

HIGH COURT OF DELHI**Bench: Chief Justice Satish Chandra Sharma****Justice Tushar Rao Gedela****Date of Decision: 09 November 2023**

W.P. (C) 4913/2023 & CM APPLN. 19009/2023

BHOLI KUMAR**..... Petitioner****versus****ITO WARD 51(1) DELHI & ANR.****..... Respondents****Legislation:**

Article 226 of the Constitution of India

Sections 148 and 148A(d) of the Income Tax Act, 1961

Subject: Writ petition challenging the order and notice issued under section 148A(d) and section 148 of the Income Tax Act, 1961, pertaining to the alleged tax evasion involving a meager amount of Rs. 12,800.

Headnotes:

Income Tax Assessment and Judicial Review – Petition against order and notice under Income Tax Act for alleged tax evasion. The case revolves around the question of whether the Revenue should continue proceedings given the small amount involved. [Para 1]

Petitioner’s Prayers for Relief – Seeking quashing of the order dated 29.07.2022 and notice dated 30.07.2022. Requests include writs of Mandamus/Certiorari or similar orders to set aside the actions taken by the Revenue. [Para 2]

Contest over Amount of Income Escapement – Counsel for petitioner asserts that the income escaping assessment is not more than Rs. 12,800. The respondent’s counsel, representing the Revenue, concedes to the meager amount after internal deliberations. [Paras 3, 5]

Revenue’s Decision and Court’s Disposition – Based on Revenue’s decision to not pursue the case due to the negligible amount, the court disposes of the petition. The broader legal questions are left open for determination in appropriate future cases. [Paras 6-7]

Referred Cases: None

Advocates:

For the Petitioner: Mr. Nagesh Behl, Advocate.

For the Respondents: Mr. Abhishek Maratha, Sr. Standing Counsel with Mr. Akshat Singh, Jr. Standing Counsel.

J U D G M E N T

TUSHAR RAO GEDELA, J. (ORAL)

1. This writ petition has been filed under Article 226 of the Constitution of India seeking setting aside of the order dated 29.07.2022 issued under section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) as well as notice dated 30.07.2022 issued under section 148 of the Act by the respondent No. 1.

2. The prayers made in the writ petition are as under:-

“A. Issue a writ in the nature of Mandamus/Certiorari or any other like writ, order or direction, setting aside and quash the order dated 29.07.2022 issued u/s 148A(d) as well as second notice dated 30.07.2022 u/s 148 of the Act issued by the Respondent No. 1 and entire assessment proceedings after issue of said notice; and/or

B. Issue a writ of and/or order and/or direction in the nature of Prohibition commanding Respondents to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said order passed u/s 148A(d) of the Act; and/or

C. Issue a writ in the nature of Mandamus/Certiorari or any other like writ, order or direction, setting aside and quash the first notice dated 29.06.2021 issued u/s 148 and entire assessment proceedings after issue of said notice; and/or

D. Pass any such other order(s) or direction(s) as this Hon’ble Court may deem fit in the facts and circumstances of the present case.”

3. According to Mr. Nagesh Behl, learned counsel for the petitioner/assessee, the income chargeable to tax which has escaped assessment is not more than Rs. 12,800. He submits that even if the case set up by the revenue is taken into account, the income chargeable to tax cannot be more than the aforesaid amount.

4. On 25.09.2023, Mr. Abhishek Maratha, learned Senior Standing Counsel for the respondent/ revenue submits that he would take instructions in the matter as to whether the Revenue would like to pursue the matter having regard to the amount involved.

5. Today, Mr. Maratha brought the notice of this Court to a letter dated 09.10.2023 and the relevant paragraphs are extracted hereunder:-

“A mail was received in writ petition (C) No. 4913 of 2023 in the matter of Bholi Kumar, PAN-ATJPK4166B, AY-2017-18. The captioned matter was listed on 25.09.202, wherein, the Counsel for Petitioner has said that now after the filing of the counter Affidavit the income escaping has come down to Rs. 12,800/-. Therefore, the Hon’ble court has asked the standing

counsel to write to the Ld. PCIT concerned that” whether the revenue wishes to continue with the escapement of such meager amount of income.’

In this regard, the matter was discussed with Ld. Pr. CIT and following observation has been made by Ld. Pr CIT:

“As the Hon’ble High Court has observed that the amount being agitated is meager, the undersigned does not wish to continue further on this issue. Other than that on the Substantial Questions of Law, however, we stand by the submission made in the Counter Affidavit.”

(Bold portion marked as per the letter dated 09.10.2023)

6. Mr. Maratha, Senior Standing Counsel submits that in view of the above, this Court may dispose of the present petition and leave the Question of Law open.

7. In view of the submissions made by Mr. Maratha, learned Senior Standing Counsel coupled with the letter placed on record on behalf of the Revenue, we dispose of the present writ petition in terms of the fact that the Revenue does not wish to pursue the case on the ground that the amount is meager. However, the Question of Law, if any, are left open to be decided in an appropriate case.

8. The petition is disposed of in above terms, alongwith the pending applications, if any.

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