

\$~31

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

+ **W.P.(C) 930/2023**

KUM KUM KOHLI

..... Petitioner

Through: Mr Sumit Lalchandani with Mr Salil Kapoor, Mr Tarun Chanana and Ms Ananya Kapoor, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 28-1
& ANR. Respondents

Through: Mr Sunil Agarwal, Sr. Standing Counsel with Mr Pratyaksh Gupta, Jr. Standing Counsel for Mr Abhishek Maratha, Sr. Standing Counsel.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

%

25.01.2023

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

CM APPL. 3648/2023

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) 930/2023 and CM APPL. 3647/2023 [Application filed on behalf of the petitioner seeking interim relief]

2. This writ petition assails the order dated 23.07.2022 passed under Section 148A(d) and the consequential notice of even date i.e., 23.07.2022 issued under Section 148 of the Income Tax Act, 1961 [in short, "the Act"].

W.P.(C) 930/2023

page 1 of 6

2.1 In addition thereto, a challenge is also laid to the notice dated 25.05.2022 issued under Section 148A(b) of the Act.

3. To be noted, the impugned order and the notices concern Assessment Year (AY) 2015-16.

4. Broadly, what emerges upon perusal of the record is that the petitioner sold shares and earned therefrom long term capital gains. In the preceding AY i.e., AY 2014-15, the long term capital gain was offered for taxation. In the AY in issue, the petitioner claimed exemption under Section 54F of the Act.

4.1. The record shows that notices under Section 143(2) and 142(1) were issued and queries were raised, with regard to the deduction claimed under Section 54F of the Act. It is only thereafter that an assessment was framed on 24.11.2017 under Section 143(3) of the Act.

4.2. The fact that notices were issued, replies were filed and queries were raised, is evident upon perusal of page nos.57, 64, 65, 113 and 115 of the case file. By way of illustration, the queries raised in the notice dated 20.10.2017 issued under Section 143(2) of the Act are set forth hereafter:

“2. This is in regard to Scrutiny Proceedings u/s 143(3) of the I.T.Act undergoing in your case pertaining to AY 2015-16. In this connection you are requested to furnish the following detail as under:

(i) Please provide the computation of capital gain & details of exemption claimed by you u/s 54F.

(ii) Please provide details of the residential property purchased by the assessee at gurgaon. Kindly attach the agreement to sell and sale deed of the said property.

(iii) Please provide details of the transfer expenses claimed by the assessee along with substantiating documentary evidences.”

4.3. This particular communication i.e., notice, was responded to by the petitioner *via* communication dated 14.11.2017. The petitioner claims that she gave a detailed reply, with regard to the sale consideration received on the sale of shares concerning an entity going by the name NCR Business Park Pvt. Ltd. The sale consideration, which had been received *albeit*, through banking channels, according to the petitioner, was also set forth in the reply; it was indicated that the petitioner had received Rs.14,03,68,959/- against the sale of shares.

4.4. The petitioner, in the very same reply, stated that she had earned a long term capital gain amounting to Rs.13,86,56,886/-, which was invested in a tenanted residential property located at DLF City, Phase 1, Gurgaon. The investment made, according to the petitioner, was Rs.14,15,00,000/-. In this behalf, reference was made to the agreement to sell dated 08.07.2015 which was the instrument based on which investment had been made; which alluded to the fact that possession of the said immovable property was taken on 31.03.2016.

4.5. In sum, the petitioner asserted that she had claimed a deduction under Section 54F of the Act on account of investment in the said residential property.

4.6. We may note, a copy of the General Power of Attorney is also appended with the reply.

4.7. As observed above, after the query was raised (concerning sale of shares and the consequent investment) and answered, an assessment order under Section 143(3) was framed on 24.11.2017.

5. It is not in dispute that the aforementioned agreement to sell was executed between the petitioner and her husband, who since then, we are told, has expired.

6. The counsel for the petitioner says that this very transaction was also examined by the concerned Assessing Officer (AO) in respect of the return filed by the petitioner's husband. According to the counsel for the petitioner, the return was accepted after scrutiny. In this context, our attention is drawn to Annexure P-20, appended on page 236 of the case file.

7. The counsel for the petitioner has argued that the reassessment proceedings triggered against the petitioner are flawed for the following reasons:

(i) First, the reassessment proceedings are based on an internal audit objection, whereas, at the relevant point in time, reassessment proceedings, if at all, could have been triggered based on an objection raised by the Comptroller and Auditor General of India [in short, "CAG"].

(ii) Second, the audit objection could not have been taken as "material", based on which reassessment proceedings could have been initiated.

(iii) Third, deduction claimed under Section 54F of the Act would not constitute an "asset" under Section 149 of the Act.

(iv) Fourth, since the Assessment Year in issue is AY 2015-2016, reassessment proceedings could not have been commenced, unless the petitioner failed to disclose, truly and fully, all material facts.

8. Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of the respondents/revenue, contests each of the aforesaid submissions.

8.1 In particular, Mr Agarwal says that fundamental requirement for claiming deduction under Section 54F of the Act has not been fulfilled as concededly, no sale deed was executed. Therefore, Mr Agarwal contends, deduction under Section 54F of the Act was not viable.

8.2. Furthermore, Mr Agarwal says that the internal auditor had only flagged the error in law committed by the AO in framing the initial assessment under Section 143(3) of the Act. Consequently, according to Mr Agarwal, the argument advanced on behalf of the petitioner is not sustainable.

9. We may note that insofar as the aspect concerning audit objection is concerned, that is an issue which also obtains in W.P.(C) 531/2023, titled ***Laveesh Bhandari v. ACIT & Ors***, as well.

9.1. Briefly, in the order dated 17.01.2023 passed in the said writ petition, we have taken note of the fact that the expression “any audit objection” was introduced only *via* Finance Act, 2022 *albeit* w.e.f. 01.04.2022. Prior to the said amendment, the expression which obtained in Explanation 1(ii) appended to Section 148 of the Act adverted to the “Comptroller and Auditor General of India”.

10. We are, *prima facie*, also of the view that if the AO, according to the respondents/revenue, had committed an error in law, perhaps, they could have taken recourse, at the appropriate time, to the provision of Section 263 of the Act.

11. We are of the view that the matter requires examination.

12. Issue notice.

12.1 Mr Agarwal accepts notice on behalf of the respondents/revenue.

13. Counter-affidavit will be filed within four weeks.
- 13.1 Rejoinder thereto, if any, will be filed before the next date of hearing.
14. List the matter on 29.08.2023.
15. In the meanwhile, the operation of the impugned order and notices shall remain stayed, till further directions of the court.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 25, 2023 /tr

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