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

O R D E R

% 14.08.2024

CM APPL. 46636/2024 (194 Days Delay) & CM APPL. 46637/2024 (15 Days Delay in Refiling)

1. Bearing in the mind the disclosures made, the delay of 194 in filing and the delay of 15 days in re-filing the appeal is condoned.

2. The applications shall stand disposed of.

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3. Notice. Although the respondents are stated to have been placed on advance notice, none have appeared on their behalf when the matter was called.

4. We consequently request Mr. Kumar, learned counsel for the appellant to take steps for service upon the respondent-assessee through all permissible modes including via approved courier service.

5. Prima facie we find merit in the challenge which stands laid bearing in mind the following observations which are rendered by

the **Income Tax Appellate Tribunal**[1]:

> "**15.** The aforementioned Notification No. 2903 (E) is loud and clear and has specifically mentioned that Exchange of Information provided for in the said Protocol will be applicable for information that relates to any fiscal year beginning on or after the 1st day of April 2011 and if the said notification is read with the reference made by the department, we find that the specific periods for which the reference has been made calling for information is 01.04.1995 to 31.03 2012. Therefore, qua the notification, information called by the Revenue by issuing the said reference was invalid for the period prior to 01.04.2011.
>
> **xxxx xxxx xxxx**
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> **21.** In light of the aforementioned discussion, we are of the considered view that the information called for by the department from Swiss authorities could not have been received by them for the period prior to 01.04.2011. Therefore, it would be a futile exercise to wait for such information, and that too, by an invalid reference. Therefore, in our considered opinion, the period of limitation could not be extended as claimed by the Revenue. The impugned assessments are clearly bared by limitation and deserve to be quashed."

6. However, Mr. Kumar points out that even prior to the issuance of that Notification, Article 24 of the **Double Taxation Avoidance Agreement**[2] between India and Switzerland as it existed on 21 April 1995 contained a provision with respect to exchange of information. Article 24 is reproduced hereinbelow:

> "Article 24
> Exchange of information
>
> 1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

[1] Tribunal
[2] DTAA

> 2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application."

7. It is in the aforesaid backdrop that learned counsel contends that no separate notification authorising initiation of an exchange of information procedure was required.

8. Our attention was additionally drawn to the Explanation appended to Section 153B of the **Income Tax Act, 1961**[3] and more particularly clause (ix) thereof which reads thus:

> "(ix) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less;"

9. Mr. Kumar submits that the period commencing from the date when a reference is made and the date when information requested is last received is liable to be excluded. This, according to learned counsel, is not dependent upon the nature of the information ultimately received or its likely impact on the proposed reassessment. The matter requires consideration.

10. We accordingly admit this appeal on the following question of law:

A. Whether in the facts and in the circumstances of the case, the Tribunal was correct in law in holding that reference made to the Swiss Authorities for Exchange of Information under an agreement referred to in Section 90 was an invalid

[3] Act

reference and period of limitation could not be extended in view of clause (ix) to the Explanation appended to Section 153B(3)?

B. Whether as per clause (ix) to the Explanation appended to Section 153B(3) the limitation for completion of assessment is extended for one year in case a reference is made under Section 90 to any country for Exchange of Information?

11. Let the matter be called again on 29.11.2024.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 14, 2024/ib