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

% *Date of decision: 20.02.2023*

+ **ITA 107/2023 & CM APPL. 8189/2023**

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Hemlata Rawat,
Adv.

versus

M/S S.G. PORTFOLIO PVT. LTD.

..... Respondent

Through: Dr. Rakesh Gupta, Adv. with Mr. Somil
Agarwal, Adv. and Mr. Anshul Mittal, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

Prefatory Facts:

1. This appeal is directed against order dated 22.03.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
2. This appeal concerns Assessment Year (AY) 2009-10.
3. The broad facts which arise for consideration are the following:
 - 3.1. A search and seizure operation along with a survey was carried out *qua* the residential and business premises of one, Mr. Aseem Kumar Gupta and the members of his group, by taking recourse to Section 132 and 133A of the Income Tax Act, 1961 [in short, "Act"].
 - 3.2. The aforementioned actions were carried out on 26.03.2010. It

appears that what emerged from the action taken by the appellant/revenue was that Aseem Kumar Gupta and his group had provided accommodation entries to several beneficiaries, by opening bank accounts in the name of several proprietary concerns and companies controlled by the said group, either directly or through their employees.

3.3. Insofar as the respondent/assessee is concerned, *qua* the AY in issue, the return was filed under Section 139(1) of the Act on 26.10.2009.

3.4. The respondent/assessee had declared his income as Rs. 5,073/-.

4. The admitted facts are that the Assessing Officer (AO) *qua* this return carried out a scrutiny assessment and framed an assessment order on 26.12.2011 under Section 143(3) read with Section 153C of the Act.

5. Accordingly, the respondent/assessee's income was assessed at Rs.7,35,60,220/-.

6. In arriving at the said assessed income, the following additions were made, *albeit* on a protective basis:

(i) Expenses disallowed: Rs. 12,68,897/-.

(ii) Unexplained cash deposits in bank account: Rs. 30,06,880/-.

(iii) Unexplained share capital and share premium: Rs. 3,52,94,700/.

(iv) Unexplained other deposits in banks: Rs. 3,39,84,674/-.

7. The respondent/assessee, being aggrieved by the assessment order framed on 26.12.2011, preferred an appeal with the Commissioner of Income Tax (Appeals) [in short "CIT(A)"].

8. The CIT(A) *via* order dated 01.02.2013 quashed the assessment order, on the ground, that the AO had wrongly assumed jurisdiction in the matter under Section 153C of the Act.

9. The CIT(A) was of the view that no incriminating material had been

found against the respondent/assessee.

10. The record shows that, thereafter, notice under Section 148 of the Act was issued *qua* the respondent/assessee on 16.05.2013. The record also shows that there was material on record indicative of the fact that the respondent/assessee had communicated to the AO that the return which had already been filed on 26.10.2009, to which we have made a reference above, should be treated as a return in response to the notice issued under Section 148 of the Act.

11. It appears that the AO, in ignorance of this plea of the petitioner, assumed, *albeit* wrongly, that no return had been filed by the respondent/assessee and thus proceeded to pass a fresh assessment order on 02.03.2015, by taking recourse to the provisions of Section 147 read with Section 144 of the Act.

12. The AO, accordingly, concluded that the respondent/assessee's taxable income was Rs. 10,98,39,924/-. While reaching this conclusion, the AO made almost the very same additions which were the subject matter of the first round.

12.1 This is an aspect which is not disputed by Mr Sanjay Kumar, senior standing counsel, who appears on behalf of the appellant/revenue.

13. The respondent/assessee, being aggrieved by the assessment order dated 02.03.2015 passed by the AO, once again, preferred an appeal with the CIT(A). This time around as well, the CIT(A) allowed the appeal of respondent/assessee and quashed the assessment order based on the following broad grounds:

(i) The AO had carried out reassessment based on the very same set of facts which were before the AO in the first round. In other words, no fresh

tangible material formed the basis of the reassessment order.

(ii) The authority granting approval for triggering the reassessment proceedings, i.e., the competent authority or designated authority, had done so mechanically, without applying its mind.

(iii). No notice under Section 143(2) of the Act was issued to the respondent/assessee.

(iv). Contrary to what the AO had recorded, the respondent/assessee had taken the plea that the return filed in the first round should be treated as return in response to the notice issued under Section 148 of the Act.

14. The CIT(A), thus, concluded that the assessment has been made without the AO validly assuming jurisdiction and since no notice under Section 143(2) of the Act had been issued, it was bad in law.

15. It is against the said order of the CIT(A) that the appellant/revenue preferred an appeal before the Tribunal. The Tribunal *via* the impugned order sustained the view taken by the CIT(A).

Submissions of Counsel

16. Mr Kumar submits with all the emphasis at his command that since the earlier assessment order dated 26.12.2011 had been quashed by the CIT(A), *via* order dated 01.02.2013, the AO was well within his rights to trigger the reassessment proceedings under Section 147/148 of the Act.

17. To a query, as to whether any fresh material was found by the AO, Mr Kumar candidly stated that there was no fresh material found.

18. Mr Kumar's argument, however, was that based on the material found in the first round, reassessment proceedings could have been triggered by the AO, for the reason that the scheme of Section 153C and Section 147/148 are materially different.

Analysis and Reasons

19. We have heard Mr Kumar at some length and also perused the record. The facts set forth hereinabove by us are not in dispute.

20. What has emerged from the record, to put it pithily, is the following:

(i) The assessment order dated 26.12.2011 in the first round was framed under Section 143(3) read with Section 153C of the Act. The assessment order was set aside by the CITA on the ground that no incriminating material had been found against the respondent/assessee.

(ii) In the reassessment proceedings triggered under Section 147/148 of the Act, substantially the very same additions were made which were the subject matter of the first round.

(iii) No fresh material was found when reassessment proceedings were triggered under Section 147/148 of the Act.

(iv) There is material on record, i.e., letter dated 06.09.2013, which pointed in the direction that the respondent/assessee had taken the plea that its original return should be treated as return in response to the notice issued under Section 148 of the Act.

(v) While according sanction, the concerned authority did not apply its mind, especially to the aspect that there was no fresh material available against the respondent/assessee while triggering the reassessment proceedings.

21. As noted above, the assessment order in the second round was passed under Section 147 read with Section 144 of the Act.

22. Section 144 of the Act concededly deals with the situation where *inter alia*, the assessee fails to file a return or fails to comply with all the terms of the notice issued under Section 142 or fails to comply with the direction

issued under sub-section (2A) of Section 142 or fails to comply with the terms of the notice issued under Section 143(2) of the Act.

23. As noted above, the record shows that the respondent/assessee's return was in place. The respondent/assessee had taken the plea that the earlier return should be treated as a return in response to notice under Section 148 of the Act.

24. Therefore, for the AO to take recourse to Section 144 of the Act was completely uncalled.

25. In our opinion, Section 144 of the Act was taken recourse to under a mistaken belief, or otherwise, that there was no return on record.

26. Since a response was on record, undoubtedly, the AO was required to issue a notice under Section 143(2) of the Act and then proceed further in the matter, and perhaps thereafter, frame an assessment under Section 147 read with Section 144 of the Act.

26.1. This was not done.

27. Therefore, we are of the view that order passed by the Tribunal does not call for any interference.

28. No substantial question of law arises for consideration.

29. Accordingly, the appeal is dismissed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 20, 2023/SA

Click here to check corrigendum, if any