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

% *Judgement reserved on: 15.05.2023*
Judgement pronounced on : 25.05.2023

\+ **W.P.(C) 12104/2022**

PREM KUMAR CHOPRA ..... Petitioner

Through: Mr Deepak Chopra, & Mr Rohan Khare, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 46(1), NEW DELHI AND ORS.

..... Respondent

Through: Mr Abhishek Maratha, Sr. Standing Counsel for Revenue

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

GIRISH KATHPALIA, J.:

1. Cogent and consistent answering to every "why" is the DNA of demosprudence. Consistency of not just the content of reasoning, but consistency of also the anvil on which the process of reasoning rests are antedote to the vice of arbitrariness. Every decision making authority, be it judicial or administrative, being public servant is accountable to the State and its subjects. Consistency, both in content and in procedure has to be adhered to in order to ensure predictability of the decisions. The absence of consistency and the consequent unpredictability of the decisions, both judicial as well as administrative leads to cynicism in the society. In order to ensure procedural and content consistency in decisions, every decision

making authority should ensure that in a given set of circumstances, their decision must be on same lines as that of their predecessor or co-ordinate authorities in similar set of circumstances. Where a decision making authority finds itself unable to agree with the view earlier taken, by the predecessor or the co-ordinate, the authority concerned is duty bound to record cogent reasons for deviating. Significance of precedence cannot be ignored even in administrative decision making.

1.1 Two sets of identical circumstances pertaining to the assessment years 2015-16 and 2016-17, but same decision making authority, rendering two decisions inconsistent with each other is what faces us in this writ action.

2. The petitioner, assessed to income tax has approached this court under Articles 226/227 of the Constitution of India, seeking a writ of mandamus or any other appropriate writ to quash the notice dated 31.07.2022 issued under Section 148 of the Income Tax Act and the order dated 31.07.2022 under Section 148A(d) of the Act. Upon service of notice, the respondent revenue entered appearance through counsel and resisted the action. We heard learned counsel for both sides and examined the records.

3. Briefly stated, the case set up by the petitioner is as follows.

3.1 The petitioner, a senior citizen, being proprietor of M/s Chopra Brothers is an authorized dealer for Kiloskar Electric Motors and is engaged in trading of industrial electric motors, mono-block pumps and generator sets etc.

3.2 For the assessment year 2015-16, petitioner filed return of his income, declaring the same to be Rs. 19,94,970/-, which was processed under Section 143(1) of the Act. On 07.04.2021, respondent no. 1 issued notice under Section 148 of the Act, which on being challenged by the petitioner, was set aside in terms with decision of this court in the case of ***Mon Mohan Kohli vs CIT,*** (2021) 441 ITR 207 (Delhi).

3.3 Thereafter, in terms with the decision of the Hon'ble Supreme Court in the case of ***Union of India vs Ashish Aggarwal,*** 2022 SCC OnLine SC 543, respondent no.1 issued notice dated 26.05.2022 under Section 148A(b) of the Act, alleging that on 26.11.2016 a search had been conducted in the premises of an entry operator, namely Shri Mohit Garg and during that search, in his statement Shri Rajeev Khushwaha admitted having provided bogus sale/purchase bills in exchange for cash; and that during the year relevant to the assessment year 2015-16, M/s Chopra Brothers through its proprietor Shri Prem Kumar Chopra was one of the beneficiaries of such accommodation entries to the tune of Rs. 13,71,00,000/-.

3.4 According to the petitioner, an identical notice dated 25.07.2022 was issued to the petitioner for the accounting year 2016-17 as well.

3.5 The petitioner submitted replies dated 10.06.2022 and 21.07.2022 to the said show cause notice, thereby categorically denying any transaction with M/s Divya International and Shri Rajeev Khushwaha. Alongwith the replies, petitioner also submitted all relevant documents.

3.6 By way of order dated 28.07.2022, respondent no. 1 accepting the case set up by the petitioner, dropped the proceedings pertaining to the assessment year 2016-17, concluding that there is no escapement of income during financial year 2015-16 relevant to the assessment year 2016-17 insofar as there is no entry of transaction of sale or purchase by the bogus entity M/s Divya International, controlled by the entry operator Shri Rajeev Khushwaha to or from M/s Chopra Brothers and accordingly held that it is not a fit case for issuance of notice under Section 148 of the Act for assessment year 2016-17.

3.7 But soon thereafter, by way of order dated 31.07.2022 for the assessment year 2015-16, respondent no. 1 rejected the case set up by the petitioner, observing that there is escapement of income during the financial year 2014-15 relevant to the assessment year 2015-16, and accordingly held that it is a fit case for issuance of notice under Section 148 of the Act for assessment year 2015-16. Accordingly, the impugned notice followed by the impugned order, both dated 31.07.2022 were issued against the petitioner for assessment year 2015-16.

3.8 Hence, the present appeal.

4. During final arguments, learned counsel for petitioner contended that the notice and the order dated 31.07.2022, impugned by way of this writ action are not sustainable in the eyes of law. It was submitted on behalf of petitioner that the above mentioned two contradictory final outcomes

pertaining to assessment years 2015-16 and 2016-17 clearly show not just non-application of mind but even extreme arbitrariness, more so, because the officer serving as the decision making authority of Assistant Commissioner Income Tax is the same officer. It was also argued that since the impugned order dated 31.07.2022 fails to deal with the documentary records submitted by the petitioner, the order is not sustainable, being a non-speaking order.

5. On the other hand, learned counsel for the respondents revenue supported the impugned order and contended that the petition is devoid of merit. Learned counsel for respondents revenue contended that the sanctioning authorities for the two assessment years in question were two different authorities, who took two different stands, thereby directing the respondent no. 1 to act differently in the interest of revenue, so there was no illegality in the impugned order. It was argued that if one of the sanctioning authorities has to be bound by the decision of the other sanctioning authority, the idea of providing for different sanctioning authorities for different assessment years would be rendered useless. It was also argued on behalf of respondents revenue that doctrine of *res judicata* does not apply to income tax proceedings, so dropping of assessment proceedings in one year would not impact the proceedings of any other year.

6. It would be apposite to briefly traverse through the orders dated 28.07.2022 and 31.07.2022, which are as follows.

6.1 In order dated 28.07.2022 under Section 148A(d) of the Act for

assessment year 2016-17, the concerned Assistant Commissioner of Income Tax (ACIT) observed that in the course of search and seizure action under Section 132 of the Act in the case of Mohit Garg and others on 26.11.2016, the entry operator Rajeev Singh Khushwaha made an admission of having used dummy entities to provide bogus sale/purchase bills on commission to various parties including the present petitioner in the financial year 2015-16; and that to the present petitioner, he advanced seven bogus sale entries to the total tune of Rs. 38,41,89,957/- through a shell entity M/s Divya International. After describing the stages till issuance of notice under Section 148A(b) of the Act, the ACIT concerned also took note of the reply with documents filed by the present petitioner and analysed the material on record. On the basis of the said analysis, the ACIT concerned held thus:

> "The reply of the assessee has been perused. The quarterly Form 2A (purchase) (VAT) of M/s Divya International forwarded by the investigation wing through insight portal and Form 2B (sales) (VAT) of the M/s Chopra Brothers (Prop. Shri Prem K. Chopra) have been compared. **It is found that M/s Chopra Brothers (Prop. Prem K. Chopra) has not made any sales (2B) to M/s Divya International during the financial year 2015-16. The VAT returns filed by M/s Chopra Brothers to VAT department via (2B) clearly show No Sales was made to M/s Divya International, so how could Divya International claim Input Tax Credit for the shown invoices, because that would result in mismatch in VAT filings.** Neither there is any purchase shown by the assessee from M/s Divya International in the VAT returns. **Also to note is that No Inward/Outward Remittance has been detected in the bank account statements of M/s Chopra Brothers from/to M/s Divya International.** So, if, M/s Divya International did not get purchase then in which account did they make the payments to complete the transactions. **Thus, it is found that the contention of the assessee is found to be correct**". (*emphasis in bold as it exists in the actual order*)

6.2 Then comes the other order, which is impugned in the present writ action. In the impugned order dated 31.07.2022 under Section 148A(d) of

the Act for assessment year 2015-16, the concerned Assistant Commissioner of Income Tax (ACIT) observed that in the course of search and seizure action under Section 132 of the Act in the case of Mohit Garg and others on 26.11.2016, the entry operator Rajeev Singh Khushwaha made an admission of having used dummy entities to provide bogus sale/purchase bills on commission to various parties including the present petitioner in the financial year 2014-15; and that to the present petitioner, he advanced three bogus sale entries to the total tune of Rs. 13,71,77,471/- through a shell entity M/s Divya International. After describing the stages till issuance of notice under Section 148A(b) of the Act, the ACIT concerned also took note of the reply with documents filed by the present petitioner, but without any analysis of the material on record, held thus:

> "Assessee has denied transaction with Divya International and has submitted supporting document. However, a search and seizure action was conducted u/s 132 of the Income Tax Act, 1961 by the investigation wing in the case of Mohit Garg and others on 26.11.2016. In the same search action Mr. Rajeev Singh Kushwaha was also covered, who was an entry operator and who used to control a number of concerns. During statement of Shri Rajeev Kushwaha, he admitted that none of these entities existed in reality. They existed only on paper and no business activity was being carried out by them. He was using his entities to provide bogus Sale/Purchase bills to various parties on commission depending on the rate of VAT. M/s Divya International is one of the concern controlled by Shri Rajeev Singh Khushwaha. However, PAN appeared in the sale details of Divya International is an issue which can be ascertained only at the time of hearing. Hence, the contention of the assessee is not acceptable at this stage and needs verification".

6.3 Thence, under same set of circumstances and in the backdrop of similar set of documentary evidence, the concerned ACIT, pertaining to the assessment year 2016-17 dropped the proceedings, while pertaining to the

assessment year 2015-16 opted to proceed further under Section 148A of the Act. It would also be significant to note that in order dated 28.07.2022, while dropping the proceedings, the ACIT concerned recorded his analysis of the documentary material; but in the subsequent order dated 31.07.2022, while deciding to proceed further under Section 148A of the Act, the same ACIT recorded not even a whiff of analysis, if any, carried out by him of the documentary record and simply reiterated the allegations borne out of the alleged admission of Shri Rajeev Khushwaha.

7. There is no dispute to the legal proposition as submitted by counsel for respondents revenue that the doctrine of *res judicata* does not apply to income tax proceedings pertaining to different assessment years since each assessment year is a separate assessment unit in itself if rests in separate factual scenario.

7.1 In the case of ***Commissioner of Income Tax, Central, Kanpur vs J.K. Charitable Trust, Kamal Tower, Kanpur***, (2009) 1 SCC 196, the basic question framed by the Hon'ble Supreme Court was as to whether the revenue could be precluded from filing an appeal even though in respect of some other years, involving identical disputes, no appeal was filed. The Hon'ble Supreme Court after elaborate discussion through multiple judicial precedents arrived at a conclusion that fact situation in all the assessment years was same and dismissed the appeal. The Hon'ble Supreme Court relied upon an earlier decision in the case of ***Bharat Sanchar Nigam Limited vs Union of India,*** (2006) 3 SCC 1, in which it was held thus :

> "The decisions cited have uniformly held that *res judicata* does not apply in matters pertaining to tax for different assessment years because *res judicata* applies to debar Courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. ***The reason why Courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi judicial or judicial can generally be permitted to take a different view.*** This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is *per incuriam*. However, these are fetters only on a coordinate bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a bench of superior strength or in some cases to a bench of superior jurisdiction". *(emphasis supplied)*.

7.2 In the case titled ***Radhasoami Satsang vs Commissioner of Income Tax,*** 193 ITR 321, the Hon'ble Supreme Court held that although the principles of *res judicata* do not apply to income tax proceedings, each assessment year being a unit by itself, yet in cases, where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it may not be appropriate to allow that position to be changed in a subsequent year.

7.3 In the cases titled ***Commissioner of Income Tax vs ARJ Security Printers,*** 264 ITR 276; ***Commissioner of Income Tax vs Neo Poly Pack P. Ltd.,*** 245 ITR 492 and ***Commissioner of Income Tax vs Dalmia Promoters Developers Pvt. Ltd.***, 2006 SCC OnLine Del 83, coordinate benches of this

court repeatedly observed that for rejecting the view taken for the earlier assessment years there must be a material change in the fact situation or law, but before an earlier view can be upset or digressed from, one of the two must be demonstrated namely change in the fact situation or a material change in law whether enacted or declared by the Supreme Court.

8. The issue before us is the consistency (or lack thereof) in the decision making. There was nothing wrong if in the impugned order dated 31.07.2022 the ACIT concerned had taken a view different from the view taken in order dated 28.07.2022, provided the diversion was supported by way of cogent reasoning. As mentioned above, consistency does not mean putting iron fetters on the subsequent decision making; it only means expecting that a deviation from the previous decision in similar set of circumstances is explained by way of cogent and rational reasons. In the present case, the decision taken first in point of time (order dated 28.07.2022) was a reasoned decision, based on the analysis of material on record, but the decision taken subsequently (order dated 31.07.2022) not just took a view completely inconsistent with the previous view but even without an iota of reason.

9. So far as the respondent's argument of two different sanctioning authorities is concerned, no doubt order dated 28.07.2022 was issued with the approval of Principal Commissioner Income Tax-10 and order dated 31.07.2022 was issued with the approval of Principal Chief Commissioner of Income Tax, but the satisfaction recorded in both orders was of same Assistant Commissioner of Income Tax. There is nothing on record to

suggest even feebly that the latter sanctioning authority was apprised of the earlier view taken in order dated 28.07.2022. An assessee, deals with the income tax department as a whole, like a body and not its individual organs, especially where left hand does not know what right had sanctioned.

10. In nutshell, the impugned notice and order suffer two infirmities, namely the same proceed on a view inconsistent with the earlier order despite the facts and circumstances being similar and the ACIT concerned did not support the said subsequent divergent view with reasoning.

11. In view of the above discussion, we are unable to uphold the impugned notice and order dated 31.07.2022 under Section 148 of the Act so the same are set aside and accordingly the petition is allowed. No costs.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

MAY 25, 2023/AS