

(2023) 08 DEL CK 0192

In the Delhi High Court

Case No : Civil Writ Petition No. 8651 Of 2022, Civil Miscellaneous Application
No. 26053 Of 2022

Shalini Mittal

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 23-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 54, 54EC, 148, 148A(b), 148A(d)

Citation : (2023) 08 DEL CK 0192

Hon'ble Judges : Rajiv Shakdher, J; Girish Kathpalia, J

Bench : Division Bench

Advocate : Mudit Gupta, Chetanya Kapoor, Aseem Chawla, Pratishtha Choudhary, Aditya Gupta

Final Decision : Allowed

Judgement

Girish Kathpalia, J

1. By way of this writ petition brought under Articles 226 read with 227 of the Constitution of India, petitioner has sought following reliefs pertaining to Assessment Year 2018-19:

"a) Quash the Impugned Order dated 08.04.2022 passed by the Respondent U/s. 148A(d) of the Income Tax Act, 1961;

b) Quash the Impugned Final Notice dated 08.04.2022 issued by the Respondent U/s. 148 of the Income Tax Act, 1961;

c) Quash the Impugned Corrigendum dated 01.04.2022 issued by the Respondent under the Act;

d) Quash the Impugned Show Cause Notice dated 25.03.2022 issued by the Respondent U/s. 148A(b) of the Income Tax Act, 1961;

e) Pass any other and further order(s), as this Hon'ble Court may deem fit and

proper in the facts and circumstances of the present case.”

2. The issue involved in this writ petition was crystallized on 30.05.2022 in following terms:

“Present writ petition has been filed challenging the order issued under Section 148A(d) of the Income Tax Act, 1961 [for short ‘the Act’] and the notice issued under Section 148 of the Act both dated 8th April, 2022 for the Assessment Year 2018-2019 as well as the corrigendum dated 1st April, 2022 and the notice dated 25th March, 2022 issued under Section 148A(b) of the Act.

Learned counsel for the petitioner states that though the petitioner is a permanent resident of Gurugram, Haryana, yet the impugned notices and orders have been issued by the Assessing Officer, Ward 72(1), Delhi who is not the Jurisdictional Assessing Officer of the Petitioner. He states that the transactions on the basis of which the reassessment proceedings are sought to be initiated against the Petitioner have already been declared by the Petitioner in her return of income for the Financial Year. He further states that the proceedings had been initiated on the ground that the Petitioner has not filed her bank statements which he points out that the Petitioner had never been called upon to submit.

He also points out that the impugned order dated 8th April, 2022 has been issued on entirely different grounds than those alleged by the Respondent in the show cause notice dated 25th March, 2022. He emphasizes that show cause notice dated 25th March, 2022 sought to tax Rs.2,43,87,500/-which had been claimed by the petitioner as deduction under Section 54 of the Act on the ground that the Petitioner had not provided any details regarding the reinvestment of the amount. Pursuant to this the Petitioner filed the deed of purchase of residential property and proof of investment made in bonds. However, in the order dated 8th April, 2022, the Assessing Officer states that the Petitioner has not disclosed the consideration received by her from sale of immovable property and thus the capital gain on the transaction remained undisclosed. It also states that the assessee has not provided the sale deed of the property that was sold for Rs.3,38,33,333/-to verify the sale consideration that was declared by the petitioner and that the assessee has not provided any bank account statement to support her claim under Section 54 of the Act with regards to the payment made for the purchase of the immovable property.

Issue notice.

Mr. Ruchir Bhatia, learned counsel accepts notice on behalf of the Respondent. He prays for and is permitted to file a counter affidavit within six weeks. Rejoinder affidavit, if any, be filed before the next date of hearing.

Though the Assessing Officer is permitted to pass the assessment order, yet it is directed that the same shall not be given effect to and same shall be subject to further orders to be passed by this Court.

List on 13th October, 2022”.

3. On 28.07.2023, we heard learned counsel for both sides and examined the record. After hearing part submissions of both sides on that day, learned counsel for petitioner opted to drop the jurisdictional challenge to the impugned notices and order in the interest of expeditious disposal and on the other hand, learned counsel for respondent in all fairness conceded to the material on record. The documents on record support the contentions of petitioner as afore-quoted from order dated 30.05.2022.

3.1 By way of notice dated 25.03.2022 under Section 148A(b) of the Income Tax Act, the Assessing Officer directed the petitioner to submit response with supporting documents on or before 31.03.2022, alleging that according to the information received pertaining to Financial Year 2017-18 the petitioner had entered into a sale transaction of immovable property for total consideration of Rs. 3,38,33,333/- with Shri Anil Gupta and according to her Income Tax Return for the Assessment Year 2018-19, total long-term capital gain shown was Rs. 44,16,750/- after deduction of Rs. 2,43,87,500/- under Section 54 and Rs. 25,00,000/- under Section 54EC of Income Tax Act but no details had been made available regarding reinvestment of the amount claimed for deduction under Section 54 of the Act, thereby the petitioner was called upon to show-cause why Rs. 2,43,87,500/- be not taken as her income from capital gain and be taxed after issuing notice under Section 148 of the Act for escapement of income.

3.2 Accordingly, petitioner submitted a detailed reply dated 28.03.2022 to the said notice under Section 148A(b) of the Act, thereby asserting that all details and particulars stood duly furnished by her in her return income; and that the necessary documents pertaining to the deduction claimed under Section 54 of the Act were being attached with the said reply in the form of copy of registered sale deed and other evidence of investments in Bonds under Section 54EC of the Act; and that therefore, there was no occasion for issuance of notice under Section 148 of the Act. The E-proceedings Response Acknowledgement clearly shows as attachments, copies of the sale deeds and NHA Bonds.

3.3 Thereafter, the Assessing Officer issued a corrigendum dated 01.04.2022 to the notice dated 25.03.2022 under Section 148A(b) of the Act, thereby clarifying that the compliance date of the show-cause notice be read as 03.04.2022 instead of 31.03.2022.

3.4 Despite the aforesaid, the Assessing Officer issued order dated 08.04.2022 under Section 148A(d) coupled with notice under Section 148 of the Act against the petitioner, rejecting the contentions of the petitioner on the ground that the petitioner had not provided copy of sale deed and her bank account statement to support her claim of deductions under the Act.

4. As would be evident, the grounds on which the Assessing Officer rejected the contentions of the petitioner are totally contrary to the record and thereby not sustainable in the eyes of law. At the cost of repetition, alongwith her reply to notice under Section 148A(b) of the Act the petitioner had duly submitted a copy

of the concerned sale deed as well as copies of the NHAI Bonds in support of her claim of deductions, but apparently the same were not noticed by the Assessing Officer which led to passing of the impugned order under Section 148A(d) and issuance of notice under Section 148 of the Act.

5. Not only this, it is also contrary to record to allege that the petitioner did not disclose the amount of Rs. 3,38,3,333/- in her return of income for the Assessment year 2018-19. The copy of the said Income Tax Return for the Assessment Year 2018-19 appended to the writ petition, clearly discloses the said sale consideration coupled with the deductions claimed as described above. Apparently, prior to issuance of notice under Section 148A(b) of the Act, the Assessing Officer failed to notice the said disclosures.

6. In above circumstances, the irresistible conclusion we reach is that it is a clear case of non-application of mind by the Assessing Officer and consequently, the notice under Section 148A(b) of the Act, coupled with its corrigendum and followed by the consequent order under Section 148A(d) and notice under Section 148 of the Act cannot survive, so the same are hereby set aside.

7. Accordingly, the writ petition stands allowed, though granting liberty to the Assessing Officer to take further steps, if so advised, in accordance with the law.

8. File be consigned to records.