(2022) 09 DEL CK 0155

In the Delhi High Court

Case No : Civil Writ Petition No. 13712 Of 2022

Sanjay Gupta APPELLANT

Vs

Union Of India & Ors. RESPONDENT

Date of Decision : 22-09-2022

Acts Referred:
Income Tax Act, 1961 — Section 148, 148A(b), 148A(d)

Citation : (2022) 09 DEL CK 0155

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

Bench : Division Bench

Advocate : Simranjeet Singh, Kunal Sharma, Shray Nargotra, Rajesh Kumar, Puneet Yadav, K.B.Sharma

Final Decision : Disposed Of

Judgement

Manmohan, J

C.M.No.41873/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.13712/2022 & C.M.No.41872/2022

1. Present writ petition has been filed challenging the notice dated 17th March, 2022 for the Assessment Year 2018-19, notice dated 22nd March, 2022 for the Assessment Year 2015-16, both issued under Section 148A(b) of the Income Tax Act, 1961 ('the Act') and notice dated 28th March, 2021 issued under Section 148 of the Act for Assessment Year 2017-18 as well as the orders dated 9th April, 2022 passed under Section 148A(d) of the Act for the Assessment Years 2018-19 and 2015-16.

2. Learned counsel for the Petitioner states that the impugned notices are without jurisdiction as the same have been issued in the name of a nonexistent

partnership firm – Railton Electronics. He states that the Petitioner, during the reassessment proceedings, duly informed the department vide replies dated 23rd March, 2022 and 19th January, 2022 that the partnership firm being M/s Railton Electronics having PAN Number AANFR1676E was dissolved as per the Deed of Dissolution dated 01st April, 2013 and thereafter, the firm was taken over by the Petitioner as a sole proprietor.

3. He further states that as per the letter obtained from the erstwhile partnership firm's bank, the partnership firm's bank account was closed on 19th July, 2013 itself. He contends that the Railton Electronics is now maintaining a proprietorship account which was opened on 25th July, 2013. In support of his contention, he relies upon certificates issued by petitioner's banker.

4. Learned counsel for the Petitioner emphasises that the alleged transactions mentioned in the notices issued under Section 148A(b) of the Act are duly accounted for in the return of the sole proprietorship. He points out that there has been a scrutiny assessment in the account of the sole proprietorship firm in the name of a sole proprietor – Mr. Sanjay Gupta.

5. Issue notice. Mr.Kunal Sharma, learned senior standing accepts notice on behalf of the Revenue and Mr.Rajesh Kumar, Advocate accepts notice on behalf of UOI. Mr.Kunal Sharma points out that the bank certificates relied upon by the Petitioner in the present proceedings had not bee annexed in the replies to the show cause notices issued under Section 148A(b) of the Act.

6. Keeping in view the aforesaid, this Court sets aside the orders dated 9 th April, 2022 passed under Section 148A(d) of the Act for the Assessment Years 2018-19 & 2015-16, the notices issued under Section 148 and directs the Petitioner to file supplementary replies before the Assessing Officer clearly stating that the transactions referred to in the notices issued under Section 148A(b) of the Act have been duly accounted for in the account of the sole proprietorship firm and have been offered to tax. Along with the replies, the Petitioner shall enclose all the relevant documents including certificates issued by the Canara Bank, income tax returns, bank statements as well as the assessment orders passed in the name of a sole proprietorship for the said assessment years, within two weeks. The Assessing Officer is directed to pass fresh orders under Section 148A(d) of the Act within a period of four weeks thereafter.

7. With the aforesaid directions, present writ petition along with pending application stands disposed of. This Court clarifies that the rights and contentions of all the parties are left open.