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

+ W.P.(C) 184/2020

KULDIP KUMAR GOEL

..... Petitioner

Through: Mr. Tushar Jarwal, Mr. Rahul Sateja
and Mr. Deepak Thakur, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME - TAX CIRCLE 1 (1),
NEW DELHI & ANR. Respondents

Through: Mr. Deepak Anand and Mr. Vipul
Agarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **09.01.2020**

C.M. No. 552/2020 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 184/2020 & C.M. No. 551/2020

3. The Petitioner has preferred the present writ petition to assail the notice dated 27.03.2019, issued to the Petitioner under Section 148 of the Income Tax Act (hereinafter 'the Act') and the consequential assessment order and remand notice dated 28.12.2019 for the assessment year (AY) 2012-13 passed by the Assistant Commissioner of Income Tax, Circle 1(1), Delhi. The Petitioner also seeks a direction that the Respondents be restrained from taking any coercive steps to enforce the aforesaid demand.
4. The Petitioner was issued a notice under Section 148 of the Act on

27.03.2019. In terms of Section 148 (1), the Petitioner was obliged to file his income tax return within thirty days, which he did not. Though the Petitioner has not disclosed this fact, but admittedly, the Petitioner was provided with the reasons for re-opening of the assessment for the AY 2012-13. The Petitioner was further issued a notice on 18.09.2019 under Section 142 (1) of the Act, requiring him to produce the books etc. and to respond to the queries. The Petitioner for the first time sent a communication on 04.10.2019 i.e. after around six months of issuance of the notice under Section 148 and that too without filing a return, raising the issue of jurisdiction of the notice issuing authority. The reassessment proceedings were transferred to the jurisdictional Assessing Officer (AO) on 16.10.2019. A further notice was issued to the Petitioner under Section 142 (1) of the Act on 10.12.2019 by the jurisdictional AO. The same was responded to by the Petitioner on 16.12.2019. Yet another notice was issued to the Petitioner on 18.12.2019 under Section 142 (1) of the Act. A further notice was issued on 22.12.2019 under the same provision. Eventually, the AO has passed the impugned reassessment order which is also assailed before us.

5. The submission of learned counsel for the Petitioner is that the notice under Section 148 has been issued by an Officer who is not the Jurisdictional Officer. Learned counsel for the Respondents who appears on advance notice points out that since the sale transaction in respect of the immovable property, which forms the subject matter of the notice under Section 148 of the Act and which is also reflected from the reasons for re-opening, was situated in Noida, the Officer at Noida had the jurisdiction to issue the said notice and the proceedings were thereafter transferred to the Jurisdictional AO. In this regard, the Respondents have placed reliance on

the decision of this Court in *Abhishek Jain v. Income Tax Officer Ward 55(1), New Delhi and ANR*. in W.P.(C) 11844/2016 decided on 02.06.2018. Learned counsel for the Respondents points out that since the Petitioner did not file a return in response to the notice under Section 148 (1) of the Act, he cannot have a grievance with regard to his objections not being disposed of.

6. The notice under Section 148 (1) was issued to the Petitioner as early as on 27.03.2019, he did not respond to that notice for over six months nor he invoked the jurisdiction of this Court to challenge the notice on the ground of jurisdiction. He responded to the notice for the first time on 04.10.2019. The conduct of the Petitioner in not filing the return, he was obligated to, in response to the notice under Section 148 (1) and disregarding the notice under Section 148 of the Act, in our view, disentitles the Petitioner to grant of any relief in the present proceedings. The Supreme Court in *GKN Driveshafts (India Ltd.) v. Income Tax Officer* 259 ITR 19 (SC) has clarified that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file a return and if he so desire, to seek reasons for issuing notices.

7. We therefore dismiss this petition and leave it to the Petitioner to pursue all his pleas in his statutory appeal before CIT (A) against the impugned assessment order. The Petitioner's grievance shall be dealt with by CIT Appeals.

VIPIN SANGHI, J

SANJEEV NARULA, J

JANUARY 09, 2020

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