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

% *Date of decision: 29.03.2023*

+ **W.P.(C) 3732/2023 & CM Appl.14464/2023**

DHRUV LAMBA

..... Petitioner

Through: Mr Ajay Vohra, Sr. Adv. with  
Mr Rohit Jain, Ms Manisha Sharma &  
Mr Abhishek Singhvi, Advs.

versus

DY DIRECTOR OF INCOME TAX (INV) & ANR. .... Respondents

Through: Mr Gaurav Gupta, Mr Puneet Singhal  
& Mr Shivendra Singh, Advs.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MS JUSTICE TARA VITASTA GANJU**

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

**RAJIV SHAKDHER, J.: (ORAL)**

**CM Appl.14465/2023**

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) 3732/2023 & CM Appl.14464/2023** *[Application filed on behalf of the petitioner seeking interim relief]*

2. The petitioner *via* the above-captioned writ petition has laid a challenge to the notice dated 08.04.2022 issued under Section 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [hereinafter referred to as, "2015 Act"].

2.1 Besides this, challenge is also laid to the order dated 10.11.2022 passed by respondent no. 2, whereby the petitioner's application dated 06.09.2022 for dropping proceedings triggered pursuant to the notice issued under Section 10(1) of the 2015 Act, was rejected.

2.2 In addition thereto, challenge is also laid to the show cause notice dated 27.02.2023 issued by the concerned officer for completing assessment *qua* the petitioner in exercise of powers under Section 10(3) of the 2015 Act.

3. The record shows that the information with regard to the fact that the petitioner was, perhaps, holding undisclosed assets in the British Virgin Islands came to light sometime in 2013 on account of an investigation carried out by the International Consortium of Investigative Journalists [hereafter referred to as, “ICIJ”].

4. The provisions of the 2015 Act were triggered on 01.07.2015. It appears that between 2013 and until such time the 2015 Act was triggered, the petitioner was in denial mode.

4.1. The petitioner made a declaration with regard to his undisclosed assets which were embedded in a company going by the name Blackrose Holdings Inc., for the first time, on 30.09.2015.

5. The respondents/revenue, however, rejected the declaration *via* the order dated 27.10.2015.

5.1. Briefly, the reasons furnished by the respondents/revenue for rejecting the petitioner’s application was that they already had information with regard to the undisclosed assets *qua* which declaration was sought to be made by the petitioner “on or before” 30.06.2015, under the agreement entered into by the Central Government as per Section 90/90A of the Income Tax Act, 1961 [hereafter referred to as, “1961 Act”].

5.2. This order also discloses that the respondents/revenue had received an intimation with regard to the undisclosed assets of the petitioner from FT&TR Division *via* communication dated 29.10.2015.

6. The order, with regard to the undisclosed foreign assets, referred to

two bank accounts maintained with the branches of UBS AG Bank and Barclays Bank located in Singapore. These are said to be maintained in the name of Blackrose Holding Inc.

7. The respondents/revenue, thus, were of the view that the petitioner was ineligible for seeking a declaration under Section 59 of the 2015 Act, in view of provisions of Section 71(d)(iii) of the 2015 Act.

8. To cut the long story short, the petitioner was issued the impugned notice under Section 10(1) of the 2015 Act concerning the Assessment Year (AY) in issue i.e., AY 2022-23 on 08.04.2022. [See Annexure A, appended on page 93 of the case file].

8.1 In response to the said notice, the petitioner filed a reply on 06.09.2022, wherein certain factual and legal assertions were made. [See Annexure S appended on page 208 of the case file].

9. Apart from other assertions made, one of the assertions that the petitioner made was based on the FAQs contained in the Central Board of Direct Taxes (CBDT) circular dated 06.07.2015.

9.1. The upshot of the assertion was that once the petitioner's declaration under Section 59 of the 2015 Act was considered ineligible, then proceedings under the 2015 Act cannot be triggered.

10. The record also shows that on 10.11.2022, the respondents/revenue passed an order whereby the petitioner's request made *via* reply dated 06.09.2022 that proceedings under the 2015 Act should be dropped, was rejected.

11. The reasons, based on which, the respondents/revenue came to this conclusion were, broadly, the following:

(i) First, when the petitioner was confronted with the information in 2013

by the Investigation Directorate, he denied holding any undisclosed assets; the declaration was made only in 2015.

(ii) Second, since the petitioner was aware of the inquiry being made, he could have declared his undisclosed foreign assets by filing a return/revised return for AY 2011-12 onwards.

(iii) Third, even after the petitioner's declaration under Section 59 of the 2015 Act was declared ineligible, he did not take steps to declare the same under the provisions of the 1961 Act for the relevant AYs, even though time was available to him for doing so.

(iv) Fourth, the circular dated 06.07.2015 was applicable qua those declarations which were made in good faith.

12. This, then, was followed by the impugned notice dated 27.02.2023. This notice has been issued, as indicated above, under Section 10(3) of the 2015 Act.

13. Mr Ajay Vohra, senior advocate, who appears on behalf of the petitioner says, firstly, in terms of the CBDT circular dated 06.07.2015, the respondents/revenue cannot take recourse to the 2015 Act, having rejected the petitioner's declaration made under Section 59 of the 2015 Act.

13.1. Secondly, Mr Vohra contends that a notice under Section 10(1) of the 2015 Act had to be issued within thirty (30) days of the end of the Financial Year (FY) in which the respondents/revenue acquired knowledge of the fact that the petitioner held undisclosed foreign assets. In support of this submission, reliance is placed on the guidelines dated 23.01.2018 issued by the CBDT.

13.2 Thirdly, Mr Vohra submitted that the provisions of the 2015 Act cannot, possibly, apply retrospectively/retroactively.

14. Mr Vohra says that, if not all, some of these issues are being considered by this court in a bunch of petitions, including W.P.(C)1503/2021, titled *Surendra Kumar Jain v. ACIT* and W.P.(C)5559/2021, titled *Harvansh Chawla v. Ministry of Finance*.

15. Mr Gaurav Gupta, senior standing counsel, who appears on behalf of the respondents/revenue, in opposition to the submissions advanced on behalf of the petitioner, relies upon the order dated 10.11.2022.

15.1. In brief, Mr Gupta says that the declaration made under Section 59 of the 2015 Act was not *bona fide*.

15.2. Mr Gupta, based on instructions, says that information with regard to the petitioner's undisclosed assets was received on 22.07.2014. Mr Gupta goes on to state that information was provided by the concerned authorities located in Singapore to the respondents/ revenue on 29.05.2015.

16. It is, thus, Mr Gupta's submission that the petitioner made the declaration under Section 59 of the 2015 Act only when he was more or less sure that the concerned authorities in India had knowledge about the fact that petitioner held undisclosed foreign assets, which could be brought under the purview of the 2015 Act.

17. Having heard the learned counsel for the parties, we are of the view that, while there can be little doubt that the petitioner made a declaration under Section 59 of the 2015 Act once he became aware of the fact that the authorities had, if not knowledge, then some clue about the fact that he was holding undisclosed assets, there are some issues which still require consideration.

17.1. The first issue that requires consideration, which has both legal and factual connotations, is: when did the respondents/revenue acquire tangible

information with regard to the fact that the petitioner had held undisclosed assets? The date on which the respondents/revenue acquired knowledge would then trigger the guidelines that the CBDT framed on 23.01.2018, which required it to issue notice under Section 10(1) of the 2015 Act within thirty (30) days of the end of the FY when it acquired such knowledge.

17.2. Second, whether provisions of the 2015 Act would apply to those undisclosed assets which had been acquired prior to 01.07.2015?

18. Mr Vohra, at this stage, says that there are several other issues/grounds that the petitioner would want to put forth for consideration of this court. Mr Vohra says that the additional grounds find place in the writ petition.

19. According to us, matter requires further examination.

20. Issue notice.

20.1 Mr Gaurav Gupta accepts notice on behalf of the respondents/revenue.

21. Counter-affidavit will be filed within next three weeks.

21.1 Rejoinder thereto, if any, will be filed before the next date of hearing.

22. List the matter on 27.04.2023.

23. In the meanwhile, no coercive measures will be taken against the petitioner till the next date of hearing.

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

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**MARCH 29, 2023 / r**