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

\+ **W.P.(C) 21/2023**

PAWAN CHOUDHARY ......Petitioner

Through: Ms Rano Jain with Mr Venketesh Chaurasia, Advocates.

versus

ITO, WARD 35(5), DELHI ......Respondent

Through: Mr Sanjay Kumar, Sr. Standing Counsel.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

O R D E R

% 04.01.2023

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

CM APPL. 47/2023

1. Allowed, subject to the petitioner filing legible copies of annexures, at least three days before the next date of hearing.

W.P.(C) 21/2023 and CM APPL. 46/2023*[Application filed on behalf of the petitioner seeking interim relief]*

2. This writ petition is directed against the notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 [in short, "the Act"] concerning Assessment Year (AY) 2014-2015.

3. Ms Rano Jain, who appears on behalf of the petitioner, says that given the fact that the impugned notice was delivered and/or dispatched on 01.04.2021, the new regime put in place under Section 147 to 151 of the Act would apply.

3.1 In support of this plea, Ms Jain has drawn our attention to the impugned notice which is appended on page 26 of the case file, and is marked as Annexure-B.

4. A perusal of the impugned notice shows, that it was digitally signed on 31.03.2021 at 03.56 PM.

4.1 Besides this, it appears, that the petitioner was also served with the impugned notice *via* an e-mail dated 01.04.2021.

4.2 This e-mail, apparently, was dispatched on the same date at 01.30 AM.

5. In addition to the above, the petitioner also appended the "track consignment" report, which facially shows that the notice was booked with the Postal Department on 01.04.2021 at 11:13:43.

6. It is Ms Jain's contention, that the petitioner's case falls under category 'C', as framed by a coordinate bench of this Court in the judgment rendered in ***Suman Jeet Agarwal andOrs. v. Income Tax Officer, Ward 61(1) &Ors.*** 2022 (9) TMI 1384 – Delhi High Court.

7. On the other hand, it appears that the respondent/revenue has taken a stand, that the petitioner's case falls in category 'E', as framed by the coordinate bench in the aforementioned judgment.

8. Ms Jain says, that category 'E' would apply, only if the impugned notice was "manually signed", and where no service was effected *via* e-mail, but the notice was dispatched through speed post on or after 01.04.2021.

9. *Prima facie*, to our minds, whether the notice was signed, either digitally or manually, should make little difference, as long as the exact date of delivery of the impugned notice to the Postal Department is known.

10. Mr Sanjay Kumar, who appears on behalf of the respondent/revenue, says that although Annexure-C, which is the track consignment report, reveals that the notice was booked for dispatch on 01.04.2021 at 11:13:43, he needs to ascertain, as to whether the notice was delivered to the Postal Department on 31.03.2021.

10.1 At this stage, Mr Kumar seeks to place reliance on paragraph 4 of the communication dated 28.10.2022 issued by the Jurisdictional Assessing Officer (JAO).

11. We may note, that the crux of Ms Jain's submission is, that in the petitioner's case, the new regime would apply. The reason this argument is put forth by Ms Jain appears to be, as even according to the respondent/revenue, the escaped income is Rs 40,50,316/- which is, quite clearly, below Rs 50,00,000/-, a prerequisite under Section 149 of the Act, for triggering reassessment proceedings under the new regime.

12. Mr Kumar will place on record material which would show the date on which the impugned notice was delivered to the Postal Department.

13. For this purpose, list the matter on 19.01.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 4, 2023 / tr

Click here to check corrigendum, if any