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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 27.02.2023*

+ **W.P.(C) 999/2022 & CM APPL. 2842/2022**

SANJAY KUMAR

..... Petitioner

Through: Mr M.S Syali, Sr. Adv. with Ms
Mahua Kalra & Mr Tarun Singh
Advs.

versus

**ASSISTANT COMMISSIONER OF
INCOME TAX & ANR.**

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

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)

PREFACE

1. This writ petition seeks to challenge the notice dated 30.03.2021 issued under Section 148 of the Income Tax Act, 1961 [in short, "Act"] concerning Assessment Year (AY) 2016-2017.

2. The broad facts which are required to be noticed to adjudicate this writ petition are the following:

i. The petitioner envisaged interest, it appears, in purchasing the Flat described as Unit B-203, Advant Navis Business Park, Sector-142, Noida (hereinafter referred to as the "Flat") for progressing his profession.

ii. On 15.04.2013 the concerned builder/seller i.e., Noida & Advant IT Park Pvt Ltd. [hereafter referred to as the "builder/seller"] made a provisional allotment in favour of the petitioner.

3. The petitioner, it appears, was handed over the possession of the Flat on 23.09.2013, subject to payment of the balance amount, after the woodwork concerning interiors was carried out.

4. As agreed between the petitioner and the builder/seller, instalments towards the agreed consideration for the Flat were made over on the following dates:

i. First instalment was paid on 15.04.2013, i.e., on the date when the provisional allotment was made, amounting to Rs 2 crores.

ii. Second instalment amounting to Rs 1,98,00,000/- was paid on 23.09.2013.

iii. Third instalment amounting to Rs 49,50,000/- (after adjusting TDS) was paid on 30.01.2014.

5. The record shows that the remaining instalments, albeit after adjusting withholding tax were paid in the Financial Year (FY) 2014-2015 on the following dates:

i. Rs 1,70,00,000/- was paid on 09.05.2014.

ii. Rs 31,51,705/- was paid on 14.06.2014.

iii. Rs 15,00,000/- was paid on 01.08.2014.

6. Because the entire sale consideration amounting to Rs 6,22,21,160/- had been paid, a “no dues” certificate was issued to the petitioner by the builder/seller on 01.08.2014.

7. The record shows that the petitioner filed his return of income for AY 2014-2015 on 30.09.2014. In the return, the petitioner had pegged his income chargeable to tax at Rs 5,28,11,460/-.

7.1 Pertinently, in this return, the petitioner had claimed depreciation on the Flat by showing it as a fixed asset.

8. Crucially, in the succeeding AY, i.e., AY 2015-2016, as well the petitioner, had claimed depreciation qua the Flat. The return for AY 2015-2016 was filed on 30.09.2015. The petitioner, this time around, had pegged his income chargeable to tax at Rs. 4,02,88,000/-.

9. Since a part of the money paid to the builder/seller for purchasing the Flat was financed *via* a loan taken from HDFC Bank, the petitioner had shown the loan amount as a liability in his balance sheet relevant for AY 2015-2016.

10. Consistent with the previous two AYs, in AY 2016-2017, the petitioner, once again claimed depreciation on the Flat and disclosed his outstanding liability, *qua* the loan taken from HDFC Bank.

10.1 In this year, the petitioner had declared Rs. 99,36.090/- as his income chargeable to tax.

10.2 Return for the said AY was filed on 18.10.2016.

11. There is no dispute raised before us that the return for AY 2016-2017 was accepted under Section 143(1) of the Act.

11.1 Intimation regarding the same was issued to the petitioner on 05.01.2017.

12. It appears that a rectification order under Section 154 of the Act was passed on 17.05.2017 regarding correction in the tax refund payable to the petitioner for AY 2016-2017.

13. The trouble, so to say, for the petitioner began when a notice dated 17.09.2019 under Section 133(6) of the Act was issued to him.

13.1 This notice was issued on 17.09.2019, whereby several queries were raised and information was sought regarding the Flat.

13.2 Interestingly, the queries raised concerned FY 2015-2016, relatable

to AY 2016-2017.

14. We have on record the response filed by the petitioner to the notice issued under Section 133(6) of the Act.

14.1 This response is dated 24.09.2019. *Inter-alia*, in his response, the petitioner set forth the source of investment made by him in the Flat. Significantly, the petitioner disclosed that out of the total purchase consideration amounting to Rs 6,22,21,160/-, Rs 1,70,00,000/- was secured by way of a loan, as noticed above, from HDFC Bank while the remaining amount was obtained through own sources, which included investments and fixed deposits.

15. Despite the response submitted by the petitioner, respondent no. 1 triggered a notice under Section 148 of the Act on 30.03.2021, which as indicated above, is impugned in the instant writ petition.

16. Having received the aforementioned notice, the petitioner asked for being provided reasons and the approval granted for triggering the reassessment proceedings.

16.1 This request was made by the petitioner on 29.04.2021. Besides this, the petitioner, *via* communication dated 31.05.2021, informed the Assessing Officer (AO) that the return already filed *vis-à-vis* the AY 2016-2017 should be treated as a return in response to the notice dated 29.04.2021 issued under Section 148 of the Act.

16.2 We have on record both the reasons recorded as well as the approval granted. The record, presently made available to us, shows that the sanction for triggering reassessment proceedings was granted on 30.03.2021. In consonance with the judgment of the Supreme Court rendered in ***GKN Drive Shaft v ITO*** 259 ITR 19 (SC), objections were filed by the petitioner on

02.09.2021. These objections were disposed of by the AO on 03.12.2021.

SUBMISSIONS OF COUNSEL

17. Mr M.S. Syali, learned Senior Counsel, who appears on behalf of the petitioner, submits that the entire reassessment proceedings are jurisdictionally flawed for the following reasons:

i. Firstly, the reasons to believe appear to have no link with the material on record and the formation of the opinion/belief that income chargeable to tax had escaped assessment.

ii. Second, the order disposing of the objections dated 03.12.2021 is, virtually, a non-speaking order.

iii. Third, the sanctioning authority i.e., respondent no. 2, has not applied his mind to any of the facets which the petitioner had brought to the fore, including the fact that no reassessment proceedings could have been triggered *qua* the relevant AY i.e., AY 2016-2017.

iv. Fourth, in any event, even according to the respondent/revenue, the sale was consummated in the preceding AY and therefore, reassessment proceedings could not have been triggered for the AY in issue i.e., AY 2016-2017.

v. Fifth, the amount paid by the petitioner towards stamp duty, i.e., Rs 31,11,500/-, cannot be construed as unexplained expenditure and brought to tax under Section 69C of the Act.

18. Mr Abhishek Maratha, who appears on behalf of the respondent/revenue, on the other hand, submits that all issues which have been raised by the petitioner can be verified and examined in the reassessment proceedings.

18.1 Mr Maratha, in sum, seeks to rely upon the order disposing of the objections dated 03.12.2021 in support of the respondent's/revenue's case.

ANALYSIS AND REASONING

19. We have heard learned counsel for the parties and examined the record. According to us, first and foremost, what is most disconcerting is that the AO has failed to take into account the material on record, i.e., the objections filed by the petitioner and the response given by him to the notice dated 24.09.2019 issued under Section 133(6) of the Act.

20. The petitioner not only explained the source of his income but also adverted to the periodicity of the instalments remitted towards purchasing the Flat.

20.1 The petitioner, both in the reply dated 24.09.2019 and the objections set out in the communication dated 2.09.2021, had clearly indicated that the payments made towards the Flat spread out between 15.04.2013 and 01.08.2014, i.e., the payments had been made in FY 2013-14 and 2014-15 and that the applicable tax at source had been deducted for all instalments, except the first instalment.

20.2 Besides this, the petitioner had also asserted that he had consistently adverted to the Flat in the fixed assets schedule appended to his balance sheet filed with the income tax return for the relevant AY.

20.3 The AO, for some unknown reason, has dealt with these assertions, which were backed by facts and figures, cursorily, to say the least.

The petitioner had claimed that he had consistently disclosed the Flat as an asset and, accordingly, claimed depreciation *qua* the same; an aspect for some inexplicable reasons, the AO failed to notice and deal with.

21. Pertinently, the AO failed to notice that the reassessment proceedings could not have been triggered for the AY in issue i.e., AY 2016-2017, having regard to the fact that the payments for the Flat were made in FY 2013-14 (AY 2014-15) and FY 2014-15 (AY 2015-16), and that no part of the transaction took place in the assessment year in question. In other words, the factual ingredients for the assumption of jurisdiction in the AY in issue, i.e., AY 2016-17, were missing.

22. The injury to the respondent is compounded by the fact that respondent no. 2 while sanctioning the commencement of reassessment proceedings, has simply rubber-stamped the proposal by making the following endorsement:

“Yes, I am satisfied that this is a fit case for action under Section 147 of I.T. Act.”

23. Given the explanation provided by the petitioner in his reply to the notice issued under Section 133(6) of the Act and in the objections filed by him, this approach certainly does not sit well with us. The courts have repeatedly disapproved of approvals/sanctions granted for the commencement of reassessment proceedings, which are undoubtedly a serious business, by the superior officers without applying their mind to the material on record.

23.1 The following observations made by the Division Bench of this court in *Synfonia Tradelinks Pvt. Ltd. v Income Tax Officer, Ward 22(4)* (2021) 435 ITR 642, being pertinent, are set forth hereafter:

“35. This apart, what is even more disconcerting is the fact that respondent no.2, who accorded sanction for triggering the process under Section 147 of the Act, simply rubber-stamped the reasons furnished by respondent no.1 for issuance of notice under Section 148 of the Act.

36. *The provisions of Section 151(1) of the Act required respondent no.2 to satisfy himself as to whether it was a fit case in which sanction should be accorded for issuance of notice under Section 148 of the Act and, thus, triggering the process of reassessment under Section 147. The sanction-order passed by respondent no.2 simply contains the endorsement 'approved'.*

37. *In our view, the sanction-order passed by respondent no.2 presents, metaphorically speaking, 'the inscrutable face of sphinx' (See: **Breen v. Amalgamated Engineering Union** [1971] 2 QB 17500; Also see: **State of H.P. v. Sardara Singh**, (2008) 9 SCC 392). In our view, the satisfaction arrived at by the concerned officer should be discernible from the sanction-order passed under Section 151 of the Act. In this context, the observations made by the Supreme Court in **Chhugamal Rajpal vs. S.P. Chaliha**, (1971) 1 SCC 453 being apposite are extracted hereafter :*

"... Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

[Emphasis is ours]

38. *Also see the observations made in the judgment of the Division Bench of this Court in **The Central India Electric Supply Co. Ltd. vs. Income Tax Officer, Company Circle – X, New Delhi & Anr.**, (2011) SCC OnLine Del 472 : (2011) 333 ITR 237.*

"19. In respect of the first plea, if the judgments in Chuggamal Rajpal's case (supra); Chanchal Kumar Chatterjee's case (supra); and Govinda Choudhury & Sons's case (supra) are examined, the absence of reasons by the assessing officer does not exist. This is so as along with the proforma, reasons set out by the assessing officer were, in fact, given. However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is

affixed. It is signed by a Under Secretary underneath a stamped 'Yes' against the column which queried as to whether the approval of the Board had been taken. **Rubber stamping of underlying material is hardly a process which can get the imprimatur of this Court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the ITO was to be agreed upon, the least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority.** Our opinion is fortified by the decision of the Apex Court in *Union of India v. M.L. Capoor and Ors.* MANU/SC/0405/1973 : AIR 1974 SC 87 wherein it was observed as under:

27. ... We find considerable force in the submission made on behalf of the Respondents that the "rubber-stamp" reason given mechanically for the supersession of each officer does not amount to "reasons for the proposed supersession". The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion.

28. ... If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. ...

(emphasis supplied)

This is completely absent in the present case. **Thus, we find force in the contention of learned Counsel for the Appellant that there has not been [a] proper application of mind by the Board and if a proper application had taken place, there would have been no reason to re-open the closed chapter in view of what we are setting out hereinafter.**"

[Emphasis is ours]

24. Thus for the foregoing reasons, we are inclined to accept the submissions made by Mr Syali that this was not a fit case for triggering

reassessment proceedings, contrary to what has been held by respondent no.2.

24.1 More so, the material placed on record by the petitioner had, in our opinion, failed to establish a nexus with the belief formed by respondent no. 1, that the income chargeable to tax in the relevant AY, i.e., AY 2016-17, had escaped assessment.

25. Accordingly, the impugned notice dated 30.03.2021 is quashed.

26. Writ petition is disposed of in the aforesaid terms. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 27, 2023/r