

(2022) 06 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Petition No. 8015 Of 2022, Civil Miscellaneous Application
No. 24373 Of 2022

Pankaj Saini

APPELLANT

Vs

Income Tax Officer & Ors.

RESPONDENT

Date of Decision : 02-06-2022

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 156

Citation : (2022) 06 DEL CK 0035

Hon'ble Judges : Manmohan, J; Manmeet Pritam Singh Arora, J

Bench : Division Bench

Advocate : Arvind Kumar, Devina Sharma, Puneet Rai, Adeeba Mujahid

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the notice issued under Section 148 of the Income Tax Act, 1961 (for short 'Act') dated 31st March, 2021 as well as the assessment order passed under Section 147 of the Act for the Assessment Year 2017-18 and the demand notice issued under Section 156 of the Act dated 31st March, 2022.

2. Learned counsel for the Petitioner states that the impugned notice dated 31st March, 2021 has not been preceded by recording of reasons to believe that there has been escapement of income for the Assessment Year 2017-18, which is a mandatory requirement for issuance of notice under Section 148 of the Act. He states that the upon perusal of the copy of the reasons to believe for re-opening of assessment, which was provided on 22nd March, 2022 by the Respondent, it is apparent that the said reasons to believe has been recorded by the Respondent No.1 on 22nd April, 2021 only i.e. after having issued the impugned notice.

3. On the last date of hearing, this Court had directed the Assessing Officer to be personally present in Court along with the file. Today, the Assessing Officer is

personally present along with the relevant files.

4. A perusal of the said files reveals that the Petitioner had been issued two show cause notices dated 31st March, 2021 and 24th May, 2021 under Section 148 of the Act. The Assessing Officer states that second show cause notice was issued as the approval form containing the sanction of the Senior Officers for notice dated 31st March, 2021 had been misplaced during scanning, and thus he had issued a second show cause notice dated 24th May, 2021 after obtaining approval/sanction from senior officers on 22nd April, 2022. He clarifies that the reasons to believe recorded on 22nd April, 2021 pertained to notice dated 24th May, 2021 issued under Section 148 of the Act.

5. Keeping in view the aforesaid facts which are evident from the record, this Court sets aside the notice dated 31st March, 2021 issued under Section 148 as well as the assessment order dated 31st March, 2022 for the Assessment Year 2017-18.

6. However, this Court clarifies that the Respondents are at liberty to proceed ahead with the second show cause notice dated 24th May, 2021 issued under Section 148 of the Act in accordance with the judgment of the Supreme Court in Union of India & Ors. vs. Ashish Agarwal, reported in 2022 SCC OnLine SC 543.

7. With the aforesaid direction, the present writ petition and application are disposed of. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.