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

+ **W.P.(C) 12551/2018**

DEEPAK WADHWA

.....Petitioner

Through: Mr. Rajesh Mahna, Adv.

*versus*

ASSTT COMMISSIONER OF INCOME TAX, CIRC1E-31(1)

.....Respondent

Through: Ms. Adeeba Mujahid, Junior Standing  
Counsel.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE TALWANT SINGH**

**ORDER**

**04.03.2021**

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[Court hearing convened *via* video-conferencing on account of COVID-19]

1. This writ petition is directed against the notice dated 27.03.2018 issued by the Revenue under Section 148 of the Income Tax Act, 1961 (in short 'the Act') and the order dated 28.09.2018, passed by the Revenue, disposing of the petitioner-assessee's objection to the notice.

2. It is not in dispute that the notice dated 27.03.2018 was issued by the Revenue on account of the purported failure on the part of the petitioner-assessee to file income tax return *qua* Assessment Year (AY) 2011-2012.

2.1. Since the petitioner-assessee sought reasons for reopening the case, under Section 147 of the Act *vide* communication dated 02.04.2018, the reasons were furnished by the Revenue *vide* communication dated 09.04.2018.

3. Apart from anything else, Mr. Rajesh Mahna, who appears on behalf of the petitioner-assessee, has made two significant submissions.

3.1 First, that the notice under Section 148 of the Act, which, as indicated above, is dated 27.03.2018 was issued prior to the concerned officer obtaining necessary administrative approval.

3.2. According to Mr. Mahna, the administrative approval of Principal Chief Commissioner, Income Tax was obtained by the Assistant Commissioner, Income Tax only on 30.03.2018, i.e., after the issuance of the notice under Section 148 of the Act.

3.3 In support of his plea, Mr. Mahana has relied upon paragraph 1 of the communication dated 28.09.2018 whereby the petitioner-assessee's objections were disposed of. Besides this, reliance is also placed by Mr. Mahana on subsection (2) of Section 151 of the Act

3.4 Second, that, in any event, the petitioner-assessee had, contrary to what is portrayed in the notice issued under Section 148 of the Act, filed the Income Tax Return (ITR) for AY 2011-2012. For this purpose, Mr. Mahana relies upon the receipts issued upon filing of the ITR, *inter alia*, for AY-2011-2012; a copy of which is appended as Annexure P-4 on page 57 of the paper book.

4. On the other hand, Ms. Adeeba Mujahid, who appears on behalf of the Revenue, has drawn my attention to paragraphs 27 and 28 of the counter-affidavit wherein it is averred that the administrative approval of the Principal Commissioner of Income Tax was taken on 26.03.2018.

4.1. As regards the other submissions made on behalf of the petitioner-assessee, Ms. Mujahid says that a communication was issued on 09.02.2018 to the petitioner-assessee, prodding him to file his returns as his case had been flagged by the Non-Filers Monitoring System (NMS), put in place by the Income Tax Department.

4.2. Ms. Mujahid says that the aforementioned communication (which was a computer-generated letter) was, consequently, attempted to be served on the petitioner-assessee which, though was returned by the postal department and, thus, left with no option, service was effected on the authorized representative of the petitioner-assessee.

4.3. Ms. Mujahid submits that since no response was received to its communication and the petitioner-assessee's ITR could not be found in the system, the Revenue took the next step, which was, the issuance of notice under Section 148 of the Act.

4.4. Ms. Mujahid, however, cannot but accept that since the relevant proof has been placed on record by the petitioner-assessee that the return for the AY 2011-2012 was filed by him and its receipt was duly acknowledged by the Revenue - the notice issued to him under Section 148 would be rendered untenable.

5. Having heard learned counsel for the parties, we are of the view that even insofar as the first aspect of the matter is concerned, which is that, notice under Section 148 of the Act was issued after obtaining requisite administrative approval, we are not satisfied with the explanation given in the counter-affidavit [if it all, it can be called, as an explanation] as no attempt has been made to explain what is stated in paragraph 1 of the impugned order dated 28.09.2018.

5.1. For the sake of convenience, paragraph 1 of letter dated 28.09.2018 and the averment made in paragraphs 27-28 of the counter-affidavit is extracted hereafter. When one compares the two, the lack of explanation is writ large. No attempt has been made to place on record the extract of the relevant file noting setting out the approval.

**Letter dated 28.09.2018**

*“1. The case of the assessee for AY 2011-12 was reopened u/s 147/148 after proper recording of the following reasons for forming belief that income has escaped assessment and taking administrative approval of the Pr.CIT, Delhi-11 on 30.03.2018.”*

**Counter-affidavit**

*“27-28 The contents of para 27 to 28 are wrong and denied. It is submitted that administrative approval of Principal Commissioner of Income Tax-11, New Delhi was taken on 26-03-2018 as laid down under Section 151 of Income Tax Act, 1961 before issuing notice under 148 of Income Tax Act, 1961.”*

5.2. As far as the other aspect is concerned, in our view, since the proof put in place by the petitioner-assessee with regard to the acknowledgement of return filed for AY 2011-2012 has not been disputed by the Revenue, as noticed above, the challenge to the impugned notice and the impugned order will have to be sustained.

6. Therefore, for the foregoing reasons, we are inclined to quash the impugned notice dated 27.03.2018 as also the impugned order dated 28.09.2018. It is ordered accordingly.

6.1. The Revenue will pay towards cost Rs.20,000/- to the petitioner-assessee. The costs will be remitted to the petitioner-assessee within 10 days of the receipt of a copy of this order.

7. The captioned writ petition is disposed of in the aforesaid terms.

**RAJIV SHAKDHER, J**

**TALWANT SINGH, J**

**MARCH 4, 2021**

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*[Click here to check corrigendum, if any](#)*