

Rajesh Agarwal vs Assistant Commissioner Of Income Tax ... on 24 April, 2023

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5122/2023 & CM Appl.20032/2023

RAJESH AGARWAL

..... Petitioner

Through: Mr Kapil Goel, Adv.

versus

ASSISTANT COMMISSIONER OF

INCOME TAX CIRCLE 43(1)

..... Respondent

Through: Mr Puneet Rai, Sr. Standing Counsel

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

% 24.04.2023 [Physical Hearing/Hybrid Hearing (as per request)]

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing. W.P.(C) 5122/2023 & CM Appl.20032/2023[Application filed on behalf of the petitioner seeking interim relief]

2. This writ petition concerns Assessment Year (AY) 2013-14.

3. The record shows that the initial notice issued under Section 148 of the Income Tax Act, 1961 [in short, "the Act"] is dated 17.06.2021.

4. The reassessment proceedings, concededly, have been triggered against the petitioner in view of a search action conducted against an entity going by the name PMC Fincorp Group under Section 132 of the Act. The search action was carried out on 11.10.2018.

5. The allegation against the petitioner is that it has registered bogus W.P.(C) 5122/2023 page 1 of 3 Long Term Capital Gains (LTCG) by transacting in shares of the aforementioned entity.

6. According to the respondent/revenue, the LTCG registered by the petitioner amounts to Rs.2,42,51,269/-. In addition to the above, there is an aspect relating to cash seized amounting to Rs.2,48,000/-. 6.1 Thus, the respondent/revenue allege that the income chargeable to tax which has escaped assessment vis-à-vis the petitioner is Rs.2,44,99,269/-.

7. Mr Kapil Goel, who appears on behalf of the petitioner, says that reassessment proceedings are flawed on several counts, one of which is that the respondent/revenue should have taken, if at all, action under Section 153C of the Act.

7.1 In support of this plea, Mr Goel has relied upon the judgment of the Division Bench of the Karnataka High Court dated 08.07.2022 passed in ITA No.16/2015, titled Sri. Dinakara Suvarna v Deputy Commissioner of Income Tax. In particular, reference is made to paragraph 10 of the said judgement. [See page 100 of the case file].

7.2 Mr Goel further submits that the revenue carried the matter in appeal to the Supreme Court. The Supreme Court, it appears, via order dated 27.03.2023 dismissed the Special Leave Petition (SLP). [See Annexure P9 appended on page 99 of the case file].

8. In addition to what is stated hereinabove, Mr Goel submits that the proceedings are time-barred. In this context, reference is made to Section 149(1) of the Act.

9. In our view, the matter requires further examination.

10. Issue notice.

W.P.(C) 5122/2023 page 2 of 3 10.1 Mr Puneet Rai, senior standing counsel accepts notice on behalf of the respondent/revenue.

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

12. List the matter on 19.10.2023.

13. In the meanwhile, the reassessment proceedings against the petitioner shall remain stayed.

14. Parties will act based on the digitally signed copy of the order.

RAJIV SHA

TARA VITASTA GA

APRIL 24, 2023/r

[Click here to check corrigendu](#)

W.P. (C) 5122/2023

