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

Judgment reserved on: 03.11.2023

% Judgment delivered on: 08.11.2023

\+ **W.P.(C) 14191/2023 & CM APPL. 56145-46/2023**

ENVIORNICS TRUST ..... Petitioner

Through: Ms. Suruchi Aggarwal, Sr. Advocate with Mr. Vineet Gar, Mr. Ashish Garg and Mr. Gurmeet Singh, Advocates

versus

THE DEPT COMMESSIONER OF INCOME TAX..... Respondent

Through: Mr. Tushar Mehta, Solicitor General and Mr. Balbir Singh, ASG with Mr. Zoheb Hossain and Mr. Vipul Agrawal, Senior Standing Counsels, Mr. Sanjeev Menon, Junior Standing Counsel, Mr. Vivek Gurnani, Mr. Girbran Naushad and Ms. Sakshi Shairwal, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioner i.e. Environics Trust, challenges *inter alia* the order dated 19.04.2023 issued by the Respondent / Revenue Department under Section 148A(d) of the Income Tax Act, 1961 (the "**IT Act**") (the

"**Impugned Order**") pursuant to a show cause notice ("**SCN**") issued under Section 148A(b) of the IT Act dated 29.03.2023 (the "**Impugned SCN**"); and the consequent reassessment notice dated 19.04.2023 issued by the Respondent under Section 148 of the IT Act (the "**Impugned Notice**") (hereinafter, the Impugned Order, Impugned SCN and the Impugned Notice are collectively referred to as the "**Impugned Proceedings**").

2. The facts and arguments laid out by Ms. Suruchi Aggarwal, learned Senior Counsel appearing on behalf of the Petitioner are delineated below:

2.1. The Petitioner is a trust registered under the applicable laws; with an objective to conduct research & development of *inter alia* environmental issues and human behavior; to innovate and implement technical and institutional designs for integrated social development and provide assistance to various local and national authorities in this regard. Furthermore, it has been stated that the Petitioner has conducted impactful work in diverse fora for ecological and environmental conservation.

2.2. Pertinently, on 05.10.2023, the Petitioner was granted registration under the Foreign Contribution (Regulations) Act 1976 (the "**FCRA**") *vide* a registration bearing number 231660713 for the purpose of receiving foreign contributions in the Petitioner's accounts. Pertinently, under the FCRA the Petitioner's object was declared to be 'Social Nature'.

2.3. Thereafter, on 07.09.2022, a survey was conducted by the Respondent under Section 133 of the IT Act (the "**Survey**"). Pertinently, it has been submitted that no incriminating materials were found during the Survey however, it is alleged that the Respondent with an ulterior

motive conducted a roving and fishing enquiry against the Petitioner. In this context, the Respondent seized books of accounts / financial documents and mobiles phones belonging to the Petitioner Trust.

2.4. On 16.01.2023, the Petitioner received a letter bearing number I/21022/58(472)/2022-FCRA(MU) from the FCRA Wing, Ministry of Home Affairs (the "**Ministry**") seeking *inter alia* information in relation to the foreign contributions received and utilized by the Petitioner under the FCRA.

2.5. In this context, it has been submitted that after a prolonged period of 6 (six) years, the Respondent issued the Impugned SCN to the Petitioner. Thereby it called upon the Petitioner to show-cause as to why a notice under Section 148 of the IT Act should not be issued to the Petitioner in relation to an alleged escaped assessment of income to the extent of INR 2,23,95,787 on account of a wrongful claim qua foreign contribution under Section 11 of the IT Act.

2.6. It is stated that *vide* a correspondence dated 10.04.2023, the Petitioner vehemently denied the allegations made by the Respondent against the Petitioner in the Impugned SCN. Thereafter, the Impugned Order; and the Impugned Notice came to be issued wherein it has been insinuated that the Petitioner engaged identified persons including the Legal Initiative for Forest and Environment ("**LIFE**") to initiate litigation in India for lobbying against certain economic activities under the guise of furthering environmental standards; and that the Petitioner entered into suspicious transactions which remained unexplained in relation to a 'film screening'; and the apparent inconsistency between the purpose declared under the FCRA and

Income Tax Return ("**ITR**") vis-à-vis the activities undertaken by the Petitioner on ground.

2.7. Accordingly, the main thrust of Ms. Aggarwal's submission has been that under the amended Section 149(1) of the IT Act[1] the reassessment period was limited to 3 years from the end of the relevant AY and 10 years if the evaded income exceeded INR 50,00,000 and was represented as an asset in the financials of the asessee. The aforesaid position was contrasted with that enunciated under the Finance Act, 2022 whereunder Section 149(1) of the IT Act expanded to reassessment within 10 years from the relevant AY for income exceeding INR 50,00,000 represented as an asset, expenditure linked to a transaction, or an entry in the books. Pertinently it was clarified that the latter position only applied from 01.04.2022 and accordingly, could not be extended qua the captioned Assessment Year ("**AY**") i.e., '16-17.

2.8. It has also been contended by Ms. Aggarwal that prior to a notice under Section 148A, the Assessing Officer ("**AO**") must have had information which suggested the escapement of tax. Reliance in this regard has been placed on a decision of the Madras High Court in ***Mathew Cherian (Dr.) v. ACIT*** (2022) 219 DTR 2.

2.9. Lastly, Ms. Aggarwal has drawn the attention of this Court to a decision dated 25.05.2023 in W.P (C) No. 7324 of 2023. It has been submitted that in a parallel case, this Court has entertained the

[1] Amended w.e.f from April 1, 2021

aforementioned writ petition and accordingly, has also granted a stay qua the proceedings.

3. On the other hand, Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the Respondent has contended as follows:

3.1. That the Impugned Proceedings were predicated on the premise that certain identified foreign income had escaped assessment. The aforesaid culminated in the issuance of the Impugned Notice. Accordingly, it is submitted that the scope of judicial review vis-à-vis a notice issued under Section 147 / Section 148 of the IT Act is extremely narrow. It has been submitted that this Court exercising its writ jurisdiction ought not to test the "sufficiency of reasons" or "correctness of reason" and accordingly, must satisfy itself that *prima facie* the AO had requisite material / information to arrive at a subjective satisfaction that there was an escapement of income. Reliance in this regard has been placed on ***Acorus Unitech Wireless Pvt. Ltd v. ACIT***, (2014) 362 ITR 417; and ***CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd.***, (2008) 14 SCC 208.

3.2. In this context, it has been submitted that the AO has on the basis of (i) the trust deed of the Petitioner Trust (the "**Trust Deed**"); and (ii) the statement of Mr. Ramamurthi Sreedhara, Managing Trustee of the Petitioner Trust has come to the conclusion that the Petitioner through an identified advocate and LIFE was involved in litigation against the Union of India. Furthermore, it has been submitted that the Petitioner was funded through OXFAM India to mobilize local workers union against the coal sector in India. Accordingly, it is

submitted that the aforesaid activities could not be construed to be activities in furtherance of the object of the Petitioner Trust and as a consequence, the exemption under Section 11 / Section 12 of the IT Act was wrongly availed.

3.3. Additionally, it was underscored before this Court the apparent divergent stance taken by the Petitioner Trust in relation to its object i.e., under the FCRA the Petitioner disclosed its object as 'social' whereas under its returns filed under the IT Act the object was disclosed as 'preservation of monuments or places or objects of artistic or historic interest'. In this regard, even before the AO, the Petitioner had conceded that divergent objects have been disclosed. Furthermore, no satisfactory response was provided by the Petitioner in relation to the aforesaid.

3.4. Lastly, it has been brought to the attention of this Court that the Petitioner has suppressed a material fact before this Court i.e., under the present petition it has stated that its status as a charitable trust had not been cancelled whereas, *vide* an order dated 29.09.2023 the registration of the Petitioner under Section 12A and 12AA had been cancelled qua Financial Year ("**FY**") '13-14 to '20-21; and the Petitioner's registration under Section 12AB of the IT Act had been cancelled FY '21-22 onwards. Accordingly, it has been submitted that this Court ought not to entertain this present petition and exercise its equitable jurisdiction in light of the aforesaid suppression of fact. Reliance in this regard has been placed on ***Prestige Lights Ltd. v. SBI***, (2007) 8 SCC 449.

4. We have heard the counsel(s) for the parties and are disposing of this present writ petition at the stage of admission with the consent of the parties.

5. The fulcrum of the dispute before this Court is two-fold i.e. (i) whether the AO could have initiated reassessment proceedings pursuant to Section 149(1) of the IT Act; and whether the AO had requisite material / information to arrive at a subjective satisfaction that there was an escapement of income qua the Petitioner.

6. In regard to the first issue before this Court, Mr. Mehta drew the attention of this Court to the *explanation* to Section 149 of the IT Act. Undoubtedly, the same clarifies that 'deposits in bank accounts' form a part of the 'assets' of the Petitioner, and accordingly, in the considered opinion of this Court, the arguments advanced by the Petitioner qua the expiry of limitation in relation to the issuance of the Impugned Notice cannot be sustained as the income escaped assessment extends to a sum of INR 2,23,95,787 i.e., higher that the minimum threshold of INR 50,00,000 enshrined under Section 149 of the IT Act. Accordingly, the limitation vis-à-vis the initiation of reassessment proceedings in the case herein would resultantly extend to 10 (ten) years in light of the fact that the AO had in its possession *inter alia* books of accounts evidencing voluntary deposits in bank accounts extending to more than INR 50,00,000.

7. Furthermore, this Court is cognizant of the narrow scope of judicial review that this Court must confine itself to in relation to testing the correctness of the Impugned Notice. In this regard, it would be

relevant to refer to ***Acorus Unitech Wireless Pvt. Ltd (Supra)*** wherein this Court has observed as under:

> *"...it is important to restate an accepted, but often neglected, principle, that in its writ jurisdiction, the scope of proceedings before the Court while considering a notice under Section 147/148 is limited. The Court cannot enter into the merits of the subjective satisfaction of the AO, or judge the sufficiency of the reasons recorded, but rather, determine whether such opinion is based on tangible, concrete and new information that is capable of supporting such a conclusion..."*

8. Accordingly, following ***Acorus Unitech Wireless Pvt. Ltd (Supra),*** this Court is satisfied that the AO based its opinion on tangible and concrete information in the form of the Petitioner's Trust Deed; and statement of Mr. Ramamurthi Sreedhara, Managing Trustee that certain identified foreign contributions received by the Petitioner were utilized for a purpose divergent to its object as disclosed in the Trust Deed, and accordingly, the wrongful application of the exemption availed under Section 11 / Section 12 of the IT Act in relation to such funds would undoubtedly result in the AO forming the subjective satisfaction that the wrong availed exemption vis-à-vis foreign contributions escaped income for the purpose of assessment under the IT Act.

9. Lastly, it is a well settled position of law that an individual seeking to invoke the equitable jurisdiction of a High Court must approach this Court displaying *bona fides*. However, in the present case, the Petitioner has unquestionably suppressed material facts in relation to the cancellation of its registration under Section 12A, 12AA and

12AB of the IT Act. In this regard, the Supreme Court in ***Prestige Lights Ltd.*** observed as under:

> *"35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."*

10. Accordingly, this Court ought to have rejected this present petition on the aforementioned ground alone but, in the interest of justice has dealt with the issue(s) framed in Paragraph 5 of this Judgement above.

11. However, the Petitioner has failed to make out a case warranting the interference of this Court under Article 226 of the Constitution of India. Accordingly, this writ petition along with pending applications, if any, stands disposed of in the aforesaid terms.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

NOVEMBER 08 , 2023