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

\+ **W.P.(C) 7190/2023**

CENTRE FOR POLICY RESEARCH ..... Petitioner

Through: Mr Arvind P. Datar, Sr Advocate with Mr Sachit Jolly, Ms Disha Jham, Ms Soumya Singh and Mr Sohum Dua Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 14, NEW DELHI & ANR. ..... Respondents

Through: Mr Vipul Agarwal, Sr Standing Counsel with Mr Dushyant Gupta, Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

O R D E R

% 24.05.2023

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

CM Appl.27981/2023

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

W.P.(C) 7190/2023 & CM Appl.27980/2023 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. This writ petition concerns Assessment Year (AY) 2016-17.

3. The petitioner has assailed the notices dated 28.03.2023 and 29.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"].

3.1 Besides this, challenge is also laid to the order dated 19.04.2023 passed under Section 148A(d) of the Act. In addition thereto, a challenge is laid to the consequential notice dated 19.04.2023 issued under Section 148 of the Act.

4. Mr Arvind P. Datar, learned senior counsel, who appears on behalf of the petitioner, submits that the reassessment proceeding has been triggered pursuant to a survey carried out against the petitioner.

4.1 It is, therefore, contended that the respondents/revenue were duty-bound to furnish to the petitioner the entire survey report, as it forms the basis for triggering the reassessment proceeding.

4.2 It is, thus, the submission of Mr Datar that there has been a breach of principles of natural justice, inasmuch as the survey report, in its entirety, has not been furnished to the petitioner.

5. Furthermore, Mr Datar has drawn our attention to the order dated 19.04.2023 passed under Section 148A(d) of the Act, in support of his plea that the reassessment proceeding has been commenced *qua* the expenditure incurred by the petitioner. [See Annexure P-3 appended on page 230 at pages 261 to 264]. For the sake of convenience, paragraphs 10.1 and 10.4 of the said order are extracted hereafter:

> *"10.1 In view of the totality of the facts, as discussed above, which is summarized below it can be said that activities of the assessee trust are not genuine and expenditure are not being made as per objects of the trust.*
>
> - *Involvement of CPR in Hasdeo protests through JASVS*
> - *Involvement of CPR in litigation activities across India through paralegal workers under Namati project.*
> - *Subsidizing individuals for publication of books*
> - *Violating FCRA by giving sub-grants to non-FCRA entity*
>
> *xxx* *xxx* *xxx*

10.4 Expenditure incurred by the assessee for which assessee's activities are not being carried out in accordance with the objects of the Trust are as below:
(i) ***Payment to JASVS amounting to INR 359, 150/m***
(ii) ***Utilization of funds from Namati amounting to INR 1,38,32,400/a***
(iii) ***Expenses related to Book Launch Event amounting to INR 6,74,831/m***
The total expenses amounting to INR1,48,66,381/- incurred by the assessee for which assessee failed to fulfil the necessary condition for claiming benefit u/s 11&12 of *IT* ***Act,1961 has escaped assessment which is more than the 50 Lakhs limit as prescribed in Section 149(1)(b) of IT Act, 1961"***
Further expenditure incurred by the assessee towards activities which are not as per objects of Trust is duly covered in the definition of ***Section-149(1)(b)(ii)*** *of the IT Act, 1961 i.e.* ***expenditure in respect of transaction or 149(1)(b)(iii) i.e an entry in the books of account. …"***

5.2 Mr Datar says that the time limit for issuance of notice under Section 148, as stipulated under Section 149 of the Act, underwent an amendment by virtue of Finance Act 2022. In this context, the following part of the amended Section 149 is adverted to by Mr Datar:

"149. ***Time Limit for Notice***
(1) No notice under section 148 shall be issued for the relevant assessment year,-
(a) …
(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of –
(i) an asset;
(ii) <u>expenditure in respect of a transaction or in relation to an event or occasion; or</u>
(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more…"

[Emphasis is ours]

5.3 Mr Datar says that, prior to the amendment brought about by the Finance Act 2022, with effect from 01.04.2022, the said provision read as follows:

> *"149.* ***Time limit for notice****. –*
> *(1) no notice under section 148 shall be issued for the relevant assessment year, -*
> *(a) ....*
> *(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year;...*

5.4 It is contended, as noticed above, that the amended provision i.e., the amended Section 149 of the Act has been applied to the petitioner, although the transaction relates to AY 2016-17.

6. Mr Vipul Agarwal, learned senior standing counsel, who appears on behalf of the respondents/revenue, on the other hand, states that since the reassessment proceeding was triggered *qua* the petitioner on account of a survey action, provisions of clause(ii) of Explanation 2 of Section 148 of the Act, would be applicable.

6.1 In other words, Mr Agarwal says that the information which emerged post the survey would be deemed to be considered as information, suggesting that income chargeable to tax has escaped assessment.

6.2 It is also Mr Agarwal's submission that since clause(a) to the first proviso appended to Section 148A of the Act does not refer to "survey", the regime provided under Section 148A had to be applied to the petitioner, which is why notices were issued under Section 148A(b) of the Act.

7. What emerges from the record is that, clearly, two notices were issued

under Section 148A(b) of the Act, i.e., notice dated 28.03.2023 and 29.03.2023.

8. What has also emerged is that the entire survey report was not submitted to the petitioner, since Mr Agarwal, during the course of his submissions, has said that the relied-upon portion of survey report was provided to the petitioner.

9. We may also note that Mr Agarwal says that information came to the fore only on 07.09.2022, when the survey was conducted, i.e., after the Finance Act 2022 kicked in.

10. Mr Datar, however, submits that the expenditure was incurred prior to 01.04.2022, and therefore, the unamended provisions would apply and consequently, proceedings would be time-barred.

10.1 In support of his plea, Mr Datar has relied upon Instruction No.1/2022 dated 11.05.2022 and the Memorandum Explaining the Provisions in the Finance Bill 2022.

11. According to us, the matter requires examination. Besides this, as noticed above, it is, at least, *prima facie*, evident to us that Section 149 of the Act, as amended, may not be applicable.

12. Issue notice.

12.1 Mr Vipul Agarwal accepts notice on behalf of the respondents/ revenue.

13. Counter-affidavit will be filed within six weeks.

13.1 Rejoinder thereto, if any, will be filed at least five days before the next date of hearing.

14. List the matter on 22.11.2023.

15. In the meanwhile, there shall be a stay on the continuation of the reassessment proceedings, till further directions of the court.

16. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 24, 2023/pmc *Click here to check corrigendum, if any*