

Twylight Infrastructure Pvt Ltd vs Income Tax Officer Ward 25 3 Delhi And Ors on 1 December, 2022

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

\$~59

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 16524/2022 & CM Appl.51907/2022

TWYLIGHT INFRASTRUCTURE PVT LTD Petitioner
Through: Mr Kapil Goel, Adv.

versus

INCOME TAX OFFICER WARD 25 3 DELHI AND ORS.

..... Respondent
Through: Mr Sunil Agarwal, Sr. Standing
Counsel with Mr Tushar Gupta &
Utkarsh Tiwari, Advs. for Revenue
Mr GhanShyam Mishra, Adv. for Respondent

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

% 01.12.2022 [Physical Hearing/Hybrid Hearing (as per request)]

1. This writ petition is directed against the order dated 29.06.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short "Act"] by the Jurisdictional Assessing Officer (JAO), and the notice dated 29.06.2022 issued under Section 148 of the Act.

2. Mr Kapil Goel, who appears on behalf of the petitioner, says that before issuing notice under Section 148 of the Act, approval of the specified authority had to be taken.

2.1 It is Mr Goel's contention, that the specified authority, in this case, in terms of Section 151 (ii) of the Act would be the Principal Chief Commissioner or Principal Director General or where there is no Principal W.P.(C) 16524/2022 page 1 of 3 Chief Commissioner or Principal Director General, Chief Commissioner or Director General.

2.2 In the context of this plea, our attention has been drawn to paragraph 9 of the impugned order dated 29.06.2022 passed under Section 148A(d) of the Act, which shows that approval for issuance of the order has been taken from the Principal Commissioner of Income Tax-7, and notice under Section 148 has been issued along with the order. 2.3 Mr Goel also says, that a jurisdictional error

occurred, even when the petitioner was issued notice under the old regime.

3. In this connection, our attention has been drawn to the notice dated 29.06.2021 issued under Section 148 of the Act, which facially indicates that the notice was issued after obtaining "necessary satisfaction of the RANGE 25, Delhi."

4. Mr Goel says, that the range head was the Additional Commissioner of Income Tax, whereas under the unamended provisions of Section 151 of the Act, the said range head was not the authority who could have granted the approval for initiating reassessment proceedings.

5. Besides this, Mr Goel also contends, that the provisions of Section 151A of the Act have been breached.

6. Mr Sunil Agarwal, senior standing counsel who appears on behalf of the respondent/revenue, says that notice under Section 148A(b) of the Act has its genesis in the earlier notice dated 29.06.2021 to which we have made a reference above.

6.1 It is therefore Mr Agarwal's submission that the approval of PCIT would suffice.

W.P.(C) 16524/2022 page 2 of 3

7. As indicated by us hereinabove, it is the petitioner's contention, that even the notice dated 29.06.2021 was flawed.

8. Assuming that the old regime had to continue, then, as has been argued by Mr Goel, there was, perhaps, no necessity to seek a fresh approval from the PCIT.

9. According to us, the matter requires examination.

10. Issue notice.

10.1 Mr Agarwal accepts notice on behalf of the respondent/revenue.

11. Counter-affidavit will be filed within the next four weeks. 11.1 Rejoinder thereto, if any, be filed before the next date of hearing.

12. Since the error pointed out goes to the root of the jurisdiction of the concerned authority, proceedings under Section 148 of the Act shall remain stayed till further orders of the Court.

13. List the matter on 23.03.2023.

14. In the meanwhile, counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.

RAJIV SHA

TARA VITASTA G

DECEMBER 1, 2022/r

[Click here to check corrigendum](#)

W.P.(C) 16524/2022