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

Date of Decision: 19.05.2023

+ **W.P.(C) 13040/2019**

RAMAKANT

..... Petitioner

Through: Ms Rachna Agrawal, Adv.

versus

INCOME TAX OFFICER, WARD

INT TAX 3(1)(2) & ORS.

..... Respondents

Through: Mr Puneet Rai, Sr. Standing Counsel
with Mr Ashvini Kumar and Ms
Madhvi Shukla, Advs.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

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19.05.2023

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER.J, (ORAL)

REVIEW PET. 115/2023 and CM No.20922/2023*[Application filed on behalf of the petitioner seeking condonation of delay of 24 days in filing the review petition]*

1. At the outset, we must emphasize that we are constrained to write an order on a review petition which is longer than the judgment of which review is sought, only to allay the misapprehension of the petitioner/assessee that the notices referred to hereafter, *qua* which declaration was sought, still survive after the assessment/reassessment order has been passed, accepting the original return of the petitioner/assessee.

2. Besides this, in our view, it is well-established that the court can



mould the relief sought by a litigant; which by itself cannot become a ground for review.

Prefatory Facts and Submissions of Counsel:

3. The instant review petition has been preferred by the petitioner/assessee against judgment dated 31.01.2023 passed in WP(C) 13040/2019.

4. Ms Rachna Agrawal, who appears on behalf of the review petitioner/assessee, says that the writ petition was instituted to seek, inter alia, the relief that the following notices were “invalid” in law:

(i). notice dated 31.03.2019 issued under Section 148 of the Income Tax Act, 1961 [in short, “the Act”], and

(ii). notice dated 27.11.2019 issued under Section 142(1) of the Act.

4.1 It is submitted that these reliefs have not been considered while disposing of the writ petition. The contention is that it was incumbent on the court to first establish as to whether or not the said prayers were made out.

4.2 Reference was made by Ms Agrawal to the counter-affidavit filed on behalf of the respondents/revenue, in support of her plea that the notice dated 31.03.2019 issued under Section 148 of the Act was without jurisdiction.

5. The argument advanced by Ms Agrawal, in support of her submission that the judgment dated 31.01.2023 should be reviewed, was pivoted on the fact that there was an admission of the respondents/revenue on record. The admission being that the respondent/revenue had wrongly concluded that the review petitioner/assessee had not filed his income tax return for the Assessment Year (AY) in issue, i.e., AY 2012-13.

6. In sum, the argument was that merely because, *via* assessment order



dated 26.12.2019, the Assessing Officer (AO) had proceeded to accept the return filed by the petitioner/assessee, the grievance of the petitioner/assessee was not fully addressed.

7. We may note at the outset that while closing the writ petition *via* judgment dated 31.01.2023, we had indicated that since the assessment order dated 26.12.2019 did not foist any tax liability on the petitioner/assessee, as the income declared by him, which was pegged at Rs.1,96,430/-, was accepted, the writ petition need not progress any further

8. We had, however, given leeway to the petitioner/assessee that in case he was still aggrieved insofar as the assessment order dated 26.12.2019 was concerned, he could take recourse to an appropriate remedy, *albeit*, as per law.

9. A perusal of the record shows that, to begin with, the trigger for issuing the notice under Section 148 of the Act was the information that had been pushed into the ITD system: Firstly, that the petitioner/assessee was a “non-filer”. Secondly, that he had deposited cash amounting to Rs.14,00,000 with HDFC Bank Ltd. and Karnataka Bank Ltd. in Financial Year (FY) 2011-12 (AY 2012-13).

10. Upon receipt of the petitioner/assessee’s response dated 30.04.2019, the AO was made aware of the fact that a return had been filed, which had been processed under Section 143(1) of the Act *via* order dated 18.09.2013.

10.1 Since scrutiny-assessment had not taken place *qua* the AY in issue, the assessment proceedings were carried forward, as at that point in time, the AO had, as it appears, reasons to believe that the cash deposit amounting to Rs.14,00,000 had been made by the petitioner/assessee from undisclosed sources, which had escaped assessment, within the meaning of Section 147



of the Act.

10.2 The reasons for reopening the assessment, furnished to the petitioner/assessee, broadly, adverted to this aspect for triggering proceedings under Section 147/148 of the Act.

11. Upon receiving objections, both with regard to jurisdiction, and merits, an order was passed on 27.11.2019, whereby the objections were disposed of. However, while disposing of the objections, the Principal Commissioner of Income Tax Delhi-12 transferred the case, from DCIT 3(1)(C) International Taxation to Ward 3(1)(2) New Delhi.

11.1 Notably, the objection taken that the AO did not have material before him to form an opinion that income chargeable to tax had escaped assessment, was rejected for the reasons given in the order disposing the objections, i.e., order dated 27.11.2019.

11.2 The record discloses that this led to the issuance of notice of even date, i.e., dated 27.11.2019 under Section 142(1) of the Act.

12. It is at this juncture that the petitioner/assessee approached the court by way of a petition under Article 226 of the Constitution.

13. The writ petition was listed on 11.12.2019 before a coordinate bench. The coordinate bench, while issuing notice, directed continuation of the assessment proceedings, with a caveat that if a final order was passed, the same shall not be given effect to.

14. It was, thus, during the pendency of the writ petition that the aforementioned assessment order dated 26.12.2019 came to be passed.

15. As noted at the very outset, and in the judgment *qua* which review has been filed i.e., judgment dated 31.01.2023, the return filed by the petitioner/assessee was accepted. It is in this context that we had observed



that the writ petition need not progress further.

Reasoning and Analysis:

16. Ms Agrawal's contention that a declaration had to be made that notice dated 31.03.2019 issued under Section 148 and the consequential notice dated 27.11.2019 issued under Section 142(1) of the Act were invalid, in effect tantamounts, in a manner of speech, to splitting hairs.

17. The reason why we say so is that although the review petitioner is right that he had filed his return for the assessment year in issue, i.e., AY 2012-13, he does not dispute the fact that he had deposited cash amounting to Rs.14,00,000 in the aforementioned bank accounts.

18. As noted above, the AO, it appears, received two pieces of information: First, that the said amount had been deposited in the aforementioned bank account, and second, that the petitioner/assessee had not filed a return. The second piece of information was not accurate. However, once the petitioner/assessee informed the AO that a return had been filed, it came to light that no scrutiny-assessment has taken place.

19. The return, concededly, had been processed under Section 143(1) of the Act. The AO, thus, was of the view that the matter required further enquiry and investigation, and therefore, proceeded further after disposing of the objections raised by the petitioner/assessee.

20. As noted above, the objections were disposed of by the AO on 27.11.2019. It was only thereafter that a notice under Section 142(1) of the Act was issued on 27.11.2019. Therefore, the AO having examined the matter holistically, concluded that the return filed by the petitioner could be accepted.

21. We find Ms Agrawal's argument that reassessment proceedings were



commenced because the AO was under the impression that the return had not been filed does not give a complete picture of the background facts. The other facet which triggered enquiry under Section 148 of the Act, was the deposit of cash by the petitioner/assessee in the aforementioned bank accounts.

21.1 Therefore, it cannot be said that the notice under Section 148 of the Act was invalid. This is evident upon a bare perusal of the reasons given by the AO for reopening the assessment. Thus, in our opinion, it cannot be said that the impugned notices had no basis for triggering an enquiry, and therefore, were invalid.

22. As alluded to hereinabove, although we had closed the writ petition, we granted the petitioner/assessee leeway to take recourse to a statutory remedy as per law, in case he was still aggrieved by the assessment order passed in his case. There is, to our minds, no error apparent on the face of the record.

Conclusion:

23. Thus, for the foregoing reasons, we find no merit in the review petition. The review petition is, accordingly, dismissed.

24. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MAY 19, 2023 /tr